



ANNOTATED

# Indian Civil Court Handbook

(1st amended 17th September 1934)

BY

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Index of Cases The Indian Evidence Act,  
Principles and Practice of Injunctions etc etc*

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## BY THE SAME AUTHOR

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# The Annotated Civil Court Hand Book.

## VOL I

### THE ACTING JUDGES ACT, 1867.

#### ACT XVI OF 1867.

RECEIVED THE G G'S ASSENT ON THE 1ST MARCH, 1867.

*An Act to amend the making of acting appointments to certain judicial offices.*

WHEREAS the Governor General of India in Council or the Local Government as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India; and whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges and it is expedient to remove such doubts, it is hereby enacted as follows:—

1 In every case in which the Governor General of India in Council, or the Local Government, as the case may be, has power under any act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor General of India in Council or the Local Government, as the case may be, shall direct.

Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

2 Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

### THE ADMINISTRATOR-GENERAL'S ACT, 1913

#### ACT NO III OF 1913

RECEIVED THE G G'S ASSENT ON THE 27TH FEBRUARY, 1913

*An Act to consolidate and amend the law relating to the office and duties of Administrator General.*

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General, It is hereby enacted as follows:—

#### PART I

##### PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Administrator General's Act, 1913.

(2) It extends to the whole of British India, including the Sonthal and British Baluchistan, and applies also to all British and Indian His Majesty in the territories of Native States in India.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, direct

Notes — The office of the Administrator General in this country grew out of the Mercantile and Trading Company in Bengal, whose interests were safeguarded by the charter establishing the Supreme Court of Judicature at Fort William in Bengal dated the 26th March 1774. Its functions have been developed and regulated on lines which experience has shown to be necessary, and it is an illustration of the adoption and modification to suit local circumstances, of those principles which underlie the law of trusts, and the law affecting the administration of the estates of the deceased persons — Vide *Kennys Administration Practice* By Stat 39 and 40 Geo II C 79 Ecclesiastical Registrars were appointed to take charge of deceased's property where the deceased had no next of kin. The first Administrator General was appointed by Act VII of 1849.

Local Extent — Act II of 1874 was in force in Sonthal Parganas, in the Arakan Hill District in British Baluchistan, in Angul and in the Khond mals.

Interpretation clause

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "assets" means all the property, moveable and immovable, of a deceased person, which is chargeable with, and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next of kin

(2) "exempted person" means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865,\* from the operation of that Act

(3) "Government" means the Governor General in Council, so far as the Act relates to the Presidency of Bengal and the Local Governments of Madras and Bombay respectively, so far as the Act relates to those Presidencies :

(4) "Indian Christian" means a Native of India who is or in good faith claims to be of unmix'd Asiatic descent, and who professes any form of the Christian religion

(5) "Letters of administration" includes any letters of administration whether general or with a copy of the Will annexed, or limited in time or otherwise

(6) "next of kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased

(7) "Official Gazette" means, in the case of the presidency of Bengal, the *Gazette of India*, and in the cases of the Presidencies of Madras and Bombay, the *Fort St George and Bombay Government Gazettes*, respectively

(8) "Prescribed" means prescribed by rules under this Act

(9) (a) "Presidency of Bengal" includes the territories for the time being, under the government of the Governor of Bengal in Council, the provinces of Oudh, the Central Provinces and Berar, the province of Delhi, Ajmer and Merwara, the Andaman and Nicobar Islands, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, direct

(b) "Presidency of Bombay" includes the territories for the time being under the government of the Governor of Bombay in Council, the Province of British Baluchistan and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, direct

(c) "Presidency of Madras" includes the territories for the time being under the government of the Governor of Fort St George in

\* Act 10 of 1865. See now Act 39 of 1925 by which Act 10 of 1865 has been repealed and re-enacted

Council, the province of Coorg, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, direct :

- (10) "Presidency" means any of the Presidencies mentioned in clause (9):  
 (11) "Revenues of the Government" means, in respect of any part of India,

in a  
 and  
 under

**Assets**—The term "assets" means and includes property of a deceased person chargeable with and applicable to the payment of his debts and legacies. It would therefore include immoveable property. *In re Coury*, 25 C 65, see also *Manchiraju v Narayan*, 1 B H C R 83.

**Exempted persons**—Section 332 of Act X of 1865 has been repealed. See now section 3 of Act of 1925.

Province of Coorg,

of India 1868, p 1

20th November, 1886, Bombay 1st of Local Rules and Orders, Ed 1896, p 26, (3)  
 the members of  
 dated the 20th

4) *Mundis, Or*

*Kurris, Malga*

notification No 1

see also *Tuni Orun v Letti Orun*, 20 C W N 108, (1003) 11 C L J 225=36  
 Ind Cas 206

Indian (Chant on)

selves with the members of the religion of their adoption in such a case the rule of inheritance as prescribed by the Indian Succession Act is applicable to the parties. *Mukherjee v Alfred*, 1 Ind Cas 697=36 P R 1907, see also *Abraham v Abraham*, 9 M. I A 195=1 W R 1 P C; *Nipenbala v Sitikanta*, 12 C L J 459; *Hastings v Gonzales*, 23 B 539, *Dagree v Pacotti*, 19 B 783. But he will be considered as an exempted person under this Act.

But if a Hindu has an admiration for the principles of Christianity and attends church service he does not thereby cease to be a Hindu nor does his personal law cease to bind him before baptism. *Jogendra v Rani* (1900) P L R 251, *Mrs Edith Susan Mukherjee v Mrs George Alfred and ors* 52 P W R 1907, *Administrator General v Ananachari*, 8 M 465, *Ponnasami v Dorasami*, 2 M 209.

**Letters of Administration**—The term includes letters of administration whether with the Will annexed or without it. It also includes letters of administration limited in time or otherwise. Limited grants are dealt with in Chapter II of Part IX of the Succession Act 39 of 1925.

**Next of kin**—According to English Law when used *simpliciter*, it means blood

*Milne v Gilbert*, 5 D M & G 510, *Collingood v Page* 1 Ventr 424, *Brown v Wood Allyn*, 36 In England relations by marriage are not included. *Nichols v Savage*, 18 Ves 53, *Garrick v Camden* 14 Ves 372, *Watt v Watt* 3 Ves 244, *Bailey v Kin Wright*, 18 Ves 49. But in India the law is otherwise. It includes both husband and wife. In sections 55 and 56 of the Indian Succession Act, the words "next of kin" and "relatives" are synonymous, and are collective names for the persons mentioned in Part I and Part II of Schedule II. *Hyribai v Burjori*, 22 B 909.

**Official Gazette**—According to clause ( ) 'Government' means the Governor General in Council so far as the Act relates to the Presidency of Bengal. Similarly the official gazette means the Gazette of India in the case of the Presidency of Bengal. This difference is owing to the fact that the Presidency of Bengal includes the territories for the time being under the government of the Governor of Fort William in Council the United Provinces of Agra and Oudh the Provinces of Punjab Burma Bihar and Orissa the Frontier Province the Province of Nicobar Islands and such of the territories in Council may by notification clause 9(a)]

## PART II

### THE OFFICE OF ADMINISTRATOR GENERAL

Appointment and designation of the Administrators General in the three Presidencies

3 (1) In each of the Presidencies of Bengal Madras and Bombay the Government shall appoint an Administrator General

(2) No person shall be appointed to the office of Administrator General of any of the said Presidencies who is not—

- (a) a Barrister, or
- (b) an Advocate Attorney or Vakil enrolled by a High Court, or
- (c) a person holding the office of Deputy Administrator General at the commencement of this Act

(3) The said Administrators General shall be called respectively the Administrator General of Bengal the Administrator General of Madras and the Administrator General of Bombay

ment of India so far as  
For the meaning  
The word 'Govern  
Madras and Bombay

clause 9 (b) and for the meaning of the term 'Presidency of Madras' vide section 2, clause 9 (c) Under Act II of 1874 only members of the Bar of England or Ireland or of the Faculty of Advocates in Scotland could be appointed an Administrator General. Vide section 6 of Act II of 1874

4 The Government may appoint a Deputy or Deputies to assist the Administrator General, and any Deputy so appointed shall be subject to the control of the Government and the general or special orders of the Administrator General, be competent to discharge any of the duties and to exercise any of the powers of the Administrator General and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator General

**Notes**—By this section provision is made for the appointment of deputy Administrator General. Powers to be exercised by the deputy Administrator General are also mentioned in this section. There was no such provision in Act II of 1874.

**Grants whether limited or unlimited**—Grants of Letters of Administration to an Administrator General must be limited to the particular province in which they are granted. *Per Garth C J* in *In the goods of Howson* 4 C 770. But in the same case *Wile J* held that the form of grant of letters of administration to the Administrator General should be general and unlimited.

5 The Administrator General shall be a corporation sole by the name of the Administrator General of the Presidency of Bengal, Madras or Bombay, which he shall have in his official seal and to sue and be sued in his corporate name.

**Corporation sole**—Corporations are usually classified under two heads, viz., corporation sole and corporation aggregate. As a corporation according to Lord Coke is 'invisible and immortal it has no soul, neither is it subject to the laws of nature.' The rights of a corporation are its intangible legal persons the following leading of foundation—Vide

*Amagers Municipal Corporation* p 2

### PART III.

#### RIGHTS, POWERS, DUTIES AND FACILITIES OF THE ADMINISTRATOR GENERAL

##### (a) Grants of Letters of Administration and Probate

6 So far as regards the Administrator General of any presidency, the High Court at the presidency town shall be deemed to be a Court of Competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force wheresoever within the presidency the estate to be administered is situate

**Jurisdiction of High Court**—The Court has jurisdiction to grant probate or letters of administration to the estate of the deceased if he left property within the jurisdiction of the Court or if the deceased had a fixed place of abode within its jurisdiction. *Kamoni v Hurro* 8 C 570, *Jurdunji v Nivaji* 17 B 689, *Re Lornmouth* 24 M 120, *Go int v Anant* 19 N L R 54, *Bhanrao v Lakshimbai*, 20 B 607, *11 jiv Vishnu* 9 B 241, *In the goods of Mohendra Narain* 5 C W N 377, *1 in 1 idur v Mohirnee* 4 C L R 495, *Golum v Saboo* 20 W R 286, *In the goods of Prodel* L. R. 11 F & D 454, *In re Santaye* 3 P D 42. But in the case of Administrator General the High Court at the presidency town has such a jurisdiction irrespective of the fixed place of abode of the deceased or the situation of his properties. So far as the Administrator General of Bengal is concerned such application may be made to the High Court of Calcutta. Vide also 1 B L R O C 3

7. Any letters of administration, which are granted after the commencement of this Act by the High Court at any place, unless granted to next of kin

**Letters of administration granted by High Court**—Sections 218 and 219 of the Succession Act 39 of 1925 lay down that letters of administration may be granted even to a creditor in the absence of the next of kin. But this section lays down that when such grant is made by a High Court at any presidency town it shall be granted to the Administrator General in preference to a creditor. So far as the estate of an illegitimate person is concerned the Administrator General is entitled to letters of administration. *De Mellow v Broughton* 11 B L R App 6, *In the goods of Simpson* 1 M H C R 171, vide notification No 2189 dated 31st March, 1873 11 B L R 7 note

**Next of kin**—Next of kin in this section means the nearest of kin absolutely, not nearest of kin in India—*Per Norman J* in *In the goods of Smallwood* 20th July 1868 where a brother the nearest of kin in India was held not to be entitled in priority to the Administrator General there being a father and mother alive in England—Vide *Henderson's Testamentary Succession* p 420. He is entitled in preference to pecuniary legatee. *11 re Veigis* 1 B H C R 103

8 The Administrator General of the presidency shall be deemed by all the Courts in the presidency to have a right to letters of administration other than letters *pendente lite* in preference to that of—

(a) a creditor, or



- (d) a legatee other than an universal legatee, or  
(e) a friend of the deceased

**Scope**—By section 7 the Court is required to grant letters of administration to the Administrator General if no person appears entitled as next of kin and where such grant is made by the High Court at any Presidency town. So far as other places are concerned the Administrator General of the Presidency is a preferential right to obtain letters of administration over a creditor or a legatee other than an universal legatee or a friend of the deceased. The difference between this section and section 7 appears to be that under section 7 the grant must be made to the Administrator General where there is no next of kin whereas under this section it is optional with the Administrator General to exercise his rights or not. These two sections qualify the law laid down in sections 218, 219 and 234 of the Indian Succession Act, 39 of 1925.

**9** If any person not being an exempted person has died leaving within any Presidency assets exceeding the value of "two thousand" rupees and if no person to whom any Court would have jurisdiction to commit administration of such assets has within one month after his death, applied in such presidency for probate of his will or for letters of administration of his estate,

the Administrator General of the presidency in which such assets are, shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets take such proceedings as may be necessary to obtain from the High Court at the presidency town letters of administration of the estate of such person.

## 10

Power to  
Administrator General to apply for ad-  
ministration

being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted may upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit directing the Administrator General to apply for letters of administration of the estate of such person. Provided that, the Court on the application of the Administrator General may refuse to grant letters of administration if the Court is satisfied that the grant of such letters is unnecessary for the purpose of making such order as the Court may think fit.

**Notes**—This section is applicable to the assets of the Hindus and Mahomedans also. It requires that the Court shall be satisfied that the danger is to be apprehended of the misappropriation of such assets unless letters of administration of the effects of the deceased are granted. The bare possibility that the Act of Limitation



- (b) a legatee other than an universal legatee, or  
 (c) a friend of the deceased

**Scope**—By section 7 the Court is required to grant letters of administration to the Administrator General, if no person appears of kin and where far as other places preferential right than an universal

section 7 appears to be that under section 7 the grant must be made to the Administrator General where there is no next of kin whereas under this section it is optional with the Administrator General to exercise his rights or not. These two sections qualify the law laid down in sections 218, 219 and 234 of the Indian Succession Act, 39 of 1925

**9** If any person, not being an exempted person has died leaving within any Presidency assets exceeding the value of "two thousand" rupees, and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such presidency for probate of his will, or for letters of administration of his estate,

the Administrator General of the presidency in which such assets are, shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court at the presidency town letters of administration of the estate of such person.

**Scope**—If the assets do not exceed two thousand rupees, the provisions of this section are not applicable

administration as regards  
 The legal heirs are

**10** Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency town, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted may upon the application of the Administrator General or interested in such assets or in the due administration thereof, or upon such terms as to indemnifying the Administrator General against other expenses as the Court thinks fit, directing the Administrator to apply for letters of administration of the estate of such person: in the case of an application being made and granted

the Court shall make

also It requires that the bare possibility that the effects of the deceased are granted

may ultimately become a bar to the recovery of assets is not such danger of mis-  
 . . . . . to the Administrator General  
 . . . . . the estate it seems, cannot apply  
 . . . . . the title of the Administrator-  
 . . . . . leath of the deceased *Vide Lal*  
 . . . . . also section 220 of the Indian  
 . . . . . Administrator General cannot take  
 possession of the estate without a previous order of the Court *Nrityo Gopal v.*  
*Administrator General*, 10 C W N 241

Power to direct Adminis 11. (1) Whenever any person has died  
 trator General to collect and leaving assets within the local limits of the  
 hold assets until right of ordinary original civil jurisdiction of any of the  
 succession or administration said High Courts,  
 is determined

and such Court is satisfied that there is no person immediately available,  
 who is legally entitled to the succession to such assets or that danger is to be  
 apprehended of misappropriation deterioration or waste of such assets, before it  
 can be determined who may be legally entitled to the succession thereto, or  
 whether the Administrator General is entitled to letters of administration of the  
 estate of such deceased person,

the Court may, upon the application of the Administrator General or of any  
 person interested in such assets, or in the due administration thereof, forthwith  
 direct the Administrator General to collect and take possession of such assets,  
 . . . . . the directions  
 . . . . . the provisions

is section shall  
 entitle the Administrator General,

(a) to maintain any suit or proceeding for the recovery of such assets, and  
 (b) . . . . . estate of

(c) . . . . . able under  
 rules made under this Act, and to reimburse himself for all pay  
 ments made by him in respect of such assets which a private ad  
 ministrator might lawfully have made

Scope—The admission by the applicant that there is a valid Will does not

The word 'succession' in this  
 Even where the Administrator  
 under this section *In the goods*  
*Cas 431*, see also 5 C 220 An  
 late or letters of administration so  
 far as respects the title under it to get in the property of the deceased *Hogg v*  
*Henry*, 1 Boul 654 cited in *Henderson* p 422 The position of an Administrator

Ge  
 mi  
 est  
 of  
 10 C W N 241 *supra* The Administrator General does not part with his interest  
 in a business by merely handing over the keys of the business premises 25 Ind Cas  
 153 The Administrator General is entitled to his costs for the protection of the  
 estate under this section *Amer v Rivett* 10 B 350 Under this section the right  
 of the Administrator General dates from the death of the deceased *Bhany v A G*  
 23 B 428 Under this section he can only protect the estate and is not to administer  
 property *Henderson* 423, see also 26 Ind Cas 793

Grant of probate or letters  
 of administration to person  
 appearing in the course of  
 proceedings taken by Admin-  
 istrator General under sec  
 tions 9, 10 and 11

12. If, in the course of proceedings to  
 obtain letters of administration under the provi-  
 sions of section 9, section 10 or section 11  
 any person appears and establishes his claim—

(a) to probate of the will of the deceased

(b) to letters of administration as next of kin of the deceased, and gives such security as may be required of him by law,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the administrator General the costs of any proceeding taken by him, under those sections to the paid out of the estate as part of the testamentary or intestate expenses thereof

Notes—Sections 12 and 13 are explained by Mr Sen as applying only to cases where a person comes forward and unexpectedly propounds a Will. I think there is no reason in sections 12 and 13 which requires a condition of unexpectedness at all. *Per Rankin J* in *In the Goods of Pashupati Mukherjee*, 24 C W N 376 at p 328, see also 26 Ind Cas 793

13 If, in the course of proceedings to obtain letters of administration

Grant of administration to Administrator General in certain cases under the provisions of section 9, section 10 or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next of kin of the deceased within such period as to the Court seems reasonable,

or if a person who has established his claim to a grant of letters of administration as next of kin of the deceased fails to give such security as may be required of him by law

the Court may grant letters of administration to the Administrator General

Notes—Vide notes under s 12

14 Nothing in this Act shall be deemed to preclude the Administrator

Administrator-General not precluded from applying for letters within one month after death of one month from the death of the deceased

Notes—Under section 9 the Administrator General is bound to apply for probate or letters of administration after a period of one month if the deceased be not an exempted person and if he dies leaving within any Presidency town assets exceeding the value of one thousand rupees. But that section does not preclude the Administrator General from applying to the Court for a grant within the period of one month

(b) *Estates of Persons subject to the Army Act or the Air Force Act*\*

Act not to affect Regimental Debts Act 1893 15 Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act, 1893†

Notes—On the death of a person while subject to military law the prescribed

of the preferential charges on the property of the deceased Vide s 1 of Regimental Debts Act, 1893

16 It shall not be necessary for the Administrator General to take out

Letters of administration not necessary in respect of small estates administered by Administrator General in accordance with the Regimental Debts Act, 1893 letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act 1893† if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him

**Regimental Debts Act**—The Administrator General can apply under the Regimental Debts Act, Vide s 7 (1), 8 (2) and s 9

**17.** If the Administrator General applies, in accordance with the provisions of the Regimental Debts Act, 1893\* for letters of administration of the estate of any person subject to the Army Act, "or the Air Force Act," the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with provisions of the Regimental Debts Act, 1893

**Notes**—Vide ss 11 to 24 of the Regimental Debts Act 1893

### (c) *Revocation of Grants*

**18** If an executor or next of kin of the deceased who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto establishes to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted in accordance with the provisions of this Act to the Administrator General may be revoked, and probate or letters of administration may be granted to such executor or next of kin as the case may be

Recall of Administrator General's administration, and grant of probate etc to executor or next of kin

Provided that no letters of administration granted to the Administrator General shall be revoked for the cause aforesaid except in cases in which a will of the deceased is proved in the Presidency, unless the application for that purpose is made within six months after the grant to the Administrator General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made

**Revocation**—A grant may be revoked where it has been granted without citing necessary parties *Tristram & Coole* p 180 (n), *Mortimer* on Pro Pric 431 A person having notice can not apply for revocation *Katcliffe v Barnes* 2 S and T 486, *Wytelerley v Andrews* 1 and D 328, *Newells v Weeks*, 2 Phill 224 It is necessary for the party who appears for revocation to prove not only that no special citation was served on him but also that he had no knowledge of the proceedings *Premchand v Surendra* 9 C W N 190 A grant is ordinarily revoked on the ground that no citation is served 2 C W N 100, 2 C W N 607

**19** If any letters of administration granted to the Administrator General in accordance with the provisions of this Act are revoked the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of the estate

Cost of obtaining administration etc may, on revocation be ordered to be paid to Administrator General out of assets

Provided that nothing in this section shall affect the provisions of clause (e) of sub section 2 of section 11.

**Notes**—On revocation the Court may order costs to be paid to the Administrator General out of assets The Administrator General is also allowed commission even if he has taken manual possession of cash Government promissory notes, etc *In the goods of Simpson* 1 M H C R 171, see also *Nirya Gopal Biswas v A G* 10 C. W N 241

20 If any letters of administration granted to the Administrator General

After revocation letters granted to Administrator General to be deemed as to him to have been voidable only

in accordance with the provisions of this Act are revoked the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof be deemed to have been only voidable except as to any act done by any such Administrator General

or other person as aforesaid after notice of a will or of any other fact which would render such letters void

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters unless within the period of one month from the time of giving such notice proceedings are commenced to prove the will or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay

Voidable—The effect of the proceeding for the grant of probate effect of the revocation depends according to *Judu 19 C W N 40* Where the grant is also void *Abram v Cunningham* Ch 613 *Wooly v Clark*, B and Ald 744 *Debendra v A G 10 C W N 103* Under the section such a grant is only voidable and not void It is also stated in the section when such a grant becomes void

21 If any letters of administration granted to the Administrator General

Payments made by Administrator General prior to revocation

acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation which would have been valid if

of such

Pay

a copy of the will annexed, and payment made

Court are afterwards revoked or the *W v Bigelow 19 Am Dec 591 Foster* 33 Am Dec 227, *Gobinda v Mayun* in *Sailja Prosad v Judu 11th 19*

C W N 40

(d) General

22 Whenever any

Administrator General's petition for grant of letters of administration

administration is presented for the grant of such letters

- (i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner,
- (ii) the names and addresses of the surviving next of kin of the deceased if known
- (iii) the particulars and value of the assets likely to come into the hands of the petitioner
- (iv) particulars of the liabilities of the estate if known

Cf s 278 of the Succession Act 1925

Notes—The term assets means and includes property of a deceased person chargeable with and liable to the payment of his debts and legacies It would therefore include immovable property *In re Goring 15 C 65*, see also *Man har*

**Names of Surviving Next of Kin**—The applicant is bound to state the names of the family or other relatives of the intestate *Rishi v Hile*, 7 P. R. 1902

23 (1) All probates or . . .

Probates or letters to be granted to Administrator General by his name of office, and powers of that officer in cases in which probate or letters of administration have been granted to the Ecclesiastical Registrar, which such probate or letters relate

(2) All probates and letters of administration granted to the Ecclesiastical Registrar of any of the late Supreme Courts shall have the same effect in all respects as to any act hereafter done or required to be done under this Act as if they had been granted to the Administrator General

**To act as executor**—If an Administrator General takes out letters of administration to the estate moveable and immovable, of a Hindu dying intestate, the whole estate of the deceased vests in the Administrator General and he can dispose of it without the sanction of the Court in such manner as may appear to him proper *P. Alwar Cetti v P. Chidambaram* 26 Ind. Cas. 792=27 M. L. J. 400, see also 33 C. 713. But no such estate vests in him if the deceased was an insolvent *V. Nee v A. G.* 27 Ind. Cas. 56=38 M. 500. After his death all assets vest in his successor in office *A. G. v. Devedra* 33 C. 713

Presidency—Vide 4 C. I. P. 47=4 C. 770, 1 C. 52=24 W. R. 206

24 Probate or letters of . . . High Court at any

Effect of probate or letters of Administrator General . . . Administrator General effect over all the assets of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator General :

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout one or more of the other Presidencies

Whenever a grant is made by a High Court to the Administrator General with such effect as last aforesaid, the Court shall send to the other High Courts a certificate that such grant has been made, and such certificate shall be filed by the Courts receiving the same

Administration to an Administrator of those grants are not affected *s of Hewson* 1 C. 770=4 C. L. 1 C. 52=24 W. R. 206

**Representative title**—An Administrator General may sue and be sued in his name. Vide *Antonie v A. G.* 28 B. 529, *Bolarani v A. G.* 8 C. W. N. 93, *Corporation of Calcutta v A. G.* 30 C. 927

25 (1) Any private executor or administrator may, with the previous

Transfer by private executor or administrator of interest under probate or letters of administration are situate by an instrument in writing under his hand notified in the official Gazette, transfer the assets of the estate vested in him by virtue of such probate or letters to the Administrator General by that name or any other sufficient description

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except



respect of acts done before the date of such transfer, and the Administrator General shall have the rights which he would have had and be subject to the liabilities to which he would have been subject, if the probate or letters of administration as the case may be had been granted to him by that name at the date of such transfer

**Power to transfer**—The right to devolve the property of a deceased testator, with all powers and duties relating to the management and administration which is conferred by s 31 of Act II of 1874 (=this section) is not confined to any particular class of executors or of estates. It is given in broad and comprehensive terms to any and every testamentary executor in whom the estates of the deceased testator have been legally vested by virtue of the probate—provided only that no transfer shall be made to the Administrator General without his consent. Section 31 of Act II of 1874 is a re-enactment of s 30 of Act XXIV of 1867. At the time when the prior Act was passed the executor of a Hindu testator was not a person entitled to transfer under the Act. But by the time when the latter Act was passed he became a person entitled so to act, by virtue of the provisions of the Hindu Wills Act 1870. So a Hindu testator now may effect a valid transfer of the estate under this section. *A G v Premji*, 2 C 788 P C, see also 22 B 1.

26 (1) When the Administrator General has given the prescribed notice

Distribution of assets

for creditors and others to send in to him their claims, ceased, he shall, be at liberty to satisfy lawful claims

as he has notice of

(2) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively

(5) In computing the period of limitation for any suit appeal or application under the provisions of any law for the time being in force the period between the date of submission of the claim of a creditor to the Administrator General and the date of the final decision of the Administrator General on such claim shall be excluded

**Notes**—This section corresponds to section 360 of the Succession Act 1925

Appointed as trustee of assets after completion of administration

him he shall notify the fact in the official Gazette and he may, by an instrument in writing, with the consent of the Official Trustee and be the trustee of any assets then remaining in his hands

(2) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act 1913 and shall be held by him upon the same trusts as the same were held immediately before such appointment

by such a notice

be discharged administered by

**Principle**—This section is based on the broad principle that when an executor, who happens also to be named a trustee of a legacy to be laid out in stock, has *filled* administered the estate, and assented to the legacy and returns the legacy in his hands not as assent of the testator, but as trustee of the legacy, then the principles which would apply to another trustee must apply to him. *Williams on Executors* 11th ed. p. 1129 citing *Birchall v. Bridport*, 6 Madd. 13, see also *In re Sires* (1007) 1 Ch. 126 at p. 152.

25. (1) The High Court shall make such orders as it may think fit in relation to the administration of the estate of any deceased person, and in relation to the administration of any such estate, and in relation to the administration of any such estate, and in relation to the administration of any such estate.

(2) Applications under subsection (1) may be made by the Administrator General or any person interested in the assets or in the due administration thereof.

29 (1) No Administrator General shall be required by any Court to enter into any administration bond or to give other security to the Court, on the grant of any letters of administration to him by that Court.

(2) No Administrator General or Deputy Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

3) The entry of the Administrator General by that name in the books of a Company shall not constitute notice of a trust, and a Company shall not be entitled to object to enter the name of the Administrator General on its register by reason only that the Administrator General is a corporation and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust

public officer is exempted  
presented by him under  
26 C 404=3 C W N 208.

30. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be so examined by him regarding such question.

**Notes**—This section gives the Administrator-General power to administer oath and examine persons he desires to examine

### (e) Grant of Certificates

31 Whenever any  
In what case Adminis-  
General  
or in ar  
188/,\*  
rupees—in value, he may, after the  
thinks fit, or before the lapse of the said month if he is requested so to do

37 The Administrator General shall not be bound to take out letters of Administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate, under section 31 or section 32 but he may do so if he revokes such certificate under section 35 or ascertains that the value of the estate exceeded "two thousand" rupees.

38 When the value of the estate is under Rs 2000 the Administrator General is not bound to take out Letters of Administration. But if he revokes the certificate he may take out Letters of Administration.

38 Where a person not having his domicile in British India has died leaving assets in any Presidency and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in any such Presidency have been taken under section 31 or section 32, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

the Administrator General may, after having given, the prescribed notice to the persons entitled to the surplus or residue of the deceased, and after having discharged, at the expiration of the time prescribed, the claims against the estate of the deceased, instead of himself, to persons residing in the country of domicile, the consent of the persons entitled to the surplus or residue to him for distribution to those persons.

Transfer of certain assets.—It is the duty of local or limited administrators to remit or pay over to the administrator in the *forum* of the domicile any surplus or residue of the estate of the deceased.

Ed p 1277.

#### (f) Liability.

39. The revenues of the Government shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator General nor any of his officers has incurred liability.

\* Substituted by Act 32 of 1925

† Certain words after the repealed by Act 21 of 1922 have been omitted.

‡ Inserted by Act 21 of 1922.

(2) Nothing in sub section (1) shall be deemed to render "the Government or" the Government of India or the Administrator General liable for anything done before the commencement of this Act, by or under the authority of the Administrator General

upon two principles, 1st that in order not to deter persons from undertaking those offices, the Court is extremely liberal in making every possible allowance and cautions not to hold executors and administrators liable upon slight ground 2nd that care must be taken to guard against an abuse of their trust *Powell v Et ins*, 5 Ves 843 *Kapffuel v Boehm*, 13 Ves 410, *Tebbs v Carpenter*, 1 Madd 298—*Williams on Executors* 11th Ed 1417

40 (1) If any suit be brought by a creditor against any Administrator General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General for the amount and other particulars of his claim support thereof as in the circumstances of the case was reasonably entitled to require

(2) If any such suit is decreed in favour of the creditor he shall nevertheless unless he is a secured creditor be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors

Creditors—who are—A surety who pays off the debts of the intestate after the death is considered as a creditor *Williams v Jules* 34 L J P 60 A man who has paid for the funeral expenses of the deceased is a creditor *Newcombe v Beloe* 1 P & D 314 *Flower In re* 16 Jur 894

Secured creditor—A debt secured by a lien on property stands on a totally different footing, the executor and administrator taking such property subject to the charge The administrator of the estate of a deceased debtor is not justified in notice of the claims of the creditor to the payments of the Administrator General, 22 Ind Cas 262 (c)

41 Nothing in section 80 of the Code of Civil Procedure, 1908†, shall apply to any suit against the Administrator General in which no relief is claimed against him personally

Section 80 of the Code of Civil Procedure—Section 80 of the Civil Procedure Code lays down that no suit shall be instituted against a public officer in respect of any act purporting to be done by such officer in his official capacity until the expiration of two months next after notice in writing has been delivered to him or left at his office stating the cause of action the name and description and place of residence of the plaintiff and the relief which he claims A notice under that section is

## PART IV

### FEES

42 (1) There shall be charged in respect of the duties of the Administrator General such fees whether by way of percentage or otherwise as may be prescribed by the Government

\* The words within quotations have been inserted by Act 71 of 1922  
† 5 of 1908

Provided that, in the case of any estate, the administration of which has been committed to the Administrator General before the commencement of this Act, the fees prescribed under this section shall not exceed the fees leviable in respect of such estate under the Administrator General's Act, 1874,\* as subsequently amended :

Provided further that in respect of the duties of the Administrator General under the Regimental Debts Act, 1893,† the fees prescribed in this section shall be at different rates for different estates

Provisions of that Act  
duties, and shall, so far as may be, be amount sufficient to discharge the salaries and the working of this Act (including such sum to be required to insure the revenues of the Government) against loss under this Act)

Administrator General is entitled to charge only  
He is entitled to charge commission upon the

commission on the value of

the Receiver *Watkins v*

be considered at the date of the distribution 43 M. L. J. 347=74 Ind. Cas. 182 see also, 4 C. 770, 25 C. 65, 1 M. 148 The term "assets" means and includes property of a deceased person chargeable with and applicable to the payment of debts and legacies *In the goods of Conry* in 25 C. 65

43 (1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator General if he were a private administrator of such estate shall be so retained or paid and the fees prescribed under section 42 shall be retained or paid in like manner as and in addition to such expenses.

(2) The Administrator-General shall transfer and pay to such authority in such manner and at such time as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government §

Notes—The Administrator-General has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has *R. v. Stokes*, 2 Mac. 255 cited in *Henderson* p. 437

## PART V.

### AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS

44 The accounts of every Administrator-General shall be audited at least once annually, and at any other time if the Government so direct, by the prescribed person and in the prescribed manner.

Auditors—The accounts should be audited by an auditor or the person prescribed by the Government and in the prescribed manner

45 The auditors shall examine the accounts and certify the same

(c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder, or (as the case may be) that such accounts are deficient or that the Administrator General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate

*Notes*—This section lays down the duties of an auditor or

Power of auditors to summon and examine witnesses, and to call for documents

46 (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908.\*

- (a) to summon any person whose presence he thinks necessary to attend him from time to time, and
- (b) to examine any person on oath to be by him administered; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination

(2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined shall be deemed to have committed an offence within the meaning of, and punishable under, section 184 of the Indian Penal Code,† and the auditor shall report every case of such refusal or neglect to Government

*Notes*—Under this section the auditor is given wide powers. He is invested with the powers of a Civil Court under the Civil Procedure Code to summon and examine witnesses on oath. He can also issue a Commission for the examination of any person and can summon any person to produce any document. Any person who refuses to attend or to be sworn is punishable under section 188 of the Indian Penal Code. Every facility is given to an auditor for successfully auditing the accounts

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the Government, and shall be defrayed in the prescribed manner

Costs of audit, etc

## PART VI.

### MISCELLANEOUS

48 The Administrator General may, in addition to and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

General powers of administration

- (a) on such acts as may be necessary for the proper care and management
- (b) on such

such  
ments,

*Notes*—Even under the old law although a trustee is allowed nothing for his expenses out of pocket *How v Godfrey* 11 Cl & F 578 *Haywood v Alk* 126, *Caffery v Lord Eldon* 8 Ves 81 *Lord Eldon* said, 'It follows from the nature of the office whether expressed in the instrument or not that the trust property shall reimburse him all the charges and expenses incurred in the execution of the trust' See also *Dawson v Clark* 18 Ves 254

49 Any person interested in the administration of any estate, which is in the charge of the Administrator General shall, subject to such conditions and restrictions as may be prescribed be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor and on payment of the prescribed fee, to copies thereof and extracts therefrom

Notes — Any person interested in the administration of any estate is entitled at all reasonable time to inspect the accounts relating to such estate and the reports and certificates of the auditor

50 (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the accounts to be kept by the Administrator General and the audit and inspection thereof,

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,

(c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required

(d) subject to the provisions of this Act the fees to be paid under this Act, and the collection and accounting for any such fees

(e) the statements schedules and other documents to be submitted to the Government or to any other authority by the Administrator General and the publication of such statements schedules or other documents

(f) the realization of the cost of preparing any such statements, schedules or other such documents

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination and

(i) any matter in this Act directed to be prescribed

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act

Notes — For rules under this section *Vide* Gazette of India 1914 Part I, p. 269

51 Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding

False evidence

Scope — It is sufficient to bring a case under this section if the statement is intentionally given, that is to say, if the person knowingly and advisedly knowing it to be false and with intent of leading it to suppose that what he states is true

52. All assets in the charge of the Administrator General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for Assets unclaimed for twelve years to be transferred to Government

\* After this sub clause (f) was inserted by Act 10 of 1914 but has been repealed 5 of 1917 and hence it is omitted

payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government :\*

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any Court

Notes—Under article 123 of the First Schedule of the Limitation Act, a suit for granting a legacy or for a share of a distributive share of the property of a testator is barred by 12 years from the time when the legacy or share was due. *See Cursetjee v. Ditta*, 19 M. 425; *Narottam v. Teroybat*, 23 B. 80, *Asmi v. Asishinra*, 16 M. 160=1 M. L. J. 754, *Khetiamoni v. Dhirendri*, 41 C. 271, *Nine v. Kaimunt* 2 Agra 171, *Mung Tun v. Mathil*, 44 C. 379=21 C. W. N. 527 P. C.=38 Ind. Cas. 809. But when a suit has already been instituted within that period the claim is not barred by limitation. These time barred legacies or assets in the hands of Administrator General become the property of the Government. Hence the period of twelve years is mentioned.

Assets include both immovable and movable property. Whether assets have been "collected" depends on the facts of each case. Mere taking of letters of administration does not entitle Administrator to get commission. A. I. R. 1926 Mad. 1076=51 M. I. J. 334=97 Ind. Cas. 722.

53. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government\* under the provisions of this Act, or any claim to recover principal money so transferred, Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the Government\* shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court at the Presidency town against the Secretary of State for India in Council, and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

Notes—If the claim is made within the period of limitation, it shall be valid. *See* *Eliza Smith v. Secretary of State*, 3 C. 340. The Civil Procedure Code of 1908, section 107, provides that a decree of a District Judge in certain cases of deceased persons, and to report to Administrator General, shall be subject to review by the High Court. The Civil Procedure Code of 1908, section 107, provides that a decree of a District Judge in certain cases of deceased persons, and to report to Administrator General, shall be subject to review by the High Court.

54. Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, stating the following particulars so far as they may be known to him :—

- the amount and nature of the assets,
- whether or not the deceased left a will and, if so, in whose custody it is,
- the names and addresses of the surviving next-of kin of the deceased, and, on the lapse of one month from the date of the death,

\* Certain words after this repealed by Act 21 of 1922 have been omitted



49 Any person interested in the administration of any estate, which is in the charge of the Administrator General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom

Notes—Any person interested in the administration of any estate, is entitled at all reasonable time to inspect the accounts relating to such estate and the reports and certificates of the auditor

50 (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Administrator General and the audit and inspection thereof,
  - (b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,
  - (c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required,
  - (d) subject to the provisions of this Act the fees to be paid under this Act, and the collection and accounting for any such fees,
  - (e) the statements schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements schedules or other documents.
  - (f) the realization of the cost of preparing any such statements schedules or other such documents,\*
  - (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,
  - (h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and
  - (i) any matter in this Act directed to be prescribed
- (3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act

Notes—For rules under this section *Vide* Gazette of India 1914, Part I p 369

51 Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding

Scope—It is sufficient to bring a case under this section if the false evidence is intentionally given that is to say, if the person making the statement makes it advisedly knowing it to be false and with the intention of deceiving the Court and of leading it to suppose that what he states is true 26 A 506 *Vide* section 191 of the Indian Penal Code

52. All assets in the charge of the Administrator General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for

Assets unclaimed for twelve years to be transferred to Government

\* After this sub clause (ff) was inserted by Act 10 of 1914 but has been repealed by Act 5 of 1917 and hence it is omitted

payment thereof having been made and granted by him shall be transferred in the prescribed manner, to the account and credit of the Government\*.

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any Court.

**Notes.**—Under article 123 of the First Schedule of the Limitation Act, a suit for granting a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate can be brought within twelve years from the time when the legacy or share becomes payable or deliverable. *See Cursetjee v. Ditta*, 19 M. 475, *Asaroy v. Ierapin*, 23 B. 80, *Kasim v. Avishinra*, 16 M. 160=1 M. L. J. 754, *Akhetron v. Dhirendri*, 41 C. 271, *Ware v. P. v. mund*, 2 Agra. 171, *Muang Tun v. Mithil*, 44 C. 379=21 C. W. N. 527 P. C.=38 Ind. C. 807. But when a suit has already been instituted within that period the claim is not barred by Limitation. These time barred legacies or assets in the hands of Administrator General become the property of the Government. Hence the period of twelve years is mentioned.

Assets include both immovable and movable property. Whether assets have been collected depends on the facts of each case. Mere taking of letters of administration does not entitle administrator to get commission. A. I. R. 1926 Mad. 106=51 M. I. J. 334=97 Ind. C. 722.

53. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government\* under the provisions of this Act or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority the Government\* shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to institute proceedings for the recovery of such assets, at the Presidency town against the Secret such Court after taking such evidence as it thinks fit shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit and such order shall be binding on all parties to the proceeding.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

**Notes.**—If the claim is not barred by limitation under article 123 of the schedule I of the Limitation Act and if it is established to the satisfaction of the prescribed authority it shall be paid to the claimant. An application by petition under section 63 of Act II of 1874 (=this section) is a suit within the meaning of section 13 of the Civil Procedure Code 1877 and is barred by the disposal of a similar former application in the same matter though the order passed is capable of being reviewed. *Eliza Smith v. Secretary of State*, 3 C. 340.

54. Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency stating the following particulars so far as they may be known to him—

- (a) the amount and nature of the assets,
- (b) whether or not the deceased left a will and, if so, in whose custody it is,
- (c) the names and addresses of the surviving next of kin of the deceased, and, on the lapse of one month from the date of the death,

\* Certain words after this repealed by Act 21 of 1922 have been omitted

(d) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 239 of the Indian Succession Act, 1865,\* to take and keep possession of the same until the Administrator General has obtained letters of administration, or until some other person has obtained probate or letters of administration from the Administrator General under the Act, to the holder of

Provided that the District Judge may, if he thinks fit, sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold, and he shall there upon credit the proceeds of such sale to the estate

(3) The District Judge may cause to be paid out of any assets of which he or such officer has charge, or out of the proceeds of such assets or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

(a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act,

(b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant,

(c) the relief of the immediate necessities of the family of the deceased, and

(d) such acts as may be necessary for the proper care and management of the assets left by the deceased,

no or section 281 of the Indian Succession Act, 1865, being in force with respect to rights of persons shall be held to affect the validity of any payment so caused to be made

**District Judge**—A District Judge who has under the provision of this section taken possession of the assets of a deceased person pending the happening of one or other of the events specified in this section is not the legal representative of the deceased for the purpose of the execution of a decree obtained against the deceased. *The District Judge of Azamgarh v Baldeo Prasad*, A W N 1899 221

Commission is fixed on value of assets as they are ultimately distributed A I R 1922 Mad 492=43 M L J 342=74 Ind Cis 182

Succession Act and Companies Act not to affect administrator General, and saving of provisions of Presidency Police Acts as to petty estates

55 (1) Nothing contained in the Indian Succession Act, 1865,\* or the Indian Companies Act, 1882,† shall be taken to supersede or affect the rights, duties and privileges of any Administrator General.

(2) Nothing contained in the Indian Succession Act, 1865\* or in this Act, shall be deemed to affect, or to have affected, any law for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the presidency towns or in the town of Rangoon, which shall be or has been taken charge of by the police for the purpose of safe custody.

**Notes**—Section 100 of the Calcutta Police Act (Ben Act IV of 1866) lays down that the police shall for the purpose of safe custody, take temporary charge of unclaimed moveable property found by them. Clause (1) of section 101 of the same lays down that if the said property appears to have been left by a person who has died intestate, and not to be under two hundred rupees in value, the Commissioner

\* 10 of 1865, see now Act 39 of 1925

† 6 of 1882, see now Act 7 of 1913

of the Court shall communicate with the Administrator-General, with a view to its being dealt with according to the Administrator-General's Act, 1874 or any other law for the time being in force. Then clauses 2 to 6 of the same section provide the procedure of dealing with property under two hundred rupees. Similar provisions are also made by Bombay, Madras and Bangalore Local Acts.

**56** Any order made under this Act by any Court shall have the same effect as a decree.

**Decree**—In the definition of a decree, vide Civil Procedure Code, section 2 (2). The term decree is defined in the Code as meaning the formal expression of an order which, so far as regards the Court expressing it, conclusively determines the rights of parties with regard to all or any of the matters in controversy in the suit. See also *Secretary of State's Bill*, 1883, *Minister's Bill*, *Hellin* 34 C 584, *Kissam Ali v. Azim Ali* 11 C 352, *Minister's Bill*, *Minister's Bill* 11 M 135. All decrees are appealable. *Minister's Bill*, *Minister's Bill* 11 M 26 (35) = 141 A 100.

**57** Notwithstanding anything in this Act, or in any other law for the time being in force, the Governor-General in Council may, by general or special order, direct that where a subject of a foreign State dies in British India and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of a competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the Governor-General in Council by notification in the *Gazette of India*, think fit to impose.

**Notes**—This section is based on Stat. 24 & 25, Vict. c. 121. Under 24 & 25, as the Court shall think fit. These provisions, however are only to apply to the subjects of such Foreign States as shall be specified by order in Council, with whom for securing similar rights to British subjects. Apart from this statute, the law of right of a Foreign Consul to take possession of the estate of a person dying here, who is domiciled in his own country, even though none of those are otherwise entitled to object to the grant. *Boole's International Law* 289 citing *Aspinwall v. Queen's Proctor*, 2 Curt 241, 247. *In the goods of Wyckoff*, 3 Sw and Br 20.

**58** (1) Notwithstanding anything in the Division of Presidency into Provinces, foregoign provisions of this Act, the Governor-General in Council may, by notification in the *Gazette of India*—

- remove any of the territories included in the presidency of Bengal from such presidency, and constitute the same into Provinces for the purposes of this Act;
- direct that for the purposes of this Act any of the territories of any Native State in India shall be included in any province so constituted, and
- appoint any person qualified in accordance with the provisions of sub-section (2) of section 3, or who holds office under Government to be an Administrator-General for any such province to be called the Administrator-General of the Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

- the Administrator-General, of a Province shall by that name have like rights, powers, privileges and liabilities, and perform the

duties, in the Province as the Administrator General of the presidency within which such territories were included had and performed as Administrator General therein and shall be deemed to be his successor in office :

(ii) the powers and duties of the Government under this Act shall, as

of the Province for the purposes of this Act :

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such province by such Court as the Governor General in Council may, by notification in the *Gazette of India*, appoint to the behalf :

same effect throughout the Province, or, if the Court, so directs, throughout the Presidencies of Bengal, Bombay and Madras, or any part thereof, as probate or letters of administration, granted to the Administrator General by the High Court at a Presidency town would or might have had ;

(iv) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province and the expression "Presidency town" the place of sitting of the Court appointed by the Governor General in Council under clause (iii) of this sub section

(v) generally, the provisions of the foregoing sections of this Act with respect to the High Court at a Presidency town and the provision of those sections or of any other enactment with respect to the Administrator General of a Presidency shall, in relation to a Province, be construed so far as may be, to apply to the Court and Administrator General, respectively, appointed for the province under this section.

(2) Any proceeding which was commenced before the publication of the notification constituting the Province and, to or in which the Administrator-General of any Presidency within which any of the territories constituted into a Province were situate was a party or was otherwise concerned, shall be continued as if the notification had not been published

(3) If, by reason of the constitution of Provinces for the purposes of this Act, any property vested in the Administrator General of a Presidency shall be so vested, generally of the Province as fully and effectually for the purposes of this Act as if probate or letters of administration had been granted to him originally.

(4) If in accordance with the provisions of this section territories have been removed from the Presidency of Bengal and constituted a province for the purposes of this Act, the Governor General in Council may, by notification in the *Gazette of India*, direct that as regards the Presidency of Bengal excluding the territories so removed, the provisions of this Act shall apply to it under this section as if it were a Presidency, and

(5) Upon the rescission of a notification constituting a province under sub section, (1) the territories comprised therein shall again form part of the Presidency within which they were originally included, the office of Administrator General of the Province shall determine and all properties vested in and all proceedings by or against such Administrator General pending at the date

of the recession shall vest in and be carried on by or against such Administrator General or Administrators General as the Governor General in Council may direct

Notes—Vide Gazette of India pt I p 365

Saving of provisions of Indian Registration Act, 1908 59 Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908 \*

Notes—The documents which require registration under that Act must be registered

60. Repeals [*Repealed by Act 12 of 1927*]

Repeal—Repeal does not affect acts done under the Repealed Act

## THE SHEDUIE.

*Repealed by Act 12 of the 1927.*

# THE AGRICULTURISTS' LOANS ACT, 1884

## ACT XII OF 1884

RECEIVED THE G. G.'S ASSENT ON THE 24TH JULY, 1884 †

*An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879*

WHEREAS it is expedient to amend the Northern India Takkavi Act 1879 and provide for its extension to any part of British India, It is hereby enacted as follows —

Preamble

Short title

Commencement

Local extent

1. (1) This Act may be called the Agriculturists' Loans Act, 1884, and

(2) It shall come into force on the first day of August, 1884

2 (1) This section and section 3 extend to the whole of British India

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant Governors of the North Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer

(3) But any other Local Government may from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration

3 (1) On and from the day on which this Act comes into force, the Northern Indian Takkavi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act 1880, shall, except as regards the recovery of advances made before this Act comes into force, and of the interest thereon, be repealed

(2) All rules made under those Acts shall be deemed to be made under this Act

\* XVI of 1908

† This Act has been declared to be in force in upper Burma (except the States) by Act XXII of 1898 s 4

4 (1) The Local Government\* "or in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner, subject to the control of the Local Government" may from time to time make rules as to loans to be made to owners and occupiers of arable land, for the relief of distress the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects

(2) All such rules shall be published in the local official Gazette

5 Every loan made in accordance with such rules all interest (if any) chargeable thereon and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the payment thereof, as if they were arrears of land revenue or costs incurred in recovering the same due by the person to whom the loan was made, or by his surety

6 When a loan is made under this Act to the members of a village community, or to any other persons, on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof and a statement, showing the portion of that amount which, as among themselves each is bound to contribute, is entered upon the order granting the loan, and is signed marked or sealed by each of them or his agent duly authorized in this behalf, and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which, as among themselves, each of those persons is bound to contribute

## THE BENGAL ALLUVION AND DILUVION REGULATION, 1825

### REGULATION XI OF 1825

PASSED ON THE 26TH MAY, 1825

*A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea*

1 In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the Provinces immediately subject to the Presidency of Fort

William, and the shifting of the sands which lie in the beds of those rivers, churs or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks and large portions of land are carried away by an encroachment of the river on one side whilst accessions of land are at the same time or in subsequent years gained by dereliction of the water on the opposite side similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea coast which borders the southern and south eastern limits of Bengal

The lands gained from the rivers or sea by the means abovementioned are a frequent source of contention and strife and, although the law and custom of the country have established rules applicable to such cases these rules not being generally known, the Courts of Justice have sometimes found it difficult

en omitted  
of 1914 but these  
Vide U P Act XII

claiming chars or other lands gained

provision of the Muhammadan and Hindu laws on this subject, called for reports from their law officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of Sadar Dewani Adalat in cases brought before them in appeal, which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Courts of Judicature, to be in force, as soon as promulgated, throughout the whole of the Provinces subject to the Presidency of Fort William.—

the old Bengal Presidency and Scheduled Districts. It is also in the Central Provinces, in Oudh

and in Assam except the North Lichai Hills

It is supplemented (in the former Province of Bengal) by Ben Act 4 of 1864, in Bengal by Ben Act 5 of 1900

2 Whenever any clear and definite usage of *shikast fatwa* respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established, for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them whatever changes may take place in the course of the river by encroachment on one side and accession on the other) the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage

3 Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea

4 First—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a Zamindar or other superior landholder, or as a subordinate tenure, by any description of under tenant whatever

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819,\* or of any other Regulation in force

Nor if annexed to a subordinate tenure held under a superior landholder shall the under tenant, whether a khudkast riyat holding a murusi istimari tenure at a fixed rate of rent per bigha, or any other description of under tenant

\* Ben Reg II of 1819 was replaced in Assam by the Assam Land and Revenue Regulation (I) of 1886



liable by his engagements or by established usage, to an increase of rent for the land annexed to his tenure by alluvion he considered exempt from the payment of any increase of rent to which he may be justly liable \*

*Second*—The above rule shall not be considered applicable to cases in which a river by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream, separate a considerable piece of land from one estate, and join it to another estate without destroying the identity and preventing the recognition of the land so removed

In such cases the land, on being clearly recognized shall remain the property of its original owner †

*Third*—When a char, or island, may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river, or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of Government ‡

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an access to the land, tenure or tenures, of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession

*Fourth*—In small and shallow rivers the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals any sand bank or char, that may be thrown up shall, as hitherto belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section

*Fifth*—In all other cases namely in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river, or the sea, which are not specifically provided for by this Regulation, if evidence they may be able to obtain applicable to the case, or if not, by general principles of equity and justice

5 Nothing in this Regulation shall be construed to justify any encroachments by individuals on the bed or channels of navigable rivers or to prevent Zila † Magistrates or any other officers of Government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers or which shall in any respect obstruct the passage of boats by track ing on the banks of such rivers or otherwise

except Calcutta, Orissa and  
/III of 1885) s 2  
in by the Assam Land and

# THE INDIAN ARBITRATION ACT, 1899.

## ACT NO. IX OF 1899.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*Received the Assent of the Governor General on the 3rd March, 1900*

*An Act to amend the Law relating to Arbitration.*

WHEREAS it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice, It is hereby enacted as follows —

Notes—It is an implied term of the contract that the arbitrator must decide dispute according to the contract, and that every defence open in a court of law can be usually so for the arbitrator's decision 115 Ind Cas 713=56 C 1018 P C=33 C W N 48, P C

Short title, extent and commencement 1 (1) This Act may be called the Indian Arbitration Act, 1899

(2) It extends to the whole of British India, and

(3) It shall come into force on the first day of July, 1899

Notes—The Indian Arbitration Act 1899 is based on the English Arbitration Act, 1889 (5 & 53 Vict Cap 49). Many sections are taken verbatim from that Act. As regards the application of the Act, vide s 2. Before the passing of the Arbitration Act a contract to refer matters to Arbitration was governed by the Indian Contract Act, the Civil Procedure Code and the Specific Relief Act (I of 1877). So far as the provisions contained in the Indian Contract Act and the Specific Relief Act are concerned no contract to refer (present or future differences) to arbitration could be specifically enforced. But the party who refuses to perform is debarred from bringing a suit on the same subject. The Civil Procedure Code of 1882 required that the arbitrators should be named. This Act is an independent Act 76 Ind Cas 523, 50 Ind Cas 411. The strict rule of Evidence need not be observed in an arbitration proceeding 49 Ind Cas 135. The parties may by common consent increase the number of arbitrators 62 Ind Cas 426=43 A 456. The Arbitration Act is an Act to amend the law relating to arbitration. It does not deal with the whole law of arbitration and it must be construed strictly in that it confers special powers of interference not otherwise inherent in the Court *Gopalji v Morari* 50 Ind Cas 411=21 Bom I R 308=43 B 809. This Act deals with arbitration initiated by agreement between parties not in litigation. This Act applies even when parties to suit engage in arbitration without an order of the court. A I R 1931 Rang 58=131 Ind Cas 57. Motion is not available under the Act for administration of an estate, the remedy is administration suit or originating summons 102 Ind Cas 108=45 C L J 597=31 C W N 517. Award upheld by court becomes enforceable as a decree *ibid*. The Act does not apply to arbitration in the course of litigation 49 C 60=69 Ind Cas 808.

2. Subject to the provisions of section 23, this Act shall apply only in cases where, if the subject matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a presidency town, Application

Provided that the Local Government\* may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a presidency town.

\* Certain words after this repealed by Act 38 of 1920 have been om

liable by his engagements or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, he shall be considered exempt from the payment of any increase of rent to which he may be justly liable.\*

*Second*—The above rule shall not be considered applicable to cases in which a river by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate and join it to another estate without destroying the identity and preventing the recognition of the land so removed.

In such cases the land, on being clearly recognized shall remain the property of its original owner.

*Third*—When a char, or island, may be thrown up in a large navigable river (the bed of which is not the property of an individual) or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of Government †

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an access to the land, tenure or tenures of the person or persons whose estate or estates may be most contiguous to it subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

*Fourth*—In small and shallow rivers the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals any sand bank or char, that may be thrown up shall as hitherto belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

*Fifth*—In all other cases namely in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the Court of Claims and Disputes, evidence they may be able to obtain of established usage, or if not, by general principles of equity and justice.

5 Nothing in this Regulation shall be construed to justify any encroachments by individuals on the bed or channels of navigable rivers or to prevent Zila & Magistrates or any other officers of Government who may be duly empowered for that purpose from removing obstacles which appear to interfere with the safe and customary navigation of such rivers or which shall in any respect obstruct the passage of boats by tracking on the banks of such rivers or otherwise.

\* except Calcutta Orissa and  
/III of 1885) s 2  
am by the Assam Land and

# THE INDIAN ARBITRATION ACT, 1899.

## ACT NO. IX OF 1899.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*Received the Assent of the Governor General on the 31st March, 1899*

### *An Act to amend the Law relating to Arbitration*

WHEREAS it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice, It is hereby enacted as follows —

Notes—It is an implied term of the contract that the arbitrator must decide disputes according to the contract and that every defence open in a court of law can be usually so for the arbitrator's decision. 11, Ind. Crs 713=56 C 1018 1 C=33 C W N 48, 1 C

Short title, extent and commencement 1 (1) This Act may be called the Indian Arbitration Act 1899

(2) It extends to the whole of British India, and

(3) It shall come into force on the first day of July 1899

Notes—1. Act

Relief Act are concerned no contract to refer (present or future differences) to arbitration could be specifically enforced. But the party who refuses to perform is

Civil Procedure Code of

Act is an independent

Evidence need not be

The parties may by

d Crs 476=43 A 456

relating to arbitration. It does not

must be construed strictly in that it

wise inherent in the Court *Gopalji*

08-43 B 809 This Act deals with

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to arbitration in

2. Subject to the provisions of section 23 this Act shall apply only in

cases where if the subject matter submitted to

Application arbitration were the subject of a suit, the suit

could, whether with leave or otherwise, be instituted in a presidency town,

Provided that the Local Government \* may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a presidency town.

\* Certain words after this repealed by Act 38 of 1970 have been omitted

Notes.—In the first instance this Act applies only in cases where, the subject-matter submitted to arbitration were the subject of a suit, which could be instituted in a presidency town 15 Ind Cas 402, 27 Ind Cas 129, 7 Ind Cas 593, 7 Ind Cas 588. Vide Rom Govt Gaz outside order such property

11 Ind Cas 10=34 C W N 203=A I R 1930  
Presidency town, and one of the properties

also is situate in that town, and relating to such property can be filed in Presidency town 114 Ind Cas 818

3. The last thirty seven words of section 21 of the Specific Relief Act, 1877,\* and sections 523 to 526 of the Code of Civil Procedure† shall not apply to any submission or arbitration to which the provisions of the Act for the time being apply :

Provided that nothing in this Act shall affect any arbitration pending in a presidency town at the commencement of this Act or in any local area at the date of the application thereto of this Act, as aforesaid, but shall apply to every arbitration commenced after the commencement of this Act or the date of the application thereof, as the case may be, under any agreement or order previously made ‡

de contains a similar

Court has no juris  
=118 Ind Cas 533  
the Companies Act

#### Definitions

4 In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Court" means, in the presidency towns, the High Court, and, elsewhere, the Court of the District Judge ; and

(b) "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not §

Clause (a) — "Elsewhere" in this clause means in all other places than the Presidency towns 52 Ind Cas 139=13 S L R 23

Clause (b) — Written agreement means one in which the terms on both sides are

L J Q. B 640, but see that the written agree

Insurance Co (1892) 1

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nty of Devon Insurance

6 S L R 278, 10 C W

N 814, 61 Ind Cas 169, 80 Ind Cas 513, 76 Ind Cas 917 A reference can be made where there is a dispute *Chandmull v Nippon* 64 Ind Cas 798, see also 72 Ind Cas 1016, 54 Ind Cas 285=46 C 534, 47 C 799, 46 C 534, (1899) A C P 81, (1915) 2 K B 35 at p 40, 33 T L R 395 Acceptance of the written agree

\* Act 1 of 1877 † Act XIV of 1882, see now Act V 1908,

‡ Certain words after this repealed by Act VII of 1913 have been omitted

§ Supplemented in U P vide U P Act I of 1912

ment might be in the form of a signed document by both parties containing all the terms and a plain acceptance

both parties A I R 1931 All 1

on certain terms, one of which is reference to arbitration, assent to those terms by conduct amounts to submission 128 Ind Cas 881=A I R 1931, Bom 81=32 Bom L. N. 1451 see also 118 Ind Cas 220=1929 Sind 83, 56 C 118=32 C W N 110=117 Ind Cas 440, 92 Ind Cas 932, 16 Ind Cas 660, 89 Ind Cas 866, 61 Ind Cas 350, 118 Ind Cas, 220 Submission includes arbitration clause as well as reference 35 Ind Cas 526 Where claim is time barred, there is no subsisting clause to be referred 95 Ind Cas 540=19 S L R 24=A I R 1926 Sind 209 Where the factum of contract or its existence is denied there is no jurisdiction of the arbitrators 138 Ind Cas 337=34 Bom I R 697=A I R 1932 Bom 341 An oral submission is not invalid A I R 1932 Mad 745

**Present and future difference**—Vide (2 L T 808, 18 Q B D 7 C A ; (1914) 2 K B 35, (1915) 3 L R 183

**Submission to be irrevocable**—5 A submission, unless a different intention is expressed therein, shall be irrevocable, except by leave of Court

**Scope**—The word 'a submission shall be irrevocable' is ambiguous it is applicable not to the agreement to refer, but to the authority of the arbitrator *Per Bowen L J in In re Smith and Service* (1890) 25 Q B D 517 This section relates merely to the right to revoke a submission *Doleman v Osset Corporation* (1912) 3 K B 257 It is irrevocable except by the leave of the Court 44 Ind Cas 360, 20 Ind Cas 540 But it is discretionary with the Court to grant such leave *Jayes v James* 23 Q B D 12 But such discretion must be used with great caution *Belcher v Rochan* (1901) 8, L T 471 see also (1877) A C 71 P 301, 111 Ind Cas 700

the grounds for revocation—(1) *Partia V N* 235, 29 C 278, (1894) 2 B 667, (2) *Neglect* on the part of the arbitrator, *Drew v Drew* 2 Macq 1

**6 A submission, unless a different intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicable to the reference under submission**

**Provisions implied in submissions**

**Notes**—In matters of interpretation the Court is to be guided by the intention of the parties, and by what law an arbitration contract is to be interpreted is to be determined by the intention of the parties *Hamlyn v Talisker* (1894) 71 L T at p 2, see also *Spuerrier v Le Clacha*, (1902) A C 446, *Pent v Ruz* (1913) 105 L T 846

**Reference to arbitrator to be appointed by third person**

**7 The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein**

Such person may be designated either by name or as the holder for the time being of any office or appointment

### Illustration

of Commerce

**Notes**—This section has been expressly enacted to empower Bengal Chamber

and he cannot  
Where policy of insur-  
Tribunal other than

that contemplated by the clause of the policy but in itself legal was no ground for holding that the award was in any way bad 88 Ind Cas 878 = A I R 1926 Sind 8

Power for the Court in certain cases to appoint an arbitrator umpire or third arbitrator

8 (1) In any of the following cases—

(a) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen,

(b)

that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy,

(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, and do not appoint him,

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting or dies or is removed and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or

any party may serve the other parties or with a written notice to concur in third arbitrator

(2) If the appointment is not made within seven clear days after the service of the notice, the parties may, if they so desire, appoint an arbitrator by consent of all parties

**Scope**—The true meaning of clauses (a) and (b) is that where the parties will not appoint an arbitrator or umpire or third arbitrator, or where an appointed arbitrator or umpire or third arbitrator refuses to act or is incapable of acting or dies or is removed and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or any party may serve the other parties or with a written notice to concur in third arbitrator

*Eastern Coalfields Ltd. v. State of Madhya Pradesh* 1954 Cal 164 S L R 164

11890 ~ ~ ~ ~ ~  
S 8 (1) (b) applies as the expression "an appointed arbitrator" can mean one of two appointed arbitrators A I R 1929 Cal 177 = 56 Cal 848 = 33 C W N 418 Where one party having refused to appoint an arbitrator, the other party may, if it so desires, appoint an arbitrator by consent of all parties

new arbitrator in place of those who declined to proceed in a case submitted to them, when the number of arbitrators is more than two 21 Bom L R 308=50 Ind Cas 411

Clause (a)—Where reference is to be made to an 'arbitrator or umpire' it means a reference to a single arbitrator (1892) 1 Q B 11 p 141 A C

Clause (b)—An arbitrator who hesitates to act without the order of the Judge can not be said to refuse to act (1892) 1 Q B D 81 Person named in contract refusing to arbitrate is no ground for refusing to enforce arbitration 140 Ind Cas 626=A I R 1933 Sind 75

Clause (c)—Where a reference has been made to three arbitrators, and one of them declines to act, the reference shall be made to the two remaining arbitrators

Clause (d)—Vide 63 L J Q B 171

Written notice to appoint.—The words 'to appoint' mean to concur in the appointment. (1891) 1 Q B 141

Court may appoint—When all the requirements of the section are fulfilled, the Court must appoint *In re Ejre* (1891) 1 Q B 141 The Court can not ask the party to appoint *In re Smith*, 25 Q B D 545, see also 76 Ind Cas 261

Sub section (2)—Vide 71 Ind Cas 817=A I R 1924 Lah 435

9 Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein —

Power for parties in certain cases to supply vacancy

(a) if either of the appointed arbitrators refuses to act or is incapable of acting, or dies or is removed the party who appointed him may appoint a new arbitrator in his place,

(b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party, making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent

Provided that the Court may set aside any appointment made in pursuance of clause (b) of this section

Scope—This section has no application where the reference is to three arbitrators *In re Smith and Service* 25 Q B D 545, see also 14 Eq 555 This section is applicable only to cases where a different intention is not expressed in the submission 20 Ind Cas 504=7 S L R 1 So also clause (b) has no application to a case where the parties by their contract have provided that a different course should be adopted in the event of one of the parties failing to nominate one arbitrator 44 M 406=62 Ind Cas 205 This section has no application also where the agreement stipulates that in case of non appointment by any of the parties the Chairman of the Trade Union was to appoint one on behalf of the defaulting party *Sasoon v Ramdutt* 49 I A 366=27 C W N 660=70 Ind Cas 777 The appointment was validly made under clause (b) in *Jessop v Huddersfield Society*, 80 L T 598, *S S Den of Airline Co v Mitsui & Co Ltd*, (1912) 106 L T 451 But where one of the parties died the other party cannot apply to the Court to have an arbitrator appointed on the refusal of the executors of the deceased to appoint

But where one of the parties died the other party cannot apply to the Court to have an arbitrator appointed on the refusal of the executors of the deceased to appoint

futile and productive of no injury to the party complaining *Barrow v Cooper*,



59 L J Ch 506=49 Ch D 373 One party may refuse to appoint an arbitrator until he is informed by the other party of the nature of the dispute *Ibid*, see also *May v Mills* 30 T L R 287 It is not proper to import s 9 into the contract entered into by the parties themselves to refer disputes to arbitration A I R 1930 All 581=126 Ind Cas 10=1930 A L J 1147 A dispute having arisen was referred to two arbitrators one by each party one of the arbitrators refused to act after appointment and therefore the other acted as sole arbitrator and made an award *Held* the award must be set aside English Arbitration Act does not apply 110 Ind Cas 290 (P C) When the submission refers to two arbitrators and an arbitrator appointed by one of the parties is duly declared to be the sole arbitrator and he thereafter refuses to act then vacancy has arisen *Id* with s 9 A I R 1917 Sind 177=100 Ind C Ind Cas 435 Party desiring to enforce dispute and nominate his arbitrator first A Official Receiver or trustee in bankruptcy compelled to be a party where the bankrupt A I R 1926 Sind 209=19 S L R 24=9, Ind Cas 750 When reference to two arbitrators one by each party is made each party has right to appoint another in place of an arbitrator refusing to act One party refusing to appoint the other can appoint sole arbitrator 88 Ind Cas 90=A I R 1915 Bom 469=49 B 706=27 Bom L R 568 Arbitrator not attending on date fixed will under certain circumstances be construed as refusal to act as arbitrator and on such refusal followed by non appointment of another man one arbitrator would suffice A I R 1930 All 675=1930 A L J 1373=131 Ind Cas 552 Defect of absence of notice under s 9(b) can be waived by failure to object in time A I R 1910 P C 123=62 Ind Cas 737 Party acquiescing in such addition is estopped from objecting on this ground A I R 1921 All 64=43 A 456=19 A L J 348=67 Ind Cas 426 If suit is filed despite reference specific performance cannot be enforced but only stay of suit can be asked for A I R 1921 Cal 244=25 C W N 62=61 Ind Cas 380 Election of sellers to have private arbitration puts an end to buyer's remedy to arbitrate through public tribunal A I R 1924 Cal 828=51 C 657=82 Ind Cas 769 Section 9 does not provide for case where one party is entitled to appoint two arbitrators 142 Ind Cas 706=A I R 1933 Sind 6

- 10 The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,—
- (a) have power to administer oaths to the parties and witnesses appearing,
  - (b) have power to state a special case for the opinion of the Court on any question of law involved and
  - (c) have power to correct in an award any clerical mistake or error arising from any accidental slip or omission

Clause (a)—In an arbitration under a submission the Court cannot issue commission to examine witnesses *In re Slaw* (1892) 1 Q B 91 47 B 250=25 Bom L R 85 T L R 162 The examination 34 C L J 39 see also 27 C W N 49 The Court has no power to issue commission for examination of witnesses 75 Ind Cas 221=24 Bom L R 853

Clause (b)—In an arbitration the arbitrators must and shall be substituted alternately law case down Co v N 1 time of the Th

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(1898) 2 Q B 136, *Pige v Kettering*, 8 T L R 228 But the Court cannot make its own finding of facts *Produce Brokers v Wens* 118 L T 111 The Court can set aside an award under s 14 in a motion under this clause *Produce Brokers v Blith*, (1918) L J K B 597 The burden of proof is on the party who disputes an award *Caillot v Carruthers, & Co*, 30 T L R 101 An appeal lies from an award (1893) 1 Q B 375, *In re Gonty*, *Aubrook v Tuffell*, (1882) 9 Q B D 621, 98

When an umpire rehear evidence when requested 63 Ind Cas 141=15 S L R 68 Party cannot apply to Court for order directing umpire to state a case 107 Ind Cas 793=A I R 1928 Mad 107 Opinion of Court is not binding on the arbitrators nor can it operate as *res judicata* A I R 1925 Sind 83=79 Ind Cas 986

have no power to *ue v Palmer*, L R K B 423 Mere error of Law not distinctly appearing on the face of record is no ground for remission 69 Ind Cas 995=A I R 1922 Cal 447=49 C 646

11. (1) When the arbitrators or umpire have made their award they shall sign it and shall give notice to the parties of the award to be signed and filed the making and signing thereof and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award

(2) The arbitrators or umpire shall at the request of any party to the submission or any person claiming under him and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award cause the award or a signed copy of it to be filed in the Court and notice of the filing shall be given to the parties by the arbitrators or umpire

(3) Where the arbitrators or umpire state a special case under section 10, clause (b), the Court shall deliver its opinion thereon, and such opinion shall be added to, and shall form part of, the award

Sign An award under this section must be in writing and signed *Laljee v Tewari*, 82 Ind Cas 802, *Cotha v Thatha*, 5 Ind Cas 374=7 M L T 35. The arbitrator resigned and did not sign =76 Ind Cas 1007 This section 95 Ind Cas 21=A I R 1926 Cal

930-53 C 65

Amount of fees—There is nothing in this section by which the arbitrators are precluded from taking their fees beforehand *In the matter of the Arbitration Act*, 17 L W 648=75 Ind Cas 850=1924 Mad 174 This section requires the arbitrators to state in the award the amount of fees payable to them *Ibid*

Clause (2)—The arbitrators are bound, at the request of any party, to file award or a copy thereof in Court and such an award unless it is set aside or remitted for re consideration becomes enforceable as if it were a decree of Court The award stands on the footing of decree *Cotha v Thatha*, 5 Ind Cas 374=7 M L T 355 No order of the Court is necessary for the filing of the award An award upon submission which contains no provision to the contrary is final unless the Court in which it has been filed remits it or sets it aside *Akhatoon v Abdool*, 14 Bur L R 129=4 L B R 249, see also 18 Ind Cas 978=40 C 219=17 C W N 595 As

This clause in Court en before se *Udar Chand v Dets Bua*, 60 Ind Cas 987=47 C 951 Mere failure to give notice of filing an award does not by itself vitiate an award if it is otherwise valid *Louis v Tara Chand*, 95 Ind Cas 378=A I R 1926 Sind 242 An award may be filed by any one of the arbitrators 29 Ind Cas 602 As to when an arbitrator becomes *functus officio*—vide 1923A 31 The order of a Judge sitting on the Original Side

59 L J Ch 506=49 Ch D 323 One party may refuse to appoint an arbitrator,

Ind Cas 290 (P C) When the submission refers to two arbitrators and an arbitrator appointed by one of the parties is duly declared to be the sole arbitrator and, he thereafter, refuses to act then vacancy has to be supplied in accordance with s 9 A I R 1927 Sind 177=100 Ind Cas 890, A I R 1929 Sind 55=107 Ind Cas 435 Party desiring to enforce submission clause must specify nature of dispute and nominate his arbitrator first A I R 1929 Sind 58=109 Ind Cas 58 Official Receiver or trustee in bankruptcy is not party within s 9, nor can he be compelled to be a party where the bankrupt's estate is debtor and not creditor A I R 1926 Sind 209=19 S L R 24=95 Ind Cas 750 When reference to two arbitrators is made, each party has right to appoint another in

675=1930 A L J 1373=131 Ind Cas 552 Defect of arbitration can be waived by failure to object in time A I R 1921 All 64=43 A 456=19 A L J 348=100 Ind Cas 420 Party acquiescing in such addition is estopped A I R 1921 Cal 244=25 C W N 62=61 Ind Cas 380 despite reference, specific performance cannot be enforced but only stay of suit can be asked for A I R 1921 Cal 244=25 C W N 62=61 Ind Cas 380 Election of sellers to have private arbitration puts an end to buyer's remedy to arbitrate through public tribunal A I R 1924 Cal 828=51 C 657=82 Ind Cas 769 Section 9 does not provide for case where one party is entitled to appoint two arbitrators 142 Ind Cas 706=A I R 1933 Sind 6

**10** The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,—

- (a) have power to administer oaths to the parties and witnesses appearing,
- (b) have power to state a special case for the opinion of the Court on any question of law involved, and
- (c) have power to correct in an award any clerical mistake or error arising from any accidental slip or omission

**Clause (a)**—In an arbitration under a submission the Court cannot issue commission to examine witnesses *In re Shaw* (1892) 1 Q B 91, 47 B 250=25 Bom L R 853, *In re Dreyfuss*, (1893) 9 T L R 358 An arbitrator can allow amendments in the pleadings *Edward v Sturgeon*, (1910) 85 T L R 162 The examination of witnesses by arbitrator must not be *ex parte* 34 C L J 39 see also 27 C W N 933 As to form of oath, vide 29 Ind Cas 49 The Court has no power to issue commission for examination of witnesses 75 Ind Cas 221=24 Bom L R 853

**Clause (b)**—In a submission

alternately at the request of the other party may state a special case on questions of law They may require that either party, if they wish to proceed with the special case should within specified times give the other party notice and get the award down for argument Otherwise their award is to be final *Olympia Oil & Cake Co v Mac Andrews* (1918) 2 K B 771, / *L Lyon & Co v H. J. J.* N 1 But it is doubtful whether the Court time for giving notice *Ibid* After the Court, the arbitrators became *fu*

The Court may order further enquiry, as may simply give judgment *In re George*,

(1895) 2 Q B 136, *Pige v Kettering*, 8 T L R 278. But the Court cannot make its own finding of facts. *Produce Brokers v Herts* 118 L T 111. The Court can set aside an award under s 14 in a motion under this clause. *Produce Brokers v Blyth*, (1918) 1 J K B 597. The burden of proof is on the party who disputes an award. *Caillot v Carruthers, & Co*, 30 T L R 101. An appeal lies from the decision of the Court. *Re Asklethum etc* (1893) 1 Q B 375, *In re Gonty* (1896) 2 Q B 439 C A, see also *Shubbrook v Tuffrell*, (1882) 9 Q B D 621, *Borsen v Attarchum*, (1903) 1 K B 398.

107. Opinion of Court is not binding on the arbitrators nor can it operate as *res judicata*. A I R 1915 Sind 83=79 Ind Cas 986.

Clause (c)—After the arbitrators become *functus officio* they have no power to rectify mistake. *In re Stringer*, (1901) 1 K B 103, *Alford v Palmer* L R 6 Ch 22, *Commissioner of Indian Revenue v Hunter* (1914) 3 K B 423. Mere error of Law not distinctly appearing on the face of record is no ground for remission. 69 Ind Cas 99, =A I R 1922 Cal 447=49 C 646.

11. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice to the parties of the making and signing thereof and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

(2) The arbitrators or umpire shall at the request of any party to the submission or any person claiming under him and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award cause the award or a signed copy of it to be filed in the Court and notice of the filing shall be given to the parties by the arbitrators or umpire.

(3) Where the arbitrators or umpire state a special case under section 10, clause (b), the Court shall deliver its opinion thereon, and such opinion shall be added to, and shall form part of, the award.

Sign. An award under this section must be in writing and signed. *Laljee v Tewari*, 82 Ind Cas 802, *Cotha v Thatha*, 5 Ind Cas 374=7 M L T 355. The validity of an award is not affected where a third arbitrator resigned and did not sign it. *Mansa Ram v Karli Ram* 1923 Lah 411=76 Ind Cas 1007. This section applies only to awards made pursuant to this Act. 95 Ind Cas 21=A I R 1916 Cal 938=53 C 65.

Amount of fees.—There is nothing in this section by which the arbitrators are precluded from taking their fees beforehand. *In the matter of the Arbitration Act* 17 L W 648=75 Ind Cas 850=1924 Mad 174. This section requires the arbitrators to state in the award the amount of fees payable to them. *Ibid*.

Clause (2).—The arbitrators are bound, at the request of any party, to file award or a copy thereof in Court and such an award unless it is set aside or remitted for reconsideration becomes enforceable as if it were a decree of Court. The award stands on the footing of decree. *Cotha v Thatha*, 5 Ind Cas 374=7 M L T 355. No order of the Court is necessary for the filing of the award. An award upon submission which contains no provision to the contrary is final unless the Court in which it has been filed remits it or sets it aside. *Rhatoon v Abdool*, 14 Bur L R 129=4 L B R 249, see also 18 Ind Cas 978=40 C 219=17 C W N 395 As

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1926 Sind 242. An award may be filed by 602. As to when an arbitrator becomes or of a Judge sitting on the Original Side

of the High Court, the file is a judgment before appealable (Ind Cas 902 Fa. etc. to serve notice renders award invalid A I R 1927 Rang 197=5 Rang 171=102 Ind Cas 800 One arbitrator can on behalf of himself and the others send the award to the Court A I R 1927 Rang 197=5 Rang 171 When awards are not signed by all the arbitrators, it can not be accepted by the Court either under Arbitration Act or under Sch II, Civil P C 114 Ind Cas 818=56 M L J 35=A I R 1929 Mad 31 Order returning the award for complying with s 11 (2), Arbitration Act, is not a judgment within cl 13 Letters Patent 114 Ind Cas 521=A I R 1928 Rang 110 Court can not enter into enquiry to ascertain which of the two possible interpretations of the document should be accepted 29 Bom L R 665=104 Ind Cas 94 Award of Committee of Appeal on appeal from umpire's award according to contract by parties can be filed 103 Ind Cas 648 The mere receipt of the award by the Court is the filing of the award A I R 1931 Sind 160

12 The time for making an award may, from time to time, be enlarged by

Power for Court to enlarge order of the Court, whether the time for making time for making award the award has expired or not

Notes—Under this section the Court has power to extend the time even where the time for making the award has expired and the award has already been made *Teypal v B Nith Mal*, 46 C 1059, see also A I R (1926) Sind 8, 125 Ind Cas 425, 129 Ind Cas 886, 55 B 452 The Court can grant such extension even where it is expressly stipulated that there should be no extension *In re Denton*, L R 9 Q B 117, see also (1900) 2 Q B 253 C A The Court has jurisdiction to extend time for the umpire's award as well *Miy v Harcourt*, 13 Q B D 688, *Lord v Lee*, L R 3 Q B 404 The power of such enlargement of time is discretionary with the Court *In re Dare Velley Co* (1869) L R 4 Ch 554 But the Court should exercise case and is bound indulgence 28 Ind id Cas 16, 78 Ind

Cas 521 An appellate Court has power to extend the time in proper cases 40 C 1059 But the Courts of law should not lightly interfere with the discretion deliberately exercised by a lower Court 28 Ind Cas 85=8 S L R 269, 264 338 But such power rests 16 L W 657=70 Ind Cas 353, 54 I an award is a judgment within cl 15

Power to remit award

13 (1) The Court may, from time to time, remit the award to the reconsideration of the arbitrators or umpire

(2) Where an award is remitted under subsection (1), the arbitrators or umpire shall, unless the Court otherwise directs, make a fresh award within three months after the date of the order remitting the award

Notes—This section is based on section 10 of the English Arbitration Act 1889 which again re enacts the Common Law Procedure Act, 1854 s 8 *Mills v Buryers* (1856) 3 K & J 166 and all cases decided under s 8 of the last Act may be cited under this section *In re Keighley* (1893) 1 Q B p 411 The power to remit an award is given by this section and apart from this section there is no power to remit *In re Keighley* (1893) 1 Q B 405, see also (1914) 2 K B 842, (1914) 2 K B 847 The effect of this section is to treat all submissions made under this Act, as though it power to refer back the award to the 147, *Sprague v Allen*, 15 T L R 150 The the arbitrators are *functus officio* *In re Strienger* (1901) 1 K B 105 An award may be remitted where the arbitrators Ind Cas 391 66 Ind Cas 389 The ground set aside an award may be considered sufficient to L J C P 66, see also 78 L T 409 The Court either an award should be remitted or set aside The Appellate Court will not interfere unless the discretion is misused *Ibid*, 70 Ind Cas 353 It may be remitted where evidence is discovered after the award *Barnard v Wainwright*, 19 L J Q B 423, *In re*

*Keighley*, (1893) 1 Q B 405 C A, *Sprague v Allen* 15 T L R 150. But such remission is not justified when evidence is kept back by one of the parties. *In re Keighley*, (1893) 1 Q B at p 410. An award cannot be remitted in part. 74 Ind Cas 649=4 Pat L J 669. An award cannot be remitted for misreception of evidence nor can it be set aside. *McLean v Mercus*, (1896) 6 T L R 355. Power of remission is confined to grounds in s 14. A I R 1923 Sind 51=19 S L R 152=76 Ind Cas 84. Remand order for making fresh award amounts to refusal to file award and is not appealable. 76 Ind Cas 525=2 Bur L J 193. Unnamed portion of the award is enforceable as decree under s 515. 34 C W N 268=A I R 1930 Cal 468=127 Ind Cas 60. Award is remitted without fixing time for its return when award is made. Court can enter time for delivery of the award. A I R 1928 Mad 69=54 M L J 49 (F B)=107 Ind Cas 70. Where an arbitrator exercises jurisdiction in excess of the reference it should be remitted. *Hoofer v Balfour* (1890) 62 L T 646. *Re Given*, 63 L T 325. The award may be remitted for mistake of law or fact. *Dunn v Blake* L R 10 C P 368, *Hoofer v Balfour*, 62 L T 646. see also (1912) A C 673, *Myl v Mills*, (1914) T L R 287, 70 Ind Cas 353=16 L W 657. Where an award should be set aside and not remitted, vide 34 C L J 59.

14 Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award

Power to set aside award

Scope—The words 'arbitration and award' in s 14 and award in para 15 Sch II Civil Procedure Code are same. 32 Bom L R 389=A I R 1930 Bom 431. Jurisdiction of court to receive awards is very narrower than that of court of appeal. 122 Ind Cas 316. Party's accepting benefit even under protest may preclude him from objecting. 121 Ind Cas 164. There is no misconduct where arbitrators act within authority given by reference. 121 Ind Cas 161=A I R 1930 Sind 170. Before determining value of property let to be allowed. Application to set aside an award. 112 Ind Cas 318. An arbitrator is guilty of misconduct. 107 Ind Cas 793. Misconduct subsequent to making an award. 75 Ind Cas 378=A I R 1926 Sind 242. An Act cannot be set aside on the ground of misconduct. 21 Ind Cas 21. Misconduct does not necessarily imply neglect to duties and responsibilities. 76 Ind Cas 525. Statements and documents before the enquiry in absence of parties are valid. A I R 1929 Mad 274=7, Ind Cas 850. A suit lies to impeach an award. 31 C L J 283=56 Ind Cas 511.

Misconduct—The following are instances of misconduct—

(a) Corruption or partiality—*Tullis v Jackson* (1897) 3 Ch 441, *In re Whitely*, (1891) 1 Ch 358, *Titenson v Peat* 3 Atk 529, *Morgan v Mather*, 2 Ves Jr 15, *Burton v Knight* 2 Vern 514, *Fair v Stocker* 2 Vern 251.

Bias—Vide (1910) 1 K B 327.

Legal misconduct—An award may be set aside for legal misconduct. *Whitely v Morland*, 2 Dowl 249. It is misconduct to allow opportunity to a party to appear. Ind Cas 391=41 C 313. Any proceeding taken in the absence of one of the parties will be set aside. *Re Gregson*, (1894) 70 L T 106, see also 88 L J 1242, 70 Ind Cas 353, 65 Ind Cas 577, 27 Ind Cas 135, 73 Ind Cas 470=44 M L J 263, 14 L J Q B 17, (1914) 3 K B 423, (1894) 1 Q B 317. A decision contrary to law or fact does not vitiate an award. (1891) A C 39.

15 (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.

(2) An award may be conditional or in the alternative

## Illustration

A dispute concerning the

s referred to arbitration  
the other party Rs 1000  
within fourteen days

**Scope**—The necessity of obtaining a judgment is removed by this section *Selby v Whitebread*, (1917) 1 K B 736. The award is not a decree of the Court, it is enforceable as a decree 29 C W N 660=70 Ind Cas 777=49 I A 366 (P C), see also 66 Ind Cas 796, 60 Ind Cas 942, 27 C W N 666, 124 Ind Cas 318, 115 Ind Cas 584. Courts cannot refuse enforcement of such award, as s 15 is mandatory 112 Ind Cas 126=A I R 1929 Sind 28. The award is enforceable as a decree A I R 1933 P C 61=37 C W N 401=64 M L J 341=60 C 670. Order rejecting enforcement of award is appealable A I R 1934 Lah 49.

**Power to remove arbitrator or umpire**

16 Where an arbitrator or umpire has misconducted himself, the Court may remove him

**Notes**—Cases which justify the revocation of a submission under section 5 or the setting aside of an award under section 14 would justify the removal of an arbitrator under this section

17. Any order made by the Court under this Act may be made on such terms as to costs or otherwise as the Courts thinks fit

Costs

**Notes**—Ordinarily the Court should provide for costs *Burness v Youngs*, (1898) 1 Ch 414. But the C under certain circumstances regards the order for costs *Holliday*, (1888) 20 Q B D. a reference to arbitration is held not valid, a court cannot pass an order for costs 109 Ind Cas 175 (2)

18. The forms set forth in the second schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question

Forms

19 Where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission, or any person claiming under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to "the judicial authority before which the proceedings are pending," to stay the proceedings; and "such authority," if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the proceedings

**Scope**—Where the object of the suit was to impeach the validity of the arbitration clause in the contract, and the suit was not in respect of any matter agreed to be referred to arbitration, the provisions of this section do not apply *Atmaram v Gajamall*, 61 Ind Cas 141=14 S L R 123. The stay under this section would be granted irrespective of the number of arbitrators *Manchester v Pearson* (1900) 1 Q B 606. Onus is on party opposing to stay to show why stay should be refused 117 Ind Cas 417. Application for stay should be made at the earliest opportunity 107 Ind Cas 434=A I R 1928 Sind 91, 121 Ind Cas 574=33 C W N 888. This section applies where there is a valid submission under this section. Vide (1903) 1 K B 249, *Lau v Garret*, 8 Ch D 26,

\* The words within quotations have been substituted by Act 24 of 1933

*Kirchner v. Gonbon* (1909) 1 Ch 413 31 B 236, 45 B 1=22 Bom L R 242, 57 Ind Cas 997. But the existence of a valid reference is a condition precedent *Randell v. Thompson*, 1 Q, B D 748, *Dentale v. Biscoe*, 20 Q B D 177, see also 43 C L J 297

**Any person claiming under him**—As to whether it applies to trustees in bankruptcy, vide *Piercy v. Young* 14 Ch D 200, *Pennel v. Walker* 26 L J C P 9

**Any Court**—The Courts in section 4 (1) are the Courts enforcing the machinery of arbitration in the areas where the Act applies 57 Ind Cas 997, see also *Morrison v. Brooker*, (1908) 1 K B 403, *Pint v. Rio*, (1911) 105 L T 846, *Hamlin v. Talister*, (1894) A C 202. 52 Ind Cas 130, 63 Ind Cas 813=43 A 553, 7 Ind Cas 864, but see 31 B 236. Court means trial Court and not District Court 130 Ind Cas 769, see also 124 Ind Cas 797, 111 Ind Cas 641

**In respect of any matter**—That is to be decided by the Court *Piercy v. Young*, 14 Ch D 200, 2 B 662, *Parry v. Interpool*, (1900) 1 Q B 279=59 Ind Cas 784, 25 C W N 62, 56 Cas 536, 45 B 1

**Appeal**—No appeal lies from an order made under s 19 A 1 R. 1931 Lah 66=130 Ind Cas 769=82 Ind Cas 81, 81 Ind Cas 759. Order refusing to stay proceedings is not a judgment and is not appealable 120 Ind Cas 226. But order granting stay of suit pending arbitration is appealable 85 Ind Cas 341=47 A 179

**Power for High Court to make rules** 20 The High Court may make rules consistent with this Act as to—

- (a) the filing of awards and all proceedings consequent thereon or incidental thereto ;
- (b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto ,
- (c) the transfer to Presidency Courts of small causes for execution of awards filed, where the sum awarded does not exceed two thousand rupees ,
- (d) the staying of any suit or proceeding in contravention of a submission to arbitration , and
- (e) generally, all proceedings in Court under this Act

N B—This section corresponds to section 21 of the English Act

**21** In section 21 of the Specific Relief Act, 1877\* after the words, "Code of Civil Procedure" the words and figures 'and the Indian Arbitration Act 1899' shall be inserted, and for the words, a "controversy" the words, "present or future differences," shall be substituted

Amendment of section 21  
Act I, 1877

**22** The provisions of this Act shall be binding on the Crown

**Notes**—This section corresponds to section 23 of the English Arbitration Act, 1889. According to English Common Law the Crown neither pays nor receives costs *R v. Arch Bishop*, (1902) 2 K B 503, *Johnson v R* (1904) A C 817, 29 T L R (709) P C. But that rule is not applicable under this Act

**23†** (1) This Act shall apply within the local limits of the ordinary civil jurisdiction of the 'High Court of Judicature at Rangoon' ‡ in cases where and if the subject matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted within those local limits

(2) For the purposes of this Act, the local limits aforesaid shall be deemed to be a presidency town

\* I of 1877

† Section 23 has been substituted by Act 6 of 1900 s 47

‡ The words within the quotations have been substituted by Act 11 of 1973



## THE FIRST SCHEDULE.

(See Section 6)

## PROVISIONS TO BE IMPLIED IN SUBMISSIONS

I If no other mode of reference is provided the reference shall be to a single arbitrator

II If the reference is to two arbitrators the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award

III The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time for making the award

IV If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire, a writing signed by him, may, from time to time, enlarge the time for making his award

VI The parties to the reference, and all persons claiming through them in relation to the arbitration, shall be bound to do all things necessary to give effect to their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require

VII The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath

VIII The award to be made by the arbitrators or umpire shall be final and binding

IX The costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client

## THE SECOND SCHEDULE

(See Section 18)

## FORM I.

*Submission to single Arbitrator*

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby submit the following matters in difference to the award of \_\_\_\_\_

Dated the \_\_\_\_\_ 189 \_\_\_\_\_

(Signed) A B  
C D

## FORM II

*Submission of Particular Dispute to single Arbitrator.*

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby submit the following matters in difference to the award of \_\_\_\_\_

I agree to refer the said matters in difference to the award of \_\_\_\_\_

Dated the \_\_\_\_\_ 189 \_\_\_\_\_

(Signed) A B  
C D

## FORM III

*Appointment of single Arbitrator under Agreement to refer future Differences to Arbitration*

In the matter of the Indian Arbitration Act 1899 —

Whereas by an agreement in writing dated the \_\_\_\_\_ day of 18 \_\_\_\_ and made between A B of \_\_\_\_\_ and C D of \_\_\_\_\_ it is provided that differences arising between the parties thereto shall be referred to an arbitrator as therein mentioned,

and whereas differences within the meaning of the said provision have arisen and are still subsisting between the said parties concerning—

Now we the said parties A B and C D do hereby refer the said matters in difference to the award of X Y

Dated the \_\_\_\_\_ 189\_\_

(Signed) A B  
C D

## FORM IV

*Enlargement of Time by Arbitrator by Endorsement on Submission*

In the matter of the Indian Arbitration Act 1899, and an arbitration between A B of \_\_\_\_\_ and C D of \_\_\_\_\_

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the \_\_\_\_\_ day of \_\_\_\_\_ 189\_\_

Dated the \_\_\_\_\_ 189\_\_

(Signed) X Y  
Arbitrator

## FORM V

*Special Case*

In the matter of the Indian Arbitration Act 1899 and an arbitration between A B of \_\_\_\_\_ and C D of \_\_\_\_\_

The following special case is pursuant to the provisions of section 10 clause (b) of the said Act, stated for the opinion of the \_\_\_\_\_

(Here state the facts concisely in numbered paragraphs)

The questions of law for the opinion of the said Court are

First whether \_\_\_\_\_

Secondly whether \_\_\_\_\_

(Signed) X Y  
Arbitrator

Dated the \_\_\_\_\_ 189\_\_

## FORM VI

*Award*

In the matter of the Indian Arbitration Act 1899, and an arbitration between A B of \_\_\_\_\_ and C D of \_\_\_\_\_

Whereas in pursuance of an agreement in writing dated the \_\_\_\_\_ day of \_\_\_\_\_ 189\_\_ and made between A B of \_\_\_\_\_ and C D of \_\_\_\_\_ the said A B and C D have referred to me X Y, (or as the case may be)

Now I the said X Y having duly considered the matter submitted to me do hereby make my award as follows —

I award—

(1) that \_\_\_\_\_

(2) that \_\_\_\_\_

(Signed) X Y  
Arbitrator

Dated the \_\_\_\_\_ 189\_\_

\* Here specify the Court

# THE BANKERS' BOOKS EVIDENCE ACT, 1891

## ACT. NO XVIII OF 1891.

(Received His Excellency's Assent on the 1st October, 1891).

### An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books, It is hereby enacted as follows —

Title and extent 1. (1) This Act may be called "The Bankers' Books Evidence Act, 1891"

(2) It extends to the whole of British India\*.

Notes—This Act is based on English Bankers Books Evidence Act 1879 (42 Vict c 11) The reason of its enactment is thus stated 'It is sometime since the Imperial Parliament recognised the great inconvenience which is caused to bankers from being required to produce their books in Courts of Justice In the first place, and weight and in the second place they are of the bank facilities were provided for by means of certified copies and in the year 1891 an Act was passed for British India upon the same lines"—Statement of Objects and Reasons of Act XII of 1900

#### Definitions

2 In this Act, unless there is something repugnant in the subject or context—

(1) "Company" means a company as defined in the Companies Act, 1862, and includes any company registered in any country by a Charter or Letters Patent

(2) "Bank" and "banker" mean—

(a) any company carrying on the business of bankers, and to whose books the provisions of this Act apply after provided, order office

(3) "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of a bank

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given and includes an arbitration

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken

(6) "Judge" means a Judge of a High Court

(7) "trial" means any hearing before the Court at which evidence is taken, and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being

\* Certain words after this repealed by Act X of 1914 have been omitted

† The definition of 'company' has been substituted for the original one by the Bankers' Books Evidence Act (XII of 1900) s 2

‡ To sub s (2) of s 2, cl (c) has been added by s 2 of the Bankers' Books Evidence Act (1 of 1893)

dated and subscribed by the principal accountant or manager of the bank with his name and official title

**Company**—This definition was added by Act XII of 1900. The original definition of Company was too narrow. It failed to provide for banking companies carrying on business in the country but registered or incorporated in the United Kingdom and in the case of *Empress v. Patrick Mc Guire* 4 C W N 433 (F B) it was discovered that the entries in the books of Delhi and London Bank could not be proved by copies. This definition does not include foreign banks unless they are included by notification issued under section 3—*Vide Statement of Objects and Reasons to Act XII of 1900*

**Bank and Banker**—In the English Act the definitions of Bank and Banker are thus given—"In this Act the expressions 'bank' and 'banker' mean any person, persons, partnership or company only made a return to the certified under the Act relate. As regards whether the Local Government is a Banker—*Chand v. Boistab*, 31 C 284=8 C W N 125

**Bankers Books**—The definition is taken from the English Act

**Court**—A Magistrate before whom criminal proceedings are pending is a Court. *R v. Kinghorn*, (1908) 2 K B 949. *Vide* s 9 of that Act. See also the definition of legal proceedings—*vide* s 10

**Certified copy**—*Vide Chand v. Boistab* 31 C 284=8 C W N 125

3 The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of the Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration and keeping a set of not less than three ordinary account books, namely, a cash book, a day book or journal, and a ledger, and may in like manner, rescind any such notification

**Notes**—The Local Government may include all foreign banks under the Act by virtue of the power of notification given under this section

4. Subject to the provisions of the Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible but not further or otherwise

**Notes**—This section corresponds to sections 3, 4 and 5 of the English Act. Before certified copy of any bank is admissible in evidence, it must be proved that the bank is one to which the provisions of the Bankers Books Evidence Act apply. Unless that is proved certified copies of entries in their books ought not to be admitted in evidence. *Empress v. Patrick Mc Guire* 4 C W N 433 (F B). This section lays down that a certified copy of any entry in a bankers book shall be received as *Prima facie* evidence of the existence of any such entry. The term 'certified copy' is defined in clause (8) of section 2. According to that definition the required statement should be subscribed by the principal accountant or manager of the bank with his name and official title. But according to the English Act the proof of the required statement must be given by a partner or officer of the bank either orally or by an affidavit, sworn before any commissioner or person authorised to take affidavits (*Vide ss 4 and 5 of Stat 42 Vict c 11*). This section makes copies of such entries evidence against any one. Thus the entries in a defendant bankers books are made evidence against the plaintiff. *Harding v. Williams* 14 Ch D 197. See also *Dwarka Das v. Sant Baksh* 18 A 94. When before the Act a party had a right to issue a *subpoena duces tecum* to compel him to produce books he can now obtain an order under this section. He has nothing to do with the law of discovery to obtain inspection which cannot be obtained by *Wood* (1892) P 137, see however *Perry v. Phosphor Bronze* 71 L T 854 cited in *Woodroffe's Evidence* at p 996

# THE BANKERS' BOOKS EVIDENCE ACT, 1891

## ACT. NO XVIII OF 1891.

(Received His Excellency's Assent on the 1st October, 1891).

### An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:—

Title and extent 1. (1) This Act may be called "The Bankers' Books Evidence Act, 1891."

(2) It extends to the whole of British India\*.

Notes—This Act is based on English Bankers' Books Evidence Act 1879 (42 Vict c 11). The reason of its enactment is thus stated "It is sometime since the Imperial Parliament recognised the great inconvenience which is caused to bankers f Justice In the first place, in the second place, they are b Facilities were provided for certified copies and in the c same lines"—Statement of

Definitions 2 In this Act, unless there is something repugnant in the subject or context—

(1)† "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent

(2) "Bank" and "banker" mean—

(a) any

(b) any

provisions of this ded,

(c)† any

(3) "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of a bank.

(4) "legal process" evidence is

or may

(5)

is held or taken

proceeding

(6) "Judge" means a Judge of a High Court

(7) "trial" means any hearing before the Court at which evidence is taken; and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being

\* Certain words after this repealed by Act X of 1914 have been omitted

† The definition, of 'company' has been substituted for the original one by the Bankers' Books Evidence Act (XII of 1900) s 2

‡ To sub s (2) of s 2, cl (c) has been added by s 2 of the Bankers' Books Evidence Act (1 of 1893)

dated and subscribed by the principal accountant or manager of the bank with his name and official title

**Company**—This definition was added by Act VII of 1905. The original definition of Company was too narrow. It failed to provide for banking companies carrying on business in the country but registered or incorporated in the United Kingdom. *See* *Bank of India v. Bank of England* 4 C W N 433 (F B) it was held that the Bank of India and London Bank could not be included under the definition. Section 3—*Vide Statement of Objects and*

*Reasons to Act VII of 1905*

**Bank and Banker**—In the English Act the definitions of Bank and Banker are thus given—In this Act the expressions "bank" and "banker" mean any person, persons, partnership or company, whether incorporated or not, who or which only made a return to the Registrar of Companies under the Act relating to Companies.

As regards whether the

*Chandra v. Boust*, 31 C 284=8 C W N 125

**Bankers' Books**—The definition is taken from the English Act

**Court**—A Magistrate before whom criminal proceedings are pending is a Court. *R v. Kinghorn*, (1908) 2 K B 949. *Vide* s 9 of that Act. See also the definition of legal proceedings—*vide* s 10

**Certified copy**—*Vide Chandra v. Boust* 31 C 284=8 C W N 125

3 The Local Government may, from time to time by notification in the official Gazette, extend the provisions of the Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration and keeping a set of not less than three ordinary account books, namely a cash book, a day book or journal, and a ledger, and may in like manner, rescind any such notification

**Notes**—The Local Government may include all foreign banks under the Act by virtue of the power of notification given under this section

4 Subject to the provisions of the Act, a certified copy of any entry in the bankers' book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extent as, the original entry itself is now by law admissible but not further or otherwise

**Notes**—This section corresponds to sections 3, 4 and 5 of the English Act. Before certified copy of any bank is admissible in evidence it must be proved that the bank is one to which the provisions of the Bankers' Books Evidence Act apply. Unless that is proved certified copies of entries in their books ought not to be admitted in evidence. *Empress v. Patrick Mc Guire* 4 C W N 433 (F B). This section lays down that a certified copy of any entry in a bankers' book shall be received as *Prima facie* evidence of the existence of any such entry. The term "certified copy" is defined in clause (8) of section 2. According to that definition the required statement should be subscribed by the principal accountant or manager of the bank with his name and official title. But according to the English Act the proof of the required statement must be given by a partner or officer of the bank either orally or by an affidavit, sworn before any commissioner or person authorised to take affidavits (*Vide ss 4 and 5 of Stat 42 Vict c 11*). This section makes copies of such entries evidence against any one. Thus the entries in a defendant's bankers' books are made evidence against the plaintiff. *Harting v. Williams* 14 Ch D 197. See also *Dwarka Das v. Sant Baksh* 18 A 94. When before the Act a party had a right to issue a *subpoena duces tecum* to compel bankers to produce their books he can now obtain an order under this section. *Pe Marshfield* 3 Ch D 498. This has nothing to do with the law of discovery and can not be utilised before trial to obtain inspection which cannot be obtained by means of discovery. *Pinnell v. Wood* (1892) P 137, see however *Perry v. Phosphor Bronze*, 71 L T 854 cited in Woodroffe's Evidence at p 996

## 5 No officer of a bank shall in any legal proceeding to which the bank

Case in which officer of bank is not a party, be compellable to produce any  
not compellable to produce bankers book the contents of which can be  
books proved under this Act or to appear as a witness  
therein recorded unless by to prove the matters transactions and accounts  
cause order of the Court or a Judge made for special

Notes—A banker is only exonerated by this section from personal attendance in Court when he complies with the provision of section 4. *Emmott v Star Newspaper Co*, 67 1 J Q B 77 Except when the bank is a party this section exempts the banker from being compelled to produce any book that can be proved by a copy or to appear as a witness unless specially ordered to do so

## 6 (1) On the application of any party to a legal proceeding, the Court or

Inspection of books by order a Judge may order that such party be at liberty  
of Court or Judge to inspect and take copies of any entries in a  
bankers book for any of the purposes of such  
proceeding, or may order the bank to prepare and produce, within a time to  
be specified in the order certified copies of all such entries, accompanied by  
a further certificate that no other entries are to be found, in the books of the  
bank relevant to the matters in issue in such proceeding and such further  
certificate shall be dated and subscribed in manner hereinbefore directed in  
reference to certified copies

(2) An order under this or the preceding section may be made either with or without summoning the bank and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order

v *Hayes*, 36 Ch  
Q B 275, A I R  
a party desires an  
grant it *ex parte*,  
make the order  
L R 865 The  
vs paper 62 L J

great caution (*Arnott v Hayes* 36 Ch D

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rties  
such  
h 1

An order under this section is not open to revision P L R (1900) 237

## 7 (1) The costs of any application to the Court or a Judge under or for

Costs the purposes of this Act and the costs of anything  
done or to be done under an order of the Court  
or a Judge made under or for the purposes of this Act shall be in the discretion  
of the Court or Judge who may further order such costs or any part thereof  
to be paid to any party by the bank if they have been incurred in consequence  
of any fault or improper delay on the part of the bank

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding

(3) Any order under this section awarding costs may, on application to any

Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself.

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs

Notes—This section corresponds to section 8 of the English Act

## THE INDIAN BAR COUNCILS ACT, 1926

### ACT NO XXXVIII OF 1926

(PASSED BY THE INDIAN LEGISLATURE)

*Receiveth the assent of the Governor General on the 9th September, 1926)*

*In Act to provide for the constitution of Bar Councils in British India and for other purposes*

WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils and to consolidate and amend the law relating to legal practitioners entitled to practise in such Courts, It is hereby enacted as follows—

**Bar Councils**—This Act contemplates different Bar Councils. The reason of this is thus stated by the Bar Committee: From a practical point of view nothing is to be gained by setting up a central body which shall prescribe different qualifications for a body of the profession in the different provinces. A central body would necessarily lack adequate knowledge of local conditions and there are not wanting instances in which a provincial bar would not readily submit to being governed by a body which would necessarily contain a majority of members insufficiently acquainted with its special needs and difficulties.

**Courts**—The word 'Courts' is not defined in this Act. It means however the highest Courts.

#### *Preliminary.*

Short title extent application and commencement

1 (1) This Act may be called the Indian Bar Councils Act, 1926.

(2) It extends to the whole of British India and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897\* as the Governor General in Council may, by notification in the Gazette of India, declare to be High Courts to which this Act applies.

(3) This section and sections 2, 17, 18 and 19 shall come into force at once, and the Governor General in Council may by notification in the Gazette of India direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as he may by the notification appoint.

**High Courts**—In the first instance this Act applies to the High Courts of India at Fort William in Bengal and Madras Bombay Allahabad Patna and Rangoon. The High Courts of Oudh, Bihar etc. and the High Courts in the North-West Frontier Province and the Punjab are also included.



5 No officer of a bank shall in any legal proceeding to which the bank is not a party, be compellable to produce any bankers book the contents of which can be proved under this Act or to appear as a witness to prove the matters, transactions and accounts therein recorded unless by order of the Court or a Judge made for special cause

Notes—A banker is only exonerated by this section from personal attendance in Court when he complies with the provision of section 4. *Emmott v Star Newspaper Co*, 61 J Q B 77. Except when the bank is a party this section exempts the banker from being compelled to produce any book that can be proved by a copy or to appear as a witness unless specially ordered to do so.

6 (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a bankers book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries accompanied by a further certificate that no other entries are to be found, in the books of the bank relevant to the matters in issue in such proceeding and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

— be made *ex parte*. *Arnott v Hayes*, 36 Ch D 275, A 1 R 870. So where a party desires an order on behalf of the Court ought to grant it *ex parte*, but where he applies against the other party the Court ought not to make the order without notice to the other party. *Tricunlal v Lakshmidas* 5 Bom L R 865. The power under this section is discretionary (*Emmott v Star Newspaper* 62 L J 301 (*Arnott v Hayes* 36 Ch D 275)).

An order under this section is not open to revision P L R (1900) 237

7 (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of the order.

Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself

Provided that nothing in this subsection shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs

Notes—This section corresponds to section 8 of the English Act

## THE INDIAN BAR COUNCILS ACT, 1926

### ACT NO XXXVIII OF 1926

(PASSED BY THE INDIAN LEGISLATURE)

*Received the assent of the Governor General on the 9th September, 1926*

*An Act to provide for the constitution of Bar Councils in British India and for other purposes*

of the constitution and incorporation  
duties in India, to confer powers and impose  
to legal practitioners entitled to practise in such Courts, It is hereby enacted  
as follows—

Bar Councils.—This Act contemplates different Bar Councils. The reason of

acquainted with its special needs and difficulties

Courts.—The word Courts is not defined in this Act. It means however the highest Courts

#### *Preliminary*

Short title extent application  
and commencement

1 (1) This Act may be called the Indian Bar Councils Act, 1926

(2) It extends to the whole of British India and shall apply to the High Courts of Judicature at Fort William in Bengal and at Madras Bombay Allahabad Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act 1897\* as the Governor General in Council may, by notification in the Gazette of India declare to be High Courts to which this Act applies

(3) This section and sections 2 17 18 and 19 shall come into force at once, and the Governor General in Council may by notification in the Gazette of India direct that the other provisions of this Act or any provision thereof specified in the notification shall come into force in respect of any High Court to which this Act applies on such date as he may by the notification appoint

High Courts.—In the first instance this Act applies to the High Courts of Judicature at Fort William in Bengal and at Madras Bombay Allahabad Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act 1897\* as the Governor General in Council may, by notification in the Gazette of India declare to be High Courts to which this Act applies

appeal in the part of British India in  
express operation. The Lahore High

5 No officer of a bank shall in any legal proceeding to which the bank is not a party, be compellable to produce any bankers book the contents of which can be proved under this Act or to appear as a witness to prove the matters transactions and accounts therein recorded unless by order of the Court or a Judge made for special cause

Notes—A banker is only exonerated by this section from personal attendance in Court when he complies with the provision of section 4 *Emmott v Star Newspaper Co*, 67 1 J Q B 77 Except when the bank is a party this section exempts the banker from being compelled to produce any book that can be proved by a copy or to appear as a witness unless specially ordered to do so

6 (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a bankers book for any of the purposes of such proceeding or may order the bank to prepare and produce within a time to be specified in the order certified copies of all such entries accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies

(2) An order under this or the preceding section may be made either with or without summoning the bank and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed unless the Court or Judge shall otherwise direct

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order

Application—An application may be made *ex parte* *Arnott v Hayes* 36 Ch D 275 A 1 R a party des res an grant it *ex parte*, make the order L R 865 The

power under this section is discretionary (*Emmott v Star Newspaper* 62 L J Q B 77) and should be exercised with great caution (*Arnott v Hayes* 36 Ch D 275)

An order under this section is not open to revision P L R (1900) 237

7 (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court shall be in the discretion of the Court of such costs or any part thereof incurred in consequence

of any fault or improper delay on the part of the bank

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding

(3) Any order under this section awarding costs may, on application to any

Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself.

Provided that nothing in this subsection shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

**Notes**—This section corresponds to section 8 of the English Act

**THE INDIAN BAR COUNCILS ACT, 1926**

ACT NO XXXVIII OF 1926

(PASSED BY THE INDIAN LEGISLATURE)

*Received the assent of the Governor General on the 9<sup>th</sup> September, 1926)*

*An Act to provide for the constitution of Bar Councils in  
British India and for other purposes*

WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners entitled to practise in such Courts, It is hereby enacted as follows:—

**Bar Councils** — This Act contemplates different Bar Councils. The reason of this is thus stated by the Bar Comm. "The reason of this is to be gained by setting up Bar Councils for admission to the Bar. It would necessarily have in view the various indications that would be required by a body which would be acquainted with its special needs and difficulties."

**Courts**—The word "Courts" is not defined in this Act. It means however the highest Courts.

*Preliminary.*

Short title, extent, application and commencement 1 (1) This Act may be called the Indian Bar Councils Act, 1926.

(2) It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the *Clauses Act, 1897*\* as the *in the Gazette of India.*

19 shall come into force at once; and the Governor General in Council may, by notification in the Gazette of India direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as he may by the notification appoint

**High Courts.**—In the first instance this Act applies to the High Courts of

According to Clause 24 of section 3 of the General Clauses Act the term 'High Court' shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates. The Lahore High

Court has been purposely omitted as there is a Bar Council for Punjab already existing (*Vide para 50 of the Bar Committees Report*)

**Commencement of the Act**—So far as the six High Courts mentioned in para (2) are concerned sections 2, 17, 18 and 19 come into operation at once. As regards the remaining portion of the Act no notification has yet been published by the Governor General in Council.

Legal Practitioners cannot now be proceeded under inherent jurisdiction independently of the Act 125 Ind. Cas. 477

**Interpretation** 2 In this Act unless there is anything repugnant in the subject or context,—

- (a) 'Advocate' means an advocate entered in the roll of advocates of a High Court under the provisions of this Act
- (b) "Advocate General" includes where there is no Advocate General, the Government Advocate and where there is no Advocate General or Government Advocate, such officer as the Local Government may declare to be the Advocate General for the purposes of this Act,
- (c) "High Court" means a High Court to which this Act applies, and
- (d) "Prescribed" means prescribed by rules made under this Act

**Notes**—These definitions are for the purposes of the Act. Unless there be any repugnancy in the subject or context these meanings are to be applied.

11 Clauses Act, a  
of the Faculty of  
means an advocate  
Act

**Advocate General**—This definition is for the purpose of this Act and it should not be extended to other Acts.

### *Constitution of Bar Councils.*

**Constitution and incorporation of Bar Councils** 3 (1) For every High Court a Bar Council shall be constituted in the manner herein after provided.

(2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable, and to contract and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued.

**Every High Court**—A Council can be constituted for every High Court and not for every province.

**Body Corporate**—It is a corporation aggregate like a trade union and is created by this Act. Perpetual succession, a common seal and right to acquire and hold property are incidental to all corporations. A corporation aggregate says Lord Coke "is only an abstraction and rests only in intendment and consideration of law. It is invisible and immortal. It has no soul in it; either is it subject to the imbecilities of the body."

**Composition of Bar Councils** 4 (1) Every Bar Council shall consist of fifteen members, of whom—

- (a) one shall be the Advocate General,
- (b) four shall be persons nominated by the High Court of whom not more than two may be Judges of that Court, and
- (c) ten shall be elected by the advocates of the High Court from amongst their number.

(2) Of the elected members of every Bar Council not less than five be persons who have for not less than ten years practised in the High Court for which the Bar Council is constituted.

(3) Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such

proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practise in the High Court in the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland.

(4) There shall be a Chairman and Vice Chairman of each Bar Council elected by the Council in such manner as may be prescribed :

Provided that the Advocates General of Bengal, Madras and Bombay shall be Chairman *ex-officio*, respectively, of the Bar Councils constituted for the High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay

Sub Clause (b).—"We think it desirable to make clearly that Judges of the High Court may be represented on the Bar council, and have provided that two out of the four persons nominated by the Court may be Judges"—*Report of the Select Committee*

**Composition of Bar Councils**—The Council should consist of 15 members, four of whom should be nominated by the High Court, including where possible, the Advocate General or the Government Advocate and the Government Pleader. The remaining eleven, of whom six should be advocates of at least 10 years' standing should be elected by advocates of the High Court, provided that in Calcutta and Bombay the High Courts should determine how many of the eleven should be advocates entitled to practise on the original side. The nominated members should ordinarily be advocates, but it should be left to the High Courts to nominate Judges past and present. *Statement of Objects and Reasons*

**Advocates General**—We think it is essential in view of the *status* of the Advocates General in the Presidency towns that they should be made *ex-officio* Chairman of the Bar Councils to which they respectively belong. —*Report of the Select Committee*

5 (1) Notwithstanding anything contained in clause (c) of subsection (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council.

**Advocates, vakils and pleaders etc**—The attorneys are excluded from the operation of this Act as the majority supported the view that the attorneys should have a completely separate organisation. *Vide Bar Committee's Report, paras 62 and 10*

**Tenure of Office**—The life of the first Bar Council is three years from the date of the first meeting of the council and not from the date of election

Power to make rules regarding constitution and procedure of Bar Councils 6 (1) Rules, consistent with this Act, may be made to provide for following matters, namely —

(a) the manner in which elections of members of the Bar Council shall be held, the method of determining, in accordance with the provisions of sub-sections (2) and (3) of section 4, the candidates who shall be declared to have been elected, the manner in which the result of elections shall be published, and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided,

(b) the terms of office of nominated and elected members of the Council;

(c) the filling of the casual vacancies in the Council,

(d) the " " and the quorum necessary

(e) the " " tive terms of office of the Chairman in cases where the Chairman is to be elected, and of the Vice Chairman, and

(f) any matter incidental or ancillary to any of the foregoing matters

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court exercises jurisdiction

(4) Rules made under clause (d) of subsection (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined

Notes.—The matters to be dealt with by rules made under this clause are we think, matters which should ordinarily be dealt with by the Bar Councils themselves. We have accordingly provided that the rules should be made only in the first instance by the High Court and thereafter by the Bar Council with the previous sanction of the High Court.—*Report of the Select Committee* Under this section provision is made that the first rules shall be made by the High Court thereafter changes can be made with the previous sanction of the High Court, in the way of amendment or addition by the Bar Councils themselves.—*Vide Proceedings in Council*

Power of Bar Councils to make bye laws 7 The Bar Council may make bye laws consistent with this Act and any rules made thereunder to provide for any of the following matters namely —

- (a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and officers and servants, and committees of the Council the determination of the powers which may be delegated to such

#### Committees

Notes.—This section authorises the Bar Council which owes its origin to a Statute to make bye laws consistent with this Act and consistent with the rules made under this Act. These bye laws may deal with the appointment of ministerial officers and servants of the Bar Council as well as the appointment and constitution of committees. A bye law must relate to subjects within the scope of the corporate powers. It must not be *ultra vires*. In other words it must be confined to the limits of the subject matter handed over by the Legislature and dealt with by the subordinate authority and must not impose any restrictions not authorised by the language of the Statute. *Aiyangar's Municipal Corporation Vol III p 411 A*

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11 21 C 837

#### Admission and enrolment of advocates

8 (1) No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained under this Act.

Enrolment of advocates

Provided that nothing in this sub section shall apply to any attorney of the High Court

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(a) all persons who were, as advocates vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof, and

(b) all other persons who have been admitted to be advocates of the High Court under this Act

Provided that such persons shall have paid in respect of enrolment the stamp-duty if any, chargeable under the Indian Stamp Act 1899\* and a fee, payable to the Bar Council, which shall be ten rupees in the case of the person

such amount as may be prescribed  
the order of seniority, and such  
mely —

(a) all such persons as are referred to in clause (a) of sub section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court, and

(b) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission, or if he is a barrister by the date of his admission or the date on which he was called to the Bar, whichever date is earlier

Provided that for the purposes of clause (b) the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled

(4) The respective rights of pre audience of advocates of the High Court shall be determined by seniority

Provided that the Advocate-General shall have pre audience over all other advocates, and king's council shall have pre audience over all advocates except the Advocate General

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section and shall thereafter communicate to the Bar Council all alterations in and additions to the roll as soon as the same have been made

(7) The Bar Council shall enter in the copy of the roll all alterations and

g or acting on his own behalf or by his

Clause (2)—In accordance with the opinion expressed by several High Courts the preparation and maintenance of the roll of advocates is entrusted to the High Court instead of to the Bar Council. Provision has also been made for the maintenance of the roll by the High Court and for the maintenance of a copy of it by the Bar Council principally in order that the election roll of persons entitled to elect members to the Bar Council may be kept up to date. In order to enable this to be done the duty of furnishing a copy of the roll to the Bar Council and of communicating to it all alterations and additions as they are made is imposed upon the High Court—*Report of the Select Committee*

Bar Council had acted honestly  
123 Ind Cas 683  
under the Act are entitled to act  
Court 113 Ind Cas 876—52 N



Qualifications and admission of advocates

9 (1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court :

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion

(2) In particular and to the exclusion of any other power, such rules

(a) the

advocates,

(b) the form and manner in which applications shall be made to the High Court for admission,

(c) the giving of notice by the High Court to the Bar Council of all such applications,

(d) the hearing by the High Court of any objections preferred on behalf of the Bar Council to the admission of any applicant, and

(e) the charging of fees payable to the Bar Council in respect of enrolment

(3) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex

(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse as they think fit any such application "or to prescribe the conditions under which such persons shall be entitled to practise or plead"

Clause (1)—Power is given to the Bar Councils to make rules for admission of person as advocates of the High Court. But the High Court has the power to refuse admission as advocate on its merits. A member of the profession does not deserve admission. 124 Ind Cas 654 = A I R 1930 1000

Proviso—But the High Court has the power to refuse admission to any person otherwise qualified if it considers that he would be on other grounds an undesirable addition to the Bar—*Report of the Select Committee*

Clause (2)—This clause lays down the matters, respecting which rules may be made

Clause (3)—In the case of *Miss Regina Guha* 21 C W N 74 (F B) = 24 C L J 382 a Full Bench of the Calcutta High Court held that a woman was not entitled to practise as a pleader. This disability was however taken away by Act 23 of 1923. This clause lays down the law as stated in Act 23 of 1923

Clause (4)—We have added a new sub clause (4) to this clause to meet a criticism advanced by the High Court of Judicature at Bombay that under the Bill of admissions to the Original is intended to make it clear Bombay to regulate absolutely original side will remain unim

### Misconduct.

Punishment of advocate for misconduct

10 (1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of

misconduct, the High Court shall if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court) and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

**Professional or other misconduct**—It has been pointed out that the expression unprofessional conduct does not cover the whole range of cases in which it may be necessary to take disciplinary action against advocates and we have made some drafting alterations in this clause to meet this point.—*Report of the Select Committee* As regards professional or other misconduct, vide ss 12 and 13 of the Legal Practitioners Act 1879 (XVII of 1879) and notes thereunder. See also 131 Ind Cas 67, 126 Ind Cas 558, 112 Ind Cas 214. Advocates conduct as a party is not within the scope of the section 1932 A I J 773=A I R 1932 All 492 (S B). As regards what punishment is sufficient vide *Ibid*. In case of striking off advocates name from roll of advocates for misconduct, the test is to see whether such misconduct makes the advocate unworthy to remain member of honourable profession and unfit to be entrusted with responsible work of advocate. When an advocate was convicted for submitting false return of income and for setting up false defence it was held that his name should be struck off the roll. A I R 1934 Rang 33. Definite retainer or confidential instructions are necessary to make appearance for other party a misconduct. A I R 1934 Oudh 58 (S B).

**Clause (2)**—"Some misunderstanding appears to have arisen as to the object of providing for a reference of cases of misconduct to subordinate Courts. Such a provision is necessary as a Tribunal of the Bar Council will not in all cases be in a position to enquire satisfactorily into matters which have occurred in the mofussil. We think that the allocation of inquiries between Subordinate Courts and Bar Council must be left to the discretion of the High Court but we have provided that the High Court shall be bound to consult the Bar Council in any case before referring it to such a Court and we have further provided that Courts to which reference may be made shall be the Courts of District Judges.—*Report of the Select Committee* As regards when Court is entitled to dismiss petition summarily, vide 34 Bom L R 443=A I R 1932 Bom 199=138 Ind Cas 593.

11 (1) Where any case is referred for inquiry to the Bar Council under section 10, the case shall be inquired into by a Tribunal of Bar Council Committee of the Bar Council (hereinafter referred to as the Tribunal)

(2) The Tribunal shall consist of not less than three and not more than five, members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice or Chief Judge of the High Court, and one of the members so appointed shall be appointed to be the president of the Tribunal.

**Tribunal**—By this section the Chief Justice or Chief Judge of the High Court is empowered amongst the member of the Bar Council to appoint a Tribunal of not more than 5 members and less than 3 member are to be referred to such Tribunals appointed by the Bar Council. Under section 12 sub section (3) the Advocate General must be given an opportunity of being heard before orders are passed by the High Court against an advocate. So it is submitted that the Advocate General should not be appointed a member of the Tribunal by the Court, although he is the *ex officio* President of the Bar Council.

Denman 43 L J Ch 409

12 (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10.

(2) The finding of a Tribunal on an inquiry referred to the Bar C

under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such to the High Court which shall cause a copy

(3) On receipt of the finding, the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the Advocate General, and shall afford the advocate concerned and the Bar Council and the Advocate General an opportunity of being heard. Orders are passed in the case such final orders in the case to the Tribunal through the

Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub section (3) and pass final orders thereon

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under subsection (4) or sub section (5) and maintain, vary or rescind the same, as it thinks fit

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll, and the certificate of any advocate so suspended or removed shall be recalled.

**Notes** 'The alterations which we have made in this clause provide, firstly that the Advocate General shall have notice of, and shall be entitled to appear at the hearing of every case before the High Court whether the inquiry has been made by a Tribunal of the Bar Council or by a District Court, and, secondly, that the High Court shall have the power to review its orders. This power will enable it to accept a belated apology, if it thinks fit and remit or reduce the punishment'—*Report of the Select Committee*. It is submitted that the position of the Advocate General is very anomalous, who by section 4, is the *ex officio* Chairman of the Bar Council and under section 11 can be appointed a member of the Tribunal. Advocate is expected to make a statement on oath than ordinary

is not intended to exclude the right of the court to hear any person other than the persons mentioned in that clause. *Ibid* While considering the finding of a Tribunal, the High Court has power to hear the complainant. *Ibid* Under section 12 the Advocate General is empowered to appear by submitting the report of the Tribunal. The Advocate General is entitled to be heard and 33 Bom L R 1215. Where the High Court can consider reports both of the majority and minority. A bench of 3 Judges can hear such enquiries 54 M 857=134 Ind Cas 33. When the report of the tribunal is ambiguous and does not contain explicit findings report need not be sent back if after investigation Court is not in doubt as to order that ought to be passed. A I R 1933 Rang 10

13 (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as Powers of the Tribunal and Courts in inquiries are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely—

- (a) enforcing the attendance of any person and examining him upon oath,
- (b) compelling the production of documents, and

(c) issuing commissions for the examination of witnesses -

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a Criminal or Revenue Court, of the Local Government

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 475 of the Code of Criminal Procedure, 1898

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court by which the Tribunal has been constituted and

(b) a Tribunal may send to any Civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue and the Civil Court shall serve such process or issue such commission as the case may be and may enforce any such process as if it were a process for attendance or production before itself

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act 1872 and the provisions of that section shall apply accordingly

Clause (1)—By this clause the Tribunal is invested with the powers of Civil Court so far as enforcing the attendance of any person and examining him upon oath, compelling the production of documents and issuing commissions for the examination of witnesses are concerned. The English Inns of Court which are voluntary societies do not possess these powers. They can disbar a member and deprive him of his professional position and existence *Hudson v Slade* 3 F&F 390. A proviso to this clause is added to give effect to a suggestion made by the High Court of Judicature at Bombay that power to enforce the attendance of judges in dislocation of judicial business and requires the tribunal to obtain the permission of the Local Government as the case may be before issuing a summons to the presiding officer of any Court—*Report of the Select Committee*

No power to exercise inherent disciplinary independently of the Legal Practitioners Act exists in the Allahabad High Court 125 Ind Ca.

#### Miscellaneous

Right of advocates to practise

14 (1) An advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub section (4) of section 9, in the High Court of which he is an advocate and

(b) save as otherwise provided by sub section (2) or by or under any other law for the time being in force, in any other Court in British India and before any other Tribunal or person legally authorised to take evidence and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(2) Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, or in the case of a

under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy to be sent to the Bar Council

(3) On receipt of the finding the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the Advocate General, and shall afford the advocate concerned and the Bar Council and the Advocate General an opportunity of being heard before orders are passed in the case

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub section (3) and pass final orders thereon

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under subsection (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll, and the certificate of any advocate so suspended or removed shall be recalled

**Notes** The alterations which we have made in this clause provide, firstly that the Advocate General shall have notice of, and shall be entitled to appear at the hearing of every case before the High Court whether the inquiry has been made by

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officio Chairman of the Bar Council and under  
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in making statement on oath than ordinary  
31 Ind Cas 67 The rules framed under the Act

empowers the High Court to assess the cost directed to be paid to the Advocate by the complainant 35 C W N 293 Where the tribunal constituted under s 11 of the Act has made a careful and reliable investigation the High Court will not unless there is very good reasons to do so throw over the finding of fact which have been arrived by the tribunal 35 C W N 293=134 Ind Cas 1270 Sub section (3) is not intended to exclude the right of the court to hear any person other than the persons mentioned in that cause *Ibid* While considering the finding of a Tribunal, the High Court has power to hear the complainant *Ibid* Under section 12 the correct procedure is for the Advocate General to open by submitting the report of the tribunal to the  
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**13** (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters,  
Powers of the Tribunal  
and Courts in inquiries

namely —

- (a) enforcing the attendance of any person and examining him upon oath,
- (b) compelling the production of documents, and

(c) issuing commissions for the examination of witnesses.

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or in the case of an officer of a Criminal or Revenue Court, of the Local Government.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 483 of the Code of Criminal Procedure, 1898.

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court by which the Tribunal has been constituted and

(b) a Tribunal may send to any Civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue and the Civil Court shall serve such process or issue such commission as the case may be and may enforce any such process as if it were a process for attendance or production before itself.

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act 1872 and the provisions of that section shall apply accordingly.

**Clause (1)**—By this clause the Tribunal is vested with the powers of Civil Court so far as enforcing the attendance of any person and examining him upon oath, compelling the production of documents and issuing commissions for the examination of witnesses are concerned. The English Inns of Court which are voluntary societies do not possess these powers. They can disbar a member and deprive him of his professional position and existence. *Hutton v State* 3 F&F 390. A proviso to this clause is added to give effect to a suggestion made by the High Court of Judicature at Bombay that the Tribunal should not have unrestricted power to enforce the attendance of judicial officers, a power which might result in dislocation of judicial business and inconvenience to the public. This proviso requires the Tribunal to obtain the previous sanction of the High Court or of the Local Government, as the case may be before issuing a summons to the presiding officer of any Court.—*Report of the Select Committee*

No power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practitioners Act and the Indian Bar Councils Act now exists in the Allahabad High Court. 125 Ind Cas 477—A I R 1930 All 225

#### Miscellaneous

Right of advocates to practise 14 (1) An advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub section (4) of section 9, in the High Court of which he is an advocate and

(b) save as otherwise provided by sub section (2) or by or under any other law for the time being in force, in any other Court in British India and before any other Tribunal or person legally authorised to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(2) Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, or in the case of a

High Court for which a Bar Council has been constituted under this Act, by such Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions

(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction

**Practise**—It includes the right to appear, plead and act *Laurentina v Dhuki*, (1925) Pat 766 An Ex judge of High Court if entered in the roll of Advocates has a right to appear in the courts of the Province 35 C W N 321 P C

**Any other Court in British India**—‘We think the provisions of the Bill as introduced were somewhat too stringent in refusing to allow an advocate of one High Court to appear before another unless rules had been made by the latter Court or by the Bar Council where such exists regulating the conditions of such appearances. We think it reasonable to give advocates the right of appearing in other High Courts unconditionally, unless conditions are imposed by such rules, and we have rerafted the clause accordingly’—*Report of the Select Committee*

**Sub Clause (e)—W**  
for certain cases which  
are at present entitled to  
authorised to take evidence

**15 A Bar Council** may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely—

General power of Bar  
Councils to make rules

- (a) the rights and duties of the advocates of the High Court and their discipline and professional conduct,
- (b) the condition subject to which advocates of other High Courts may be permitted to practise in the High Court,
- (c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council,
- (d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council,
- (e) the investment and management of the funds of the Bar Council, and
- (f) any other matter in respect of which the High Court may require rules to be made under this section

**Scope**—This section makes provision for the rights and duties of the advocates of the High Court and their discipline and professional conduct the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court as well as the holding and conduct of examinations by the Bar Council

in should be made for rules to  
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*Committee*

**16 The High Court** shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any court subordinate thereto

Power to fix fees payable  
as costs

court subordinate thereto

**Notes**—Under this section the High Court to make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate. This section makes no mention whether reference to be made to the Bar Council or not.

**Payment of Fees to party's own legal advisers**—Before the passing of the Legal Practitioners (Fees) Act, 1926, an agreement by a client to pay a certain amount to his pleader as fees for professional service cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper Court in the manner provided by section 28 of the Legal Practitioners Act, even when the amount agreed to be paid is not in excess of that prescribed under the Rules framed under section 27 of the Act for payment by a party to his opponent in respect of fees of the pleader employed by his adversary. *Srimati Kamini De v. Khetre Mohan Ganguli* 15 C W N 43=13 Ind Cas 43=15 C L J 660, see also *Julian v. Coriasjee*, 33 Ind Cas 107, *Rajah v. D V Narayan Rao*, 29 Ind Cas 163. But now see Act 21 of 1926.

**17.** No suit or other legal proceeding shall lie against a Bar Council or any Committee, Tribunal or member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

**Notes**—'We have inserted this clause in the usual form to provide indemnity for bona fide action taken by Bar Councils and Committees, Tribunals and members of Bar Councils'—*Report of the Select Committee*

**Liability of individual members**—Corporations are not individually answerable for acts done in their corporate capacity from which detriment happens; at least not without proof of malice. *Hill v. Tupper* 1 East 555, *Key v. Wadham College* 1 East 563 (1). All suits must be in the corporate name of the corporation and not in the name of any members or the Chairman or President. *Santon v. The Chairman*, A W N 1908, 165, *Syed Ameer Sahib v. Venkatarma* 16 M 296.

**18.** All rules made under this Act shall be published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court by which or with whose sanction the rules are made exercises jurisdiction.

**Notes**—This section makes provision for the publication of Rules. These rules are to be published in the local official Gazette or Gazettes of the province or the provinces over which the High Court exercises jurisdiction. The rules of the Bar Council of Calcutta under this section are to be published in the Calcutta as well as in the Assam Gazettes.

**19 (1)** When section 8 to 16 come into force in respect of any High Court, any enactment mentioned in the first column of the Schedule which is in force in any province in which the High Court exercises jurisdiction shall, for the purpose of its application to that province, be amended to the extent and in the manner specified in the second column of the Schedule.

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders' Act, 1920 except section 7 thereof,



(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or bye law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act

Notes.—The amendments mentioned in the Schedule will be effected in any Province when sections 8 to 16 will come into force in that Province

## THE SCHEDULE.

(See section 19.)

### AMENDMENT OF ENACTMENTS.

Enactments amended	Extent and manner of amendment
The Legal Practitioners' Act, 1879	<p>(1) In section 4, after the words 'with the permission of the Court' the words and figures "or, in the case of a High Court in respect of which the Indian Bar Councils Act 1926, is in force, subject to rules made under that Act" shall be inserted.</p> <p>(2) In section 6, clauses (a) and (b) after the words 'Royal Charter' the words and figures 'in respect of which the Indian Bar Councils Act, 1926, is not in force' shall be inserted</p> <p>(3) To section 38 the following words and figures shall be added, namely — 'and except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926'</p> <p>(4) In section 41, sub section (1) after the words "Royal Charter" the words and figures 'in respect of which the Indian Bar Councils Act, 1926, is not in force' shall be inserted</p>
The Indian Stamp Act, 1899	In Article 30 of the First Schedule after the words 'High Court' where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted
The Madras Stamp Amendment Act, 1922	In Article 25 of Schedule 1A, after the words 'High Court' where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Bengal Stamp Amendment Act, 1922	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted
The Indian Stamp Punjab Amendment Act, 1922	In Article, 30 of Schedule 1A, after the words 'High Court,' where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Assam Stamp Amendment Act, 1922	In Article 30 of Schedule 1A, after the words "High Court" where they first occur, the words and figures "under the Indian Bar Councils Act, 1926 or" shall be inserted

# THE INDIAN BILLS OF LADING ACT, 1856.

## ACT NO IX OF 1865.

RECEIVED THE G G'S ASSENT ON THE 11TH APRIL, 1856

### *An Act to amend the Law relating to Bills of Lading.*

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper, or owner and it is expedient that such rights should pass with the property, and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same on the ground or the goods not having been laden as aforesaid, It is enacted as follows —

**Passed to the endorsee**—The endorsement and delivery by the consignee of a bill of lading for valuable consideration to a person not proved to have taken it *malafide* transfers to the endorsee according to the intention of the transaction the right and property of the consignee in the goods freed from any right of the consignee as to the goods in transitu *Ickberron v. Mason* 5 T R 683 6 East 20

1 Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself

**Notes**—The bill of lading remains in force, so long as complete delivery of possession of the goods is made to the consignee or endorsee  
claim them under it *Birder v East and West India Co* 11 Q B 201  
goods under that Bill ns the B 5 19\*8

2 Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee or of his receipt of the goods by reason or in consequence of such consignment or endorsement

**Notes**— There were numerous decisions both in England and America to the effect that when goods are consigned by the vendor to the vendee under bills of

late them here \* *Newbill v Cent Pac R Co*, 6 California, 345 = 71 Am Rep 718 T see also *Leak v Scott* 2 Q B D 376

3 Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board ;

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder or some person under whom the holder claims

Notes—This section of the Bills of Lading Act is limited to the master or the persons signing the bills In the absence of any proof that the bills of lading were granted under a misrepresentation without any default on the part of the person signing them, and wholly due to the fault of the shipper or the holder of such bills of lading, the particular marks as shown in the respective bills of lading must be held to have been put on the board *Pohuna v The Karachi Port Trust*, 18 S L R 105 = A I R 1925 Sind 221

## THE CARRIERS ACT 1865.

### ACT NO III OF 1865.

RECEIVED THE G G 'S ASS'NT ON THE 14TH FEBRUARY, 1865

*An Act relating to the rights and liabilities of Common Carriers*

common carrier does not cease to be so if he enters into special contract lawfully limiting his liability 31 Ind Cas 474

## Short title

1 This Act may be cited as "The Carriers Act, 1865."

## Interpretation clause

2 In this Act, unless there be something repugnant in the subject or context,—

"Common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately

"Person" includes any association or body of persons, whether incorporated or not :—

Notes—The Government is excluded 10 C 187 As to who are common carriers vide 3 M 107 26 B 562 ; 38 M 941 , 36 M 941 , 6 C 227 , 28 M 400 ; 2 N W P 387 , 3 N W P 195

by sec 52 B 37=A I R 1928 Bom 5 The section is framed without reference to the Licensee under obligation to carry goods of common carrier A I R 1933 Cal 735 A

common carrier by merely making special stipulation does not indicate that he is acting outside his business as a common carrier *Ibid* "For all persons indiscriminately" means simply that carriers are not at liberty to refuse business 80 Ind Cas 1038=51 I A 28 (P C)=28 C W N 302 (P C) Duties and liabilities of common law and Carriers Act 1 Act 50 Ind Cas 562 The 35 C W N 338

## 3 No common carrier shall be liable for the loss of or damage to property

Carriers not to be liable for loss of certain goods above 100 rupees in value unless delivered as such

delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall

have expressly declared, to such carrier or his agent, the value and description thereof

Notes—The earlier sections extend to India the principles embodied in the *Objects and Reasons* exemption clauses to risks of a common carrier in the absence of any prohibition against

exempting a carrier from loss arising from negligence or criminal acts there is perhaps an even stronger reason for adopting this canon of construction at any rate, within the limits implied by this prohibition 12 C W N 226, see also *Price v Union* (1903) 1 K B 750 S C (1904) 1 K B 412, *James v Nelson* (1907) 1 K B 769 But the non scheduled articles is not governed by the rule 59 C 472=36 C W N 129=A I R 1932 Cal 344=138 Ind Cas 89

## 4 Every such carrier may require payment for the risk undertaken

For carrying such property, payment may be required at fixed rates

in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge he shall have caused to

be exhibited in the place where he carries on the business of receiving property to be carried notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business

Object—It is unreasonable to expect a carrier to carry goods worth a few rupees and jewels possibly worth lacs for the same remuneration the negligence of the

\* Here certain words which were repealed by Act 10 of 1914 have been omitted

servants in the one case may cause him only a trifling loss, while in the other case it might be his ruin. It is only right therefore that he should be entitled to demand higher rates for certain goods. 32 M 122. Both the description and the value must be given. 5 M 208, 19 B 192. As to what is sufficient declaration of value and description, vide, 7 A L J 606 = 6 Ind Cas 333, 19 B 165, 19 B 194, 5 M 208.

5 In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

Notes—The plaintiff delivered a box to the defendant Railway Company for carriage to a particular destination. At the time of booking the box, the plaintiff made a representation to the officer of the Company that the box contained articles of the value of about Rs 1,000 and wished that special care should be taken to prevent the box or its contents from being injured by rain. He was asked the nature of the contents and he showed a list of the contents. The officer of the Company, however, failed to ask the plaintiff to pay increased rate of charges for the risk. *Held* that the declaration made by the plaintiff was a sufficient declaration. 3 see also 19 B 165. The Steamer Company delivered its luggage as the Act makes no and goods or merchandise. 17 C W N 970.

6 The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice, but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863\* may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Notes—The effect of sections 6 and 8 is that the liability of a common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule may be limited by the owner, save when such loss shall have resulted from a criminal act of the carrier or any of his servants. In England a carrier can stipulate that he shall exercise diligence. 19 C W N 905. P C. In India a carrier is not liable in the absence of special contract. When there is special contract a carrier is not liable to limit the liability of "carrier" is that the nature of the contract entered into must either have limitation of liability under the Act made expressly and in writing or the fact must be such that the contractor was engaging in a different type of business from that of a common carrier. 28 C W N 302.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act, XXII of 1863\* for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract, but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be

\* See new Act I of 1894

carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants

**Notes**—There is no obligation on a Railway Company to carry a passenger safely. They are only legally bound to carry him with reasonable care and diligence 28 C 401 = 5 C W N 449 P C. In the case of continuous carriers the authorities establish that when the goods have to be carried with the aid of different transport agencies in order to arrive at the destination to which they are booked, the carrier with whom the contract is made at one end is, in the absence of any contract limiting his liability to his own transport system, liable for the loss or destruction on portions beyond his own system or in consequence of acts or default of persons other than his own servants 45 Ind C 18 485

**S** Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property, other than property the declaration of which has arisen

**Notes**—A carrier is liable for the criminal act of his servant or agent even where there is no declaration as regards value or higher charge paid 41 C 83, 34 C 419. An agreement which exonerates the carrier from the negligence of servants is void 59 C 472 = 36 C W N 199 = A I R 1932 Cal 344 = 138 Ind C 18 89. A carrier is not relieved of his common law liability 37 C W N 559

**Delivered**—means physical delivery 31 C 921, see also 39 B 485 65 Ind C 162 21 Bom I R 40 = 51 Ind C 18 309

**Loss of goods**—shows negligence or criminal act on the part of a carrier 40 C 716

**Owner**—The liability of a carrier is to the owner 23 C W N 998; see also *Combs v Bristol* 3 H & N 510. When the consignee is the owner he can sue *Dunlop v Lambert*, 6 C & F 600, *Dulton v Solomonson*, 3 B & B 582. A person suffering loss can maintain suit apart from any privity of contract A I R 1933 Cal 735. Who renders the goods to the carrier is immaterial *Ibid*

**Burden of Proof**—The burden proof is upon the carrier if he wants exemption 40 C 716, see also 15 C W N 226, 47 C 1027, 41 C 80, 130 Ind C 18 658

**9** In any suit brought against a common carrier for the loss, damage or non delivery of goods entrusted, to him for carriage it shall not be necessary for the plaintiff to prove that such loss, damage, or non delivery was owing to the negligence or criminal act of the carrier, his servants, or agents

**de the** carrier The burden on a common carrier, on the absence of negligence 33 C L J 90, 17 C L J 639, 40 C 716, 22 W R 39, 24 C 786, 41 C 80, 21 C L J 565, 26 C 398 = 26 I A 1 = 3 C W N 145, 3 B 120, 11 C W N 1076, 24 C 882. The reason for this rule is thus stated by *Sir Sankaran Nair* in 32 M 127, 128. 'Nothing is more easy than for carriers to call their servants as witnesses and to prove *prima facie* that the goods were protected in the usual way. It would then be impossible for the plaintiff to bring negligence or criminality home to the carriers although the goods may not be forthcoming and no explanation given as to the loss occurred.' See also *Riby v Horne*, 5 Bing Rep 220, see also 39 B 209. The burden of proof on the part of the defendant will be discharged if the Court

\* Certain words here have been omitted by Act XIII of 1921

† The words within quotations have been added by Act XIII of 1921

loss is due to a fact  
J 74, see also 39 B  
C 791, 24 C 822, 23  
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10.\* No suit shall be instituted against a common carrier for the loss of, or injury to, goods, entrusted to him for carriage, unless notice in writing of the loss or injury has been given within six months of the institution of the suit, or the injury first came to the notice of the carrier.

Notes.—Notice under the section must be given if the carrier had knowledge *at the time* of the loss.  
27 C L J 294=41 Ind Cas 917, see also  
31 C W N 358 This section places  
as a railway and makes it obligatory upon a person wanting to sue a steamer company to give notice of such suit within the time mentioned in the section  
*River Steam Navigation Co Ltd v Kashi Prasad*, 8 C L J 192

11† The Governor General in Council, may, by notification in the Gazette of India, add to the list of articles contained in the Schedule to this Act, and the schedule shall, on the issue of any such notification be deemed to have been amended accordingly.

### SCHEDULE

Gold and silver coin	Cloths and tissues embroidered with the precious metals, or of which such metals form part
Gold and silver in a manufactured or unmanufactured state	Articles of ivory, ebony, or sandal wood
Precious stones and pearls	[Art pottery and all articles made of marble
Jewellery	Furs
Time pieces of any description	Government securities
Trinkets	Opium
Bills and hundies	Coral
Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign	Musk, Itr, Sandal wood oil, and other essential oils used in the preparation of <i>itr</i> or other perfumes
Stamps and stamped paper	Musical and scientific instruments
Maps, prints and works of art	Feathers
Writings	Narcotic preparation of hemp
Title deeds	Crude India-rubber
Gold or silver plate or plated articles	Jade Jade—stone and amber
Glass	Gooroochand or Gooroochandani
China	Cinematograph films and apparatus
Silk in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials	Zahir Mohra khatai]]
Shawls and lace	

\* Section 10 has been added by the Indian Carriers Act, 1899 (Act X of 1899) s 2

† Section 11 has been added by Act XIII of 1921

‡ Added by Notification No. 299 Dated 14th October 1922, Vide Gazette of India 1922, Part I p 1235

# THE CASTE DISABILITIES REMOVAL ACT, 1850.

## ACT NO. XXI OF 1850

PASSED ON THE 11TH APRIL, 1850

*An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company*

WHEREAS it is enacted by section 9, Regulation VII, 1832 of the Bengal Code, that "whenever in any civil suit the

### Preamble

parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws they would have been entitled, and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company, it is enacted as follows —

1 So much of any law or usage now in force within the territories subject to the government of the East India Company,

Law or usage which inflicts forfeiture of or affects, rights on change of religion or loss of caste to cease to be enforced

as inflicts on any person forfeiture of rights or property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion or being deprived

of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories

Notes—A Hindu widow's estate is preserved to her by force of this Act notwithstanding forfeiture of it by Hindu Law by reason of her unchastity and consequent loss of caste—*Sarnomony Das v Nemy Chirun* 2 Taylor & Bell 301 1 B 559, 32 C 871, 19 W R 367

When once a person has changed his religion and personal law that law will govern the succession rights of his children A I R 1931 Oudh 301 This Act only protects the rights of person who has lost his religion Rights of unconverted relations to succeed to the convert are not protected by the Act Hence a Hindu cannot succeed to a relation who has become a Musalman 132 Ind Cas 779=A I R 1931 Oudh 301

The word 'he is deprived of caste' have to be read with those proceedings as meaning what is generally understood by the word outcaste one excluded from religion and community The Act does not apply to the case of a Hindu who has become a *Jati Vaishtava* 35 C W N 726, see also A I R 1930 P C 251

Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste The latter part of s 1, protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste This Act applies to a case where a person born a Mahomedan his father having renounced the Hindu religion claims by right of inheritance under the Hindu law a share in his father's family—I L R 11 All 100 See also 23 P L R 1903, 2 N W P 446

Since this Act came into force, mere loss of caste does not occasion, a forfeiture of right of property—I Bom 559 See also 1 All 549

Under the Hindu Law as administered in the Bengal School a widow who has once inherited the estate of her husband is not liable to forfeit that estate by reason of unchastity *Quære*, As to the effect of Act XXI of 1850, if the widow had been degraded or deprived of her caste in consequence of her unchastity,



is convinced by the evidence produced by the defendant that the loss is due to a fact or event for which the defendant is not responsible 33 C L J 74, see also 39 B 191, *Hurlstone v London Electric Ry Co* 29 T R 514, 24 C 791, 24 C 822, 23 C W N 1008, 130 Ind Cas 658 This section has been framed in accordance with the English Common law See *Ross v Hell*, 2 Com B 890, *Richard v Lord Brighton* 7 Com B 839, 38 C 28=9 Ind Cas 364 Although by this section, it is not necessary to articles e has been ive proof of

**10.\*** No suit shall be instituted against a common carrier for the loss of, or injury to, goods, entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff

**Notes**—Notice under the section must be given, and it is not enough that the carrier had knowledge *alunde* of the loss *River Steam Navigation v Hazari Mall*, 27 C L J 294=41 Ind Cas 917, see also 38 C 50 Notice to local agent is sufficient 31 C W N 358 This section places a steamship company in the same posit on as a railway and makes it obligatory upon a person wanting to sue a steamer company to give notice of such suit within the time mentioned in the section *River Steam Navigation Co Ltd v Kashi Prosad*, 8 C L J 192

**11†** The Governor General in Council, may, by notification in the Gazette of India, add to the list of articles contained in the Schedule to this Act, and the schedule shall, on the issue of any such notification be deemed to have been amended accordingly

### SCHEDULE

Gold and silver coin	Cloths and tissues embroidered with the precious metals, or of which such metals form part
Gold and silver in a manufactured or unmanufactured state	Articles of ivory, ebony or sandal wood
Precious stones and pearls	[Art pottery and all articles made of marble
Jewellery	Furs
Time pieces of any description	Government securities
Trinkets	Opium
Bills and hundies	Coral
Currency notes of the Government of India, or notes of any Banks or securities for payment of money, English or foreign	Musk, Itr, Sandle wood oil, and other essential oils used in the preparation of itr or other perfumes
Stamps and stamped paper	Musical and scientific instruments
Maps prints and works of art	Feathers
Writings	Narcotic preparation of hemp
Title deeds	Crude India—rubber
Gold or silver plate or plated articles	Jade, Jade—stone and amber
Glass	Gooroochand or Gooroochandani
China	Cinematograph films and apparatus
Silk in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials	Zahir Mohra khatai ]†
Shawls and lace	

\* Section 10 has been added by the Indian Carriers Act, 1899 (Act 2 of 1899) s 2

† Section 11 has been added by Act XIII of 1921

‡ Added by Notification No 5299 Dated 14th October 1922, Vide Gazette of India 1922, Part I p 1235

# THE CASTE DISABILITIES REMOVAL ACT, 1850.

## ACT NO. XXI OF 1850

PASSED ON THE 11TH APRIL, 1850.

*An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company*

WHEREAS it is enacted by section 9, Regulation VII, 1832 of the Bengal Code, that "whenever in any civil suit the

Preamble

parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Musalman persuasion, or where one or more of the

of the Muhammadan or Hindu persuasion

not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company, it is enacted as follows —

1. So much of any law or usage now in force within the territories subject to the government of the East India Company,

Law or usage which inflicts forfeiture of or affects rights on change of religion or loss of caste to cease to be enforced

as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived

of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories

Notes—A Hindu widow's estate is preserved to her by force of this Act notwithstanding forfeiture of it by Hindu Law by reason of her unchastity and consequent loss of caste—*Sarromony Dutt v. Nany Chirin* 2 Taylor & Bell 301, 1 B 559, 3 C 871, 19 W R 367

When on a

and personal law, that law will 1931 Oudh 301 This Act only

successor to a relation who has become a Musalman 1931 Oudh 301

The word 'he is deprived of caste' have to be read with those proceedings as meaning what is generally understood by the word outcaste one excluded from religion and community The Act does not apply to the case of a Hindu who has become a *Jati Vaishnava* 35 C W N 726, see also A I R 1930 P C 251

Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste The latter part of s 1, protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste This Act applies to a case where a person born a Mahomedan his father having renounced the Hindu religion, claims by right of inheritance under the Hindu law a share in his father's family—1 L R 11 All 100 See also 23 P L R 1903, 2 N W P 446

Since this Act came into force, mere loss of caste does not occasion, a forfeiture of right of property—1 Bom 559 See also 1 All 549

Under the Hindu Law as administered in the Bengal School a widow who has once inherited the estate of her husband is not liable to forfeit that estate by reason of unchastity *Quære*, As to the effect of Act XXI of 1850, if the widow had been degraded or deprived of her caste in consequence of her unchastity

5 C 7/6=7 I A 115 As regards the scope—*Vide* 23 M 171—*See* also 31 B 495, 2 C L J 97 31 M 100, 15 C W N 545, 29 A 487, 60 P R 1901  
1 as 647, 52 P W R 1907, 1 B 559 32 C 871

Provisions apply only to the convert and not to his descendants 40 M 1118=37 Ind Cas 753 107 Ind Cas 890 This Act secures after apostasy the same rights to individuals in property as they enjoyed before apostasy 31 Ind Cas 476 55 Ind Cas 420 78 Ind Cas 749 98 Ind Cas 867 120 Ind Cas 133 The effect of the Act is not to enlarge the convert's interest in any property or to get rid of any condition of restriction to which it was originally subject 64 Ind Cas 776, 64 Ind Cas 514 98 Ind Cas 867, 107 Ind Cas 890, 130 Ind Cas 17

## THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920

### ACT NO XIV OF 1920.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 20TH MARCH, 1920

*An act to provide more effectual control over the administration of Charitable and Religious Trusts*

WHEREAS it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts, It is hereby enacted as follows—

**Trust Created for public purposes**—"A trust" said *Lord Romilly* in *Evan v Corporation of Avon* 29 Beav 149 may be of two characters it may of a general character or of a private and individual character A person might leave a sum of money to a corporation them the principal at twenty one the children could enforce against property to its own benefit On the corporation in trust for the benefit of the inhabitants of a particular place or for lighting the town That would be a public trust for the benefit of all the inhabitants Provisions for sadakrat—contribution towards marriages and education of Brahmin children—Trust comes within the Act A I R 1909 Lat 723=124 Ind Cas 609 Trust covered by the Act is not to be so wide in its purpose as a wakf under the Musliman Wakf Act of 1923 A I R 1909 Oudh 225=4 Lu k 429=117 Ind Cas 739 But see 134 Ind Cas 417=A I R 1931 Pat 354 This Act has no application where the grant is not for temple but is personal A I R 1928 Oudh 241=108 Ind Cas 98 see also A I R 1930 Oudh 53=119 Ind Cas 56,

Short title and extent (1) This Act may be called the Charitable and Religious Trusts Act, 1920

(2) It extends to the whole of British India

Provided that the Governor General in Council may by notification in the Gazette of India, direct that this Act or any specified part thereof, shall not extend to any specified province or area or any specified trust or class of trust

**Notes**—This Act applies even when a party ceases to be a trustee *Syed Reza v Kazi Nurdin* 78 Ind Cas 174 A trust when not acted upon cannot be regarded as a valid trust *Ibid*

2 In this Act, unless there is anything repugnant in the subject or context, 'the Court' means the Court of the District Judge "or any other Court empowered in that be

half by the local Government" and includes the High Court in the exercise of its ordinary original civil jurisdiction

Notes—The Courts mentioned in this section have jurisdiction to try a case under this Act. A District Judge's Court is a court subordinate to the High Court. 121 Ind Cas 267 = 51 A 957 = A I R 1929 All 581

3 Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate to obtain an order embodying all or any of the following directions namely—

- (1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value condition, management and application of the subject matter of the trust and of the income belonging thereto, or as to any of these matters and
- (2) directing that the accounts of the trust shall be examined and audited

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition

Notes—This section authorises any person having an interest in a trust of a charitable or religious nature to apply to Court for a direction on the trustee for certain information relating to the trust and for an examination and auditing of the accounts of the trust. But a person who claims adversely to the trust and who is not liable under the section is not a proper party to proceedings under this Act. *Syed Pervaiz Ali v. Ali* 178 I d Crs 174 = A I R 1975 Cal 527. In order to determine whether a trust is a trust for public purposes substance and primary intention of the creator must be seen. A I R 1979 Oudh 25, 4 Luck 49, 117 I d Cas 739. Benefit of specified person such as kindred dependents and others is not a public purpose. A I R 1979 Oudh 225, 117 Ind Cas 739. Interest in trust depends upon nature of trust. *Secretary of Public Institution entitled to stay in Dharmshala* created by trust is one interested in such trust. A I R 1928 All 758 = 50 A 880 = 6 A L J 1379

4 (1) The petition shall show in what way the petitioner claims to be interested in the trust and shall specify, as far as Contents and verification of petition may be the particulars and the audit which he seeks to obtain

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints

Signed—A petition may be signed by the party by his duly authorised agent. Any defect in signature can be cured any time before judgment. *Bisdeo v. Smith* 22 A 55. *Mohini v. Buggi* 17 C 580

Verification—Verification should state what matters are true to the knowledge of the petitioner and belief of the trustee. *442 The verification*  
Vide Order 6

rule 15 of C. P. Code

5 If the Court on receipt of a petition under section 3 after taking such evidence and making such inquiry, if any as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies and that the petitioner has an interest therein it shall fix a date for the hearing of the petition and shall cause a copy thereof, together with notice of the date so fix to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given

(2) On the date fixed for the hearing of the petition, or on any subsequent date

date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries if any, as it thinks fit. The trustee may and, if so required by the Court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies and undertakes to effect and for any proceedings and, suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit.

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the Court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

**Notes**—In an application by a worshipper, under section 3 of the Charitable and Religious Trusts Act, 1929.

section 5—Alleged trustee failing to institute suit—District Judge p. 118 Ind Crs 513—A. I. R. 1929 All 506—1929 A. L. J. 653

6 If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5 such trustee shall without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

**Notes**—Failure of trustee to comply with order under section 5 clause (5) may be instituted under section 92 of the Code of Civil Procedure, 1908.

may have interest under s. 5(5) and District Judge can grant

any relief under s 92 (1) Civil Procedure Code A I R 1930 All 582=118 Ind Cas 385 In such a suit accounts for whole period of trusteeship can be ordered *Ibid*

7 (1) Save as hereinafter provided in this Act any trustee of an express

Powers of trustees to apply for directions

local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate for the opinion advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be thereon

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal

(2) The Court on a petition under sub-section (1) may either give its opinion advice or direction thereon forthwith or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit

(3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned the Court before giving any opinion, advice or direction shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1) and acting upon the opinion, advice or direction of the Court given thereon shall be deemed, as far as his own responsibility is concerned to have discharged his duty as such trustee in the matter in respect of which the petition was made

Clause (1)—A trustee cannot be expected to incur the least risk and therefore if the equities be not perfectly clear he should decline to act without the sanction of

him in an application  
*Wyllie's Trust* 28  
*v. Ellison* 3 Russ  
 & M 70, *Taylor*  
*Campbell v. Home*  
*lagrave* 25 Beav  
 District Judge can  
 R 1909 All 581

Clause (4)—It would be impossible to hold a trustee answerable for an act not

on Trust, 12th Ed p 419

8 The costs, charges and expenses of and incidental to any petition and all proceedings in connection therewith, under this Act the foregoing provisions of this Act shall be in the discretion of the Court which may direct the whole or any part of any such costs charges and expenses to be met from the property or income of the trust in respect of which the petition is made or to be borne and paid in such manners and by such persons as it thinks fit

Provided that no such order shall be made against any person (other than the petitioner who has not received notice of the petition and had a reasonable opportunity of being heard thereon

Notes—Where there is reasonable ground for the application the trustees would be paid their costs *Vide notes under s 7*

Savings 9 No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances namely—

- (a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908, is pending in respect of the trust in question,
- (b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator General, the Official Trustee, or any Society registered under the Societies Registration Act, 1860; or
- (c) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

**Notes**—This section lays down that no petition is entertainable by the Court in the circumstances mentioned below. When a suit has already been instituted under section 92 of the Civil Procedure Code, the direction of that Court is binding.

**10** (1) In any suit instituted under section 14 of the Religious Endowments Act, 1863 or under section 92 of the Code of Civil Procedure, 1908, the Court trying such suit may if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred, or likely to be incurred, by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

**Notes**—This section supplements section 14 of the Religious Endowments Act, 1863 and section 92 of the Code of Civil Procedure, 1908. No provision is made in those Acts as regards previous deposit of costs by the trustees. Under this section the Court can ask the defendant either to furnish security or to deposit costs of the plaintiff, in a fit case and for public interest. This section is enacted in order to encourage suits under section 14 of the Religious Endowments Act (XX of 1863) and section 92 of the Civil Procedure Code. The option of furnishing security of making a deposit rests with the defendant. The Court can order that he may do one of these two things but it cannot specify which he is to do. Under this section a defendant can be directed to furnish security or to pay a sum of money out of the money in his hands as trustee. He cannot be required to pay any money out of his own pocket. The security is for expenditure already incurred or likely to be incurred. 69 Ind Cas 658.

**Provisions of the Code of Civil Procedure, 1908, relating to—**

- (a) the proof of facts by affidavit,
- (b) the enforcing of the attendance of any person and his examination on oath,
- (c) the enforcing of the production of documents, and
- (d) the issuing of commissions,

shall so far as they are applicable, apply to the execution of decrees and orders under this Act.

**Scope**—This section empowers a Court to prove any fact by affidavit, to summon any witness and to administer an oath to him. The Court is also empowered to enforce the production of any documents and to issue commissions to any witnesses. The procedure of serving a summons under C P Code is to be adopted in serving a notice under this Act. An order under this Act is to be executed like a

decree of the Civil Procedure Code But an order under this Act is not a decree under the Civil Procedure Code

12 No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act

Barring of appeals

Notes—The general principle is that an appeal never lies unless expressly given by Statute *Aer v Cashiobury*, 3 D & R 35 The creation of a right of appeal is an act which requires legislative authority Neither an inferior nor a superior tribunal, nor both combined can create such a right, it being essentially one of the limitation and of the extension of the jurisdiction *Att Gen v Sillem*, H L Cas 704 Where limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing and does not create any necessity for an appeal *Att Gen v Lord Huthum* Turn & R 219 An order of the District Judge directing a defendant to deposit a certain sum under section 10 is open to revision by a High Court *Kirpal v Naringin* 67 Ind Cas 658, 121 Ind Cas 267 = A I R 1929 All 581 = 51 A 937

## THE CHARITABLE ENDOWMENTS ACT, 1890.

### ACT NO VI OF 1890

RECEIVED THE GOVERNMENT'S ASSENT ON 7TH MARCH, 1890

*An Act to provide for the Vesting and Administration of Property held in trust for Charitable Purposes*

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes It is hereby enacted as follows—

Title, extent, and commencement 1 (1) This Act may be called the Charitable Endowments Act, 1890

(2) It extends to the whole of British India, inclusive of\* British Baluchistan, and

(3) It shall come into force on the first day of October, 1890

Extent This Act has been declared in force in Santhal Parganas by Regulation III of 1897

2 In this Act 'Charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility but does not

Definition

include a purpose which relates exclusively to religious teaching or worship

Notes—Charity has been defined to be a gift for a general public use *Jones v Williams* Amb 631 *Goodman v Mayor of Siltosh* 7 App Cas 633 *Peg v Comm of Incometax* 22 Q B D 296, *Commissioners v Pemsel* (1891) A C 531, *Commissioners v Scott* (1892) 2 Q B 152 It includes relief of the aged impotent and poor people *Nash v Morley* 5 Beav 177 *Re Gosling* 48 W R 500 A gift to free schools of learning and scholars of Universities is included in the term *Att Gen v Nash* 2 Br C C 587 *Att Gen v Earl of Longdale* 1 Sim 105 see also 124 Ind Cas 629 = A I R 1929 Pat 723 An educational institution is not prevented from being a charity by the fact that it imparts instruction in a certain religious belief *Dilworth v Comm of Stamps*, (1899) A C 93 *Brisdhuw v Taskar* 2 My & K 221

3 (1) The "Local Government" may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the territories subject to such Local Government †

Appointment and incorporation of Treasurer of Charitable Endowments

\* In s 1 sub s (2) the words "Upper Burma and" repealed by Act XIII of 1898 have been omitted here.

† The words within quotations have been substituted by Act 38 of 1920



(2) Such Treasurer shall, for the purposes of taking holding and transferring moveable or immovable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for the territories subject to the Local Government, and, as such Treasurer, shall have perpetual succession and a corporate seal and may sue and be sued in his corporate name

Notes—In England by the Charitable Trust Act 1855 (18 & 19 Vict c 124) section 15, the name of the Treasurer of Public Charities is abolished, and the Secretary of the Board for the time being is styled the Official Trustee of the charity lands. He is empowered to take and hold all such interest in land as in pursuance of an order of the Board is conveyed to or vested in him by any deed or assurance or otherwise. By the 18th section of the Charitable Trusts Act, 1855 and section 4 of the Charitable Trusts Act 1887 (50 & 51 Vict c 49) the Official Trustees of Charitable Funds are to have perpetual succession, and are to consist of such officers of the Board as the Board with the approval of the Treasury from time to time appoint  
*Lewin on Trust 12th Ed p. 1209*

4 (1) Where any property is held or is to be applied in trust for a charitable purpose, the Local Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the conditions of the trust or the exercise thereof as may be agreed on between the persons making the application, and

(2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto

(3) A Local Government shall not make an order under subsection (1) for the vesting in a Treasurer of Charitable Endowments of any securities for money, except the following, namely:—

- (a) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;
- (b) bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;
- (c) stock or debentures of, or shares in, Railway or other Companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;
- (d) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a Legislature established in British India;
- (e) a security expressly authorised by any order which the "Local Government" may make in this behalf

(4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require, or be deemed to require, him to administer the property, or impose, or be deemed to impose, upon him the duty of a trustee

property vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, the Local Government, if it thinks fit, may settle a scheme for the administration of any property which has been or it is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint,

\* The words within quotations have been substituted by Act 38 of 1929

by name or office, a person or persons not being or including such Treasurer, to administer the property.

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application the Local Government may, if it thinks fit, modify any scheme settled under this section, or substitute another scheme in its stead.

(3) A scheme settled, modified, or substituted under this section shall subject to the other provisions of this section come into operation on a day to be appointed by the Local Government in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the treasurer of Charitable Endowments, or until it has been modified, or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject matter thereof, in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme, or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates.

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust, so far as they can be ascertained, and, in the opinion of the Local Government, effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

**Notes**—A scheme is to be settled for the administration of the property vested in the Treasurer. Such a scheme is to be settled by the Local Government in consultation with the person making the application. Such a scheme may be modified or substituted by another scheme on the application of the original applicant. In England the Board have power, when the ordinary jurisdiction is insufficient for the purpose to approve provisionally of new schemes of charities, varying from the original endowment, but which are to be submitted annually to Parliament for its ratification.—*Levin on Trusts* 11th Ed. 1207.

Mode of applying for vesting orders and schemes

6. (1) The application referred to in the two last foregoing sections must be made,—

(a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them, and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

**Notes**—An application under ss. 4 and 5 may be made by a trustee or a majority of trustees where there are more trustees than one and where property is vested in trustees. The executors or administrators of a deceased trustee may also make an application under ss. 4 and 5.

Exercise by Governor General in Council of powers of Local Government

7. (1) The Governor General in Council may exercise all or any of the powers conferred on the Local Government by sections 4 and 5.

(2) When the Governor General in Council has signified to the Local Government his intention of exercising any of those powers with respect to any property, that Government shall not without his previous sanction, exercise them with respect thereto.

**Notes**—The Governor General can exercise the power of the Local Government in important cases.

8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(2) Such Treasurer shall keep a separate account of each property for the time being so vested, in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme if any, under section 5 or in both those documents.

(3) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management, and control of the property, and the application of the income thereof, as if the property had been vested in them.

Notes—The Treasurer of Charitable Endowments is bound to carry out the provisions of the scheme prepared under section 5. He is to keep an account of the trust property.

9. A Treasurer of Charitable Endowments shall cause to be published annually in the local official Gazette, at such time as the Local Government may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub section (2) of the last foregoing section.

Notes—This list is published for the information of the public.

10. (1) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions

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tration thereof, and be held by him or them on the same trusts as those on which it was held by such Treasurer.

11. If the office held by an officer of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished, or its name is changed, the "Local Government" may appoint the same or another officer of the Government, by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed, for the purposes of this Act, to be the successor in office of the holder of the former office.

12. If, by reason of an alteration of the limits of the territories subject to a Local Government, or for any other reason, it appears to the Governor General in Council that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, he may

\* The words within quotations have been substituted by Act 38 of 1920

direct that the property shall be so vested, and thereupon it shall vest in that other Treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act

13\* (1) The Governor General in Council may prescribe forms for any proceedings under this Act and may make rules consistent with this Act for prescribing the Local Government which is to exercise the powers conferred by this Act in the case of property which is or is situated, in territories subject to two or more local Governments

(2) The local Government may make rules consistent with this Act for—

(a) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments,

(b) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5,

(c) prescribing the forms in which accounts are to be kept by Treasurers of Charitable Endowments and the mode in which such accounts are to be audited and

(d) generally, carrying into effect the purposes of this Act

14 No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act or in respect of the exercise of or the failure to exercise any power conferred by this Act on the Government nor shall any suit be instituted against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him or the income thereof where the loss or misapplication has been occasioned by or through his wilful neglect or default

Notes—By this section the Government and the Treasurer of Charitable Endowments are exempt from all liabilities save and except where such liability is incurred by his wilful neglect or default. The property of a hospital was vested in the Treasurer of the Charitable Endowments Act. The administration of the trust property vested in the hands of a committee. In a suit against the ex officio secretary for a claim against the committee held that the suit could not be filed against the Secretary alone as representing the committee. *Ajodhia v The City Magistrate of Lucknow* 20 O C 333. This Act has nothing to do with a case where the claim is made in defiance of the trust and on a title paramount to the settlers. A I R 1926 Oudh 431=29 O C 176=96 Ind Cas 47

15 Nothing in this Act shall be construed to impair the operation of section 111 of the Statute, 53 George III chapter 155 or of any other enactment for the time being in force respecting the authority of an Advocate General at a Presidency to act with respect to any charity, or of sections 8, 9, 10 and 11 of Act No XVII of 1864 (an Act to constitute an Office of Official Trustee) respecting the vesting of property in trust for a charitable purpose in an Official Trustee

Notes—53 George III, Chapter 155—The East India Company Act, 1853 Act 17 of 1864—See now Act II of 1913

16 General controlling authority of Governor General in Council [Repealed by Act 38 of 1920]

\* The new section 13 has been substituted for the old one by Act 38 of 192

# THE CHILD MARRIAGE RESTRAINT ACT, 1929

## ACT NO XIX OF 1929

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 1ST OCTOBER, 1929)

*An Act to restrain the solemnisation of child marriages*

WHEREAS it is expedient to restrain the solemnisation of child marriages ; It is hereby enacted as follows —

Short title extent and commencement

1 (1) This Act may be called the Child Marriage Restraint Act, 1929 \*

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

(3) It shall come into force on the first day of April, 1930

Notes—The object of the Bill is two fold The main object by declaring invalid the marriages of girls below 14 years of age, is to put a stop to such girls becoming widows The second object by laying down the minimum marriageable ages of boys and girls is to prevent so far as may be their physical and moral deterioration by removing a principal obstacle to their physical and mental development — *Statement of Objects and Reasons* The Act applies to all classes and communities in British India *Report of the Select Committee*

Definitions

2 In this Act unless there is anything repugnant in the subject or context,—

- (a) "child" means a person who if a male, is under eighteen years of age, and if a female, is under fourteen years of age,
- (b) "child marriage" means a marriage to which either of the contracting parties is a child
- (c) "contracting party" to a marriage means either of the parties whose marriage is thereby solemnised, and
- (d) "minor" means a person of either sex who is under eighteen years of age

Notes—We consider a female is a child for another suggestion that were emphatically of op Bill—*Report of the Select Committee*

Punishment for male adult below twenty one years of age marrying a child

3 Whoever, being a male above eighteen years of age and below twentyone, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees

Notes—The object of the Bill as introduced in the Legislature was to impose restraint upon the solemnisation of child marriages and the method adopted was

es of " under it is alidity of a marriage which has been is are at present insuperable and we which has been widely made that the ig child marriages not by declaring such marriages to be invalid but by imposing punishments upon those who participate in them — *Report of the Select Committee*

4 Whoever, being a male above twenty one years of age contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both

Punishment for male adult above twenty one years of age marrying a child

Notes—Vide notes under section 3

\* Substituted by Act VIII of 1930

5. Whoever performs, conducts or directs any child marriage, shall be

Punishment for solemnising a child marriage punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage

Notes.—This section excludes betrothal ceremony which is a necessary preliminary to a marriage but which does not constitute a marriage without further ceremony. This section only penalises the persons who actually officiate in that part of the ceremony which finally renders the marriage i.e. indissoluble. This section also exempts any person who has officiated at a child marriage but who can prove to the Court that he had taken reasonable precautions to satisfy himself that the contracting parties were over the minimum age. *Report of the Select Committee*. Where a man is punished for marrying a minor girl against these injunctive order under order 39, rule 2 (3) he should be given an opportunity of establishing the plea that no notice of the order was served upon him. A I R 1932 Cal 719=137 Ind Cas 425. This section excludes those who are punishable under s 3 or s 4 or section 6. 28 N L R 302=A I R 1932 Nag 174. Sentence on priest or celebrant should be deterrent. A I R 1933 Pat 471.

6 (1) Where a minor contracts a child marriage, any person having

Punishment for parent or guardian concerned in a child marriage charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both

Provided that no woman shall be punishable with imprisonment

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised

Notes.—'We have provided that the punishment of imprisonment shall not be inflicted in the case of a female parent or guardian, and we rejected a proposal for the omission of the presumption contained in the second part of this clause, as we consider the presumption reasonable in itself and necessary to enable the provisions of the clause to have their proper effect'—*Statements of Objects and Reasons*. Cases where both parties are minors fall under this section. 28 N L R 302=A I R 1932 Nag 174. One who settles the match and gives away his daughter is guilty under this section. *Ibid*. The case is not *ultra vires* in case of the Hindus. A I R 1933 Pat 471.

7 Notwithstanding anything contained in section 25 of the General

Imprisonment not to be awarded for offences under section 3 Clauses Act, 1897,\* or section 64 of the Indian Penal Code,† a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment

Notes. We have, therefore provided separately in clause 3 for a fine of Rs 1,000 for offenders above the age of fifteen years and under twenty one, and in clause 7 we have made provision that imprisonment shall not be imposed on these offenders under any circumstances. Clause 4 relates to offenders above the age of twenty one years. *Report of the Select Committee*

8 Notwithstanding anything contained in section 190 of the Code of

Jurisdiction under this Act Criminal Procedure, 1898 no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act

**Notes** 'We have added to them certain provisions of procedure which are designed to avoid risk of frivolous prosecutions and harassment. We consider these provisions to be very important safe guards in a measure of social reform directed

must go cautiously in pursuance of Courts of Presidency Magistrates cases concerning child marriages"

**9** No Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnisation of the marriage in respect of which the offence is alleged to have been committed.

Mode of taking cognizance of offences

**Notes** In order to avoid the risk of frivolous prosecution and harassment, provision has been made that cognizance can be taken only upon complaint made within one year of the solemnisation of the marriage *Report of the Select Committee*

**10** The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898,\* either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class sub ordinate to it to make such inquiry.

**Notes**—In clause 10 we have laid down that the Court, unless it dismisses the complaint shall in all cases make a preliminary inquiry under section 202 of the Code of Criminal Procedure 1898" *Report of the Select Committee* A magistrate must hold preliminary inquiry 31 P L R 495

**11.** (1) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall, except for reasons to be recorded in writing, require the complainant to execute a bond with or without sureties for a sum not exceeding one hundred rupees\* which the complainant may be directed to execute within such reasonable time as the Court may think fit.

(2) The bond required by this section shall be a bond taken under the Code of Criminal Procedure, 1898,\* and Chapter XLII of that Code shall apply accordingly.

**Notes**—In order to avoid the risk of frivolous prosecutions and harassment in this section, the Select Committee have added a provision requiring the complainant to give security for the payment of any compensation that may be awarded against him under section 250 of the Criminal Procedure Code—*Report of the Select Committee* With a complaint made by a judicial officer, the need not execute bond is material

W N 625=143 Ind Cas 279

33 Cal 433=37 C

# THE INDIAN CHRISTIAN MARRIAGE ACT

## ACT NO XV OF 1872\*.

RECEIVED THE G G's ASSENT ON THE 18TH JULY, 1872

*An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians*

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion, It is hereby enacted as follows —

### PRELIMINARY

Short title 1 This Act may be called "The Indian Christian Marriage Act, 1872"

Extent It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty to the territories of Native Princes and States in alliance with Her Majesty

Enactments repealed 2 The enactments specified in the fifth schedule hereto annexed are repealed but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment

And all appointments made licenses granted consents given certificates issued and other things duly done under any such enactment shall be deemed to be respectively made granted given issued and done under this Act

For clause xxiv of section nineteen of the Court Fees Act, 1870, the following shall be substituted —

"xxiv Petitions under the Indian Christian Marriage Act, 1872, sections forty five and forty eight"

Interpretation clause 3 In this Act, unless there is something repugnant in the subject or context—

'Church of England' and 'Anglican' mean and apply to the Church of England as by law established,

"Church of Scotland" means the Church of Scotland as by law established,

"Church of Rome" and 'Roman Catholic' mean and apply to the Church which regards the Pope of Rome as its spiritual head,

'Church' includes any chapel or other building generally used for public Christian worship,

"Minor" means a person who has not completed the age of twenty one years, and who is not a widower or a widow,

'Native State' means the territories of any Native Prince or State in alliance with Her Majesty,

the expression "Christians" means persons professing the Christian religion,

\* f v c c  
1874)

Consolidated Districts Act (XIV of

of India 1881 Pt I,



and the expression 'Native Christians' includes the Christian descendants of Natives of India converted to Christianity, as well as such converts,  
 "Registrar General of Births, Deaths and Marriages" means a "Registrar General of Births, Deaths and Marriages" appointed under the Births, Deaths and Marriages Registration Act 1886,\*

person was baptized as an infant or that he is he is dressing as a Christian is not sufficient to ng the Christian religion' One who performs marriage cannot be said to profess the Christian 393=16 A L J 414=19 Cr L J 615

## PART I.

### THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

4 Every marriage between persons, one or both of whom is "or are"† a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section, and any such marriage solemnized otherwise than in accordance with such provisions shall be void

5 Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister ,  
 Persons by whom marriages may be solemnized

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland ,

(3) by any Minister of Religion licensed under this Act to solemnize marriages ,

(4) by, or in the presence of, a Marriage Registrar appointed under this Act ,

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians

6† The Local Government, so far as regards the territories under its administration, and the Governor General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licenses

7. The Local Government may appoint one or more Christians either by name, or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration§

re there are more Marriage Registrars than one in any district, the Marriage Registrar Local Government shall appoint one of them to be the Senior Marriage Registrar

h was added by the Births Deaths and Marriages Registration

nd cl (a)

quoted have been inserted by Act XII. of 1891, Sch II.

ned by Act II of 1891, s I

nent Gazette Nov 21 1872, p 1203, British Burma

When there is only one Marriage Registrar in a district and such Registrar is absent from such district or ill or when his office is temporarily vacant the Magistrate of the District shall act as and be Marriage Registrar thereof during such absence illness or temporary vacancy

8 The Governor General in Council may by notification in the Gazette of India appoint any Christian either by name or as holding any office for the time being to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty\*

The Governor General in Council may by like notification revoke any such appointment

9 The Local Government or (so far as regards any Native State) the Governor General in Council may grant a licence to any Christian either by name or as holding any office for the time being authorizing him to grant certificates of marriage between Native Christians

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette

## PAR I II

### TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

10 Every marriage under this act shall be solemnized between the hours of six in the morning and seven in the evening

Exception Provided that nothing in this section shall apply to—

(1)—a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the Diocese or his Commissary or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or vicariate in which such marriage is so solemnized or from such person as the same Bishop

(3)—a ... of the Church

11 No Clergyman of the Church of England shall solemnize a marriage in any place other than a church where worship is generally held according to the forms of the Church of England ‡

unless there is no such § within five miles distance by the shortest road from such place or

\* See *Gazette of India* June 14 1873 p 550 Aug 9 1873 p 717

† In s 10 c (3) has been added by Act II of 1891 s 7

‡ In s 11 the words quoted have been inserted by Act II of 1891 s 3

§ The word such has been inserted by Act II of 1891 s 3

hanc  
 Fee for special license  
 additional fee as the said  
 time authorizes

do so under the  
 Commissary  
 may charge such  
 Bishop from time to

### PART III

#### MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12 Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing according to the form contained in the first schedule hereto annexed or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname and the profession or condition, of each of the persons intending marriage
- (b) the dwelling place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized.

Provided that, if either of such person has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards

13 If the persons intending marriage desire it to be solemnized in a particular church and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein he shall cause the notice to be affixed in some conspicuous part of such church

But, if he is not entitled to officiate as a Minister in such church, he shall, at his option either return the notice to the person who delivered it to him or deliver it to some other minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid

14 If it be intended that the marriage shall be solemnized in a private dwelling the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the District who shall affix the same to some conspicuous place in his own office

15 When one of the persons intending marriage is a minor,\* every Minister receiving such notice shall unless within twenty four hours after its receipt he returns the same under the provisions of section 13 send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district to the Senior Marriage Registrar

16 The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed

\* See Act IX. of 1875

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made :

Provided—

- (1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such minister ;
- (2) that no lawful impediment be shown to his satisfaction why such certificate should not issue, and
- (3) that the issue of such certificate has not been forbidden, in manner hereinafter\* mentioned, by any person authorized in that behalf.

18 The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law † has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be

19. The father, if living of any minor or, if the father be dead, the guardian of the person of such minor and in case there be no such guardian then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India

20 Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid

21. If any such notice be received by such Minister, he shall not issue his certificate, and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

22 When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19, has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage

23 When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing

\* See s 20

† See s 19

the certificate, ascertained whether such Native Christian is cognizant of the purport and effect of the said notice or certificate as the case may be, and if not shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands

24 The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect

25 After the issue of the certificate by the Minister marriage may be solemnized between the persons therein described according to such form or ceremony as the

Solemnization of marriage

Minister thinks fit to adopt  
Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister

26 Whenever  
Certificate void if r  
not solemnized wil  
mont  
has t  
two months after the  
by such Minister as  
and all proceedings  
1 new notice

#### PART IV

##### REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

27 All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion except marriages solemnized under Part V, or Part VI of this Act shall be registered in manner hereinafter prescribed

28 Every Clergyman of the Church of England shall keep a register of marriages and shall register therein according to the tabular form set forth in the third schedule hereto annexed every marriage which he solemnizes under this Act

29 Every Clergyman of the Church of England shall send four times in every year returns in duplicate authenticated by his signature of the entries in the register of marriages solemnized at any place where he has any spiritual charge to the Registrar of the Archdeaconry to which he is subject or within the limits of which such place is situated

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty first day of March from the first day of April to the thirtieth day of June from the first day of July to the thirtieth day of September, and from the first day of October to the thirty first day of December, of each year respectively and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified

The said Registrar upon receiving the said returns shall send one copy thereof to the "Registrar General of Births Deaths and Marriages"

30 Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

\* The words quoted were substituted for the words "Secretary to the Local Government by Act (VI of 1826) s 40 cl (b) As to the establishment of General registry office of Births Deaths and Marriages see Act (VI of 1886) Chap II

and such person shall forward quarterly to the "Registrar General of Births Deaths, and Marriages" returns of the entries of all marriages registered by him during the three months next preceding

Registration and returns of 31 Every Clergyman of the Church of Scotland marriages solemnized by shall keep a register of marriages, Clergymen of Church of Scotland,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

to the "Registrar General of Births Deaths and Marriages" Chaplain of the Church of Scotland, returns, 29, of all such marriages

32 Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same, (that is to say) in a marriage register book to be kept by him for that purpose according to the form contained in the fourth schedule hereto annexed and also in a certificate attached to the marriage register book as a counterfoil

33. The entry of such marriage in both the certificate and marriage register book shall be signed by the person solemnizing the marriage and also by the persons married, and shall be attested by two credible witnesses other than the person solemnizing the marriage present at its solemnization

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book.

34 The person solemnizing the marriage shall forthwith separate the certificate from the marriage register book, and send it within one month from the time of the solemnization to the Marriage Registrar of the District in which the marriage was solemnized or, if there be more Marriage Registrars than one to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month with such number and signature or initials added thereto as are hereinafter required, to the Registrar General of Births Deaths and Marriages \*

35 Such copies shall be entered in order from the beginning to the end of the said book and shall bear both the number of the certificate as copied and also a number to be entered by the Marriage Registrar indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate

36 The Marriage Registrar shall also add such last mentioned number to Registrar to add number of entry to certificate and send to Registrar General

\* The words quoted were substituted for the words Secretary to the Local Government by Act (VI of 1886) s 30, cl (b)

### 37. When any marriage between Native Christians is solemnized "by any

Registration of marriages between Native Christians by any such person, Clergyman or Minister of Religion as is referred to in Cl (1) (2) or (3) of s 5 Custody and disposal of register book

such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section (5) \* the person solemnizing the same shall, instead of proceeding in the manner provided by sections 23 to 36 both inclusive, register the marriage in a separate register book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the

marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the senior Marriage Registrar, who shall send it to the "Registrar General of Births, Deaths, and Marriages,"† to be kept by him with the records of his office

## PART V.

### MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

#### 38. When a marriage is intended to be solemnized by or in the presence

Notice of intended marriage before Marriage Registrar

of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing in the form contained in the first schedule hereto

annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname and the profession or condition of each of the parties intending Marriage, the dwelling place of each of them the time during which each has dwelt therein, and the place at which the marriage is to be solemnized.

Provided that, if either party has dwelt in the place stated in the notice for more than one month it may be stated therein that he or she has dwelt there one month and upwards

#### 39 Every Marriage Registrar shall, on receiving any such notice, cause

Publication of notice

a copy thereof to be affixed in some conspicuous place in his office

When one of the parties intending marriage is a minor, every Marriage Registrar shall within twenty four hours after the receipt by him of the notice

give notice to each of the parties who shall likewise

Notice to be filed, and copy entered in Marriage Notice Book

#### 40 The Marriage Registrar shall file all such notices, and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book,"

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

\* Substituted by Act XVIII of 1928

† The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1886), s 30 cl (d)

41 If the party by whom the notice was given requests the Marriage Certificate of notice given Registrar to issue the certificate next hereinafter and oath made mentioned and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice

should not issue, why such certificate

that the issue of such certificate has not been forbidden in manner herein after mentioned by any person authorized in that behalf by this Act, that four days after the receipt of the notice have expired and further that where by such oath it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired

42 The certificate mentioned in section 41 shall not be issued by any Marriage Registrar until one of the parties Oath before issue of certificate intending marriage appears personally before such Marriage Registrar and makes oath\*—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage and

(b) that both the parties have or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has had their his or her usual place of abode within the district of such Marriage Registrar

and where either or each of the parties is a minor

that the consent or consents to such marriage required by law has or have been obtained thereto or that there is no person resident in India authorized to give such consent as the case may be

43 When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid they may apply by petition to a Judge of the High Court for an order upon the Marriage Registrar to whom the notice of marriage has been given directing him to issue his certificate before the expiration of the said fourteen days required by section 41

And on sufficient cause being shown the said Judge may in his discretion make an order upon such Marriage Registrar, Order on petition directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required

And the said Marriage Registrar, on receipt of the said order shall issue his certificate in accordance therewith

44 The provisions of section 19 apply to every marriage under this part either of the parties to which is a minor, Consent of father or guardian

and any person whose consent to such marriage would be required there under may enter a protest against the issue of the Marriage Registrar's certificate by writing Protest against issue of certificate at any time before the issue of such certificate

the word forbidden opposite to the entry of the notice of such intended marriage in the Marriage Notice Book and by subscribing thereto his or her name and place of abode and his or her position with respect to either of the parties by reason of which he or she is so authorized



When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage or until the protest be withdrawn by the person who entered it

**Effect of protest**  
 Petition where person whose consent is necessary is insane 45 If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or unjustly withholds consent or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay to a Judge of the High Court, or if he is not resident within any of the said towns then to the District Judge

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way,

And if upon examination, such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage,

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden

46 Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon

The decision of such Judge of the High Court or District Judge as the case may be, shall be final and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith

47 Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor General in Council, who shall decide thereon

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith

48 Whenever a Marriage Registrar acting under the provisions of section 44 is not satisfied that the person forbidding the issue of the certificate is authorised by law so to do the said Marriage Registrar shall apply by petition where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge

The said petition shall state all the circumstances of the case and pray for  
 Procedure on petition the order and direction of the Court concerning the same

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case together with all documents relating thereto, to the Governor General in Council

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden

49 Every person entering a protest with the Marriage Registrar, under this Part against the issue of any certificate, on grounds which such Marriage Registrar under section 44, or a Judge of the High Court or the District Judge under section 45 or 46 declares to be frivolous and such as ought not to obstruct the issue of the certificate shall be liable for the costs of all proceedings in relation thereto and for damages to be recovered by suit by the person against whose marriage such protest was entered

50 The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act

Form of certificate annexed or to the like effect, and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate

Solemnization of marriage after issue of certificate 51 After the issue of the certificate of the Marriage Registrar

or, where notice is required to be given under this Act to the Marriage Registrars for different districts after the issue of the certificates of the Marriage Registrars for such districts

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates be solemnized between them, according to such form and ceremony as they think fit to adopt

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid) and of two or more credible witnesses besides the Marriage Registrar

And in some part of the ceremony each of the parties shall declare as follows or to the like effect —

I do solemnly declare that I know not of any lawful impediment why A B may not be joined in matrimony to C, D,

And each of the parties shall say to the other as follows or to the like effect—“I call upon these persons here present to witness that I, *A B* do take thee *C D* to be my lawful wedded wife (or husband)

**52** Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar as required by section 40, the notice and the certificate if any issued thereupon and all other proceedings thereupon, shall be void,

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same until new notice has been given, and entry made, and certificate thereof given, at the time, and in the manner aforesaid

**53** A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage

**54** After the solemnization of any marriage under this Part the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate, that is to say, in a marriage register book, according to the form of the fourth schedule hereto annexed and also in a certificate attached to the marriage register book as a counterfoil

The entry of such marriage in both the certificate and the marriage register book shall be signed by the person by or before whom the marriage has been solemnized if there be any such person and by the Marriage Registrar present at such marriage whether or not it is solemnized by him and also by the parties married and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage

Every such entry shall be made in order from the beginning to the end of the book and the number of the certificate shall correspond with that of the entry in the marriage register book

**55** The Marriage Registrar shall forthwith separate the certificate from the marriage register book and send it at the end of every month to the Registrar General of Births Deaths and Marriages

The Marriage Registrar shall keep safely the said register book until it is filled and shall then send it to the Registrar General of Births, Deaths and Marriages \* to be kept by him with the records of his office

**56** The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor General in Council from time to time by notification in the Gazette of India appoints in this behalf

**57.** When any Native Christian about to be married gives a notice of marriage or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain that the notice and certificate are understood by Native Christians

not the Marriage Registrar \* notice or certificate or both of them as the case may be to such Native Christian into a language which he understands,

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate

58 When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage, in accordance with the provisions of this Act.

59 The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise

## PART VI \*

### MARRIAGE OF NATIVE CHRISTIANS.

60 Every marriage between Native Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled and not otherwise.—

- (1) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years,
- (2) Neither of the persons intending to be married shall have a wife or husband still living;
- (3) In the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A B*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C D* to be my lawful wedded wife (or husband)', or words to the like effect

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorised to give such consent

61 When, in respect, to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage and, on the payment of a fee of four annas, grant a certificate of the marriage.

\* As to the validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian and penalty for solemnizing such marriages under Part VI in future, see Act II of 1892

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed

62\* (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized and in such form as the Local Government by which he was licensed may from time to time prescribe a register book of all marriages solemnized under this Part in his presence and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe true and duly authenticated extracts from his register book of all entries made therein since the last of those intervals

(2) Where the person keeping the register book was licensed as regards a Native State by the Governor General in Council references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths, and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24 sub-section (2), of the Births, Deaths, and Marriages Registration Act, 1886

63 Every person licensed under this Act to grant certificates of marriage, and keeping a marriage register book under section 62, shall, at all reasonable times allow searches in register book and copies of entries search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein

64 The provision of section 62 and 63 as to the form of the register book, depositing extracts therefrom, allowing searches thereof and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37

65 This Part of this Act, except so much of sections 62 and 63 as are Part VI not to apply to referred to in section 64, shall not apply to Roman Catholics marriages between Roman Catholics

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provision of Part V of Act No. XXV. of 1864 † previous to the twenty third day of February, 1865

## PART VII.

### PENALTIES

False oath declaration, notice or certificate for procuring marriage 66 † Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

\* S 62 has been substituted by Act II of 1891 s 4

† Act XXV of 1864 was repealed by Act V of 1865 which was repealed by this Act (XV of 1871)

† S 66 has been substituted by Act II of 1898 s 5

(a) where an oath or declaration is required by this Act or by any rule or custom of a church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate,

Forbidding by false personation  
issue of certificate by  
Marriage Registrar

by falsely representing himself to be a person whose consent to the marriage is required by law knowing or believing such representation to be false or not having reason to believe it to be

true shall be deemed guilty of the offence described in section 203 of the Indian Penal Code

68 \* Whoever, not being authorized by section 5 of this Act to solemnize

Solemnizing marriage with  
out due authority

marriages solemnizes or professes to solemnize, in the absence of a Marriage Registrar of the district in which the ceremony takes place a

marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years and not exceeding ten years

or, if the offender is an European or American with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*)†

and shall be liable to fine

Notes—There is no express prohibition preventing a person professing Christianity from doing violence to his faith and marrying a non Christian by a non Christian ceremony This section does not make it penal for a professing Christian to marry by a ceremony which is void under s 4 40 A 393=16 A L J 214=19 Cr L J 613=45 Ind Cas 519 But where marriage between Hindu and Christian is performed by Hindu an offence under this section is committed 40 M 1030=33 M L J 113=41 Ind Cas 664

69 Whoever knowingly and wilfully solemnizes a marriage between

Solemnizing marriage out of  
proper time or without  
witnesses

persons one or both of whom is or are a Christian or Christians at any time other than between the hours of six in the morning and seven in the evening or in the absence of at

least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

This section does not apply to marriage solemnized under special licenses

Saving of marriages solemnized under special license

granted by the Anglican Bishop of the Diocese or by his Commissary nor to marriages performed between the hours of seven in the evening and six

\* S 68 has been substituted by Act II of 1891 s 6

† In s 68 as amended by Act II of 1891 certain words repealed by Act XII, of 1891, Sch I, have been omitted

in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies, and customs of the Church of Scotland \*

**70** Any Minister of Religion licensed to solemnize marriages under this Act who, without a notice in writing, or, when solemnizing without notice or within fourteen days after notice, marriage with minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine

Issuing certificate or marrying without publication of notice

**71.** A Marriage Registrar under this Act, who commits any of the following offences —

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act,

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in marrying after expiry of notice, respect of any marriage, solemnizes such marriage,†

(3) solemnizes without any order of a competent Court authorising him to do so any marriage when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one and if he himself be not the Senior Marriage Registrar,

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to issue certificate against authorized prohibition prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate after expiry of notice or in case of minor within fourteen days after notice, or against authorized prohibition

**72** Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of two ‡ months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing without the order of a competent Court authorizing him so to do any certificate for marriage, where one of the parties

\* In s 69 the last para has been added by Act II of 1891, s 7

† In s 71, cl ( ), has been substituted by Act II of 1891, s 8

‡ In s 72 the word 'two' has been substituted for the word 'three' by Act II of 1891, s 8

intending marriage is a *minor* before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code

Person authorized to solemnize marriage (other than Clergy of Churches of England, Scotland, or Rome),

73 Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after a due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church,

knowingly and wilfully issues any certificate for marriage under this Act, issuing certificate for, or marrying, without publishing notice or after expiry of certificate  
or solemnizes any marriage between such persons as aforesaid, without publishing or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him

or knowingly and wilfully issues any certificate for marriage or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District

or knowingly and wilfully issues any certificate the issue of which has been forbidden under this Act, by any person authorized to forbid the issue,

solemnizing marriage authoritatively forbidden or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years and shall also be liable to fine

74 Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine

"Whoever, being licensed to grant certificates of marriage under Part VI of this Act without just cause refuses, or wilfully neglects or omits to



in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites ceremonies, and customs of the Church of Scotland \*

**70** Any Minister of Religion licensed to solemnize marriages under this Act who, without a notice in writing or, when solemnizing without notice or within fourteen days after notice, marriage with minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine

Issuing certificate or marrying without publication of notice

**71.** A Marriage Registrar under this Act, who commits any of the following offences —

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act,

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in marrying after expiry of respect of any marriage, solemnizes such notice, marriage,†

(3) solemnizes without any order of a competent Court authorising him to do so any marriage when one of the parties solemnizing marriage with minor within fourteen days without authority of Court or without sending copy of notice, days after the receipt of the notice of such marriage, or without sending by the post or otherwise a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar,

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to issuing certificate against authorized prohibition prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine

Issuing certificate after expiry of notice or in case of minor within fourteen days after notice or against authorized prohibition

**72** Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of two ‡ months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing without the order of a competent Court authorizing him so to do any certificate for marriage where one of the parties

\* In s 69 the last para has been added by Act II of 1891, s 7

† In s 71, cl ( ) has been substituted by Act II of 1891, s 8

‡ In s 72 the word 'two' has been substituted for the word 'three' by Act II of 1891, s 8

intending marriage is a minor before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf

shall be deemed to have committed an offence under section 483 of the Indian Penal Code

Person authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome),

**73** Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England solemnizing a marriage after a due publication of banns or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf

or not being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules rites ceremonies and customs of that Church

or, not being a Clergyman of the Church of Rome solemnizing a marriage according to the rites rules ceremonies and customs of that Church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing or causing to be affixed the notice of such marriage as directed in Part III, of this Act or after the expiration of two months after the certificate has been issued by him

or knowingly and wilfully issues any certificate for marriage or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise a copy of such notice to the Marriage Registrar, or if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District

or knowingly and wilfully issues any certificate the issue of which has been forbidden under this Act, by any person authorized to forbid the issue,

solemnizing marriage authorizedly forbidden or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years and shall also be liable to fine

**74** Whoever, not being licensed to grant a certificate of marriage under part VI of this Act grants such certificate, intending thereby to make it appear that he is so licensed shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine

“Whoever, being licensed to grant certificates of marriage under Part VI, of this Act, without just cause refuses, or wilfully neglects or omits to perform

any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees<sup>1</sup> \*

75 Whoever by himself or another, wilfully destroys or injures any register book or the counterfoil certificates thereof or any part thereof or any authenticated extract therefrom

or falsely makes or counterfeits any part of such register book or counterfoil certificates

or wilfully inserts any false entry in any such register book or counterfoil certificate or authenticated extract

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine

Limitation of prosecutions under Act

76 The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed

## PART VIII.

### MISCELLANEOUS

77 Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters namely —

(1) — Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law

(2) — The notice of the marriage

(3) — The certificate or translation thereof

(4) — The time and place at which the marriage has been solemnized

(5) — The registration of the marriage

78 Every person charged with the duty of registering any marriage who discovers any error in the form or substance of any such entry may, within one month next after the discovery of such error in the presence of the persons married or in case of their death or absence in the presence of two other credible witnesses

thereof

And every entry made under this section shall be attested by the witnesses in whose presence it was made

correction therein made

Searches and copies of entries 79 Every person solemnizing a marriage under this Act, and hereby required to register the same,

And every Marriage Registrar or Registrar General of Births, Deaths and Marriages \* having the custody for the time being of any register of marriages, or of any certificate or duplicate or copies of certificate under this Act,

shall, on payment of the proper fees at all reasonable times allow searches to be made in such register or for such certificate or duplicate or copies, and give a copy under his hand of any entry in the same

80 Every certified copy purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate or duplicate, required to be kept or delivered under this Act of any entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein without further proof of such register or certificate or duplicate or of any entry therein, respectively, or of such copy

81† The Registrar General of Births Deaths and Marriages and the officers appointed under section 56 shall, at the end of every quarter in each year select from the certificates of marriages forwarded to them respectively during such quarter the certificates of the marriages of which the Governor General in Council may desire that evidence shall be transmitted to England and shall send the same certificates signed by them respectively to the Secretary of State for India

Local Government to prescribe fees 82 Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages

issuing "certificates for Marriage" ‡ by Marriage Registrars, and registering marriages by the same,

entering protests against, or prohibitions of, the issue of 'certificates of Marriage' † by the said Registrars,

searching register books or certificates or duplicates or copies thereof,

giving copies of entries in the same under sections 63 and 79

The Local Government shall fix the amount of such fees respectively, §

and may from time to time vary or remit them, either generally or in special cases, as to it may seem fit

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section 82 the supply of register books and the preparation and submission of returns of marriages solemnized under this Act ||

\* r 2

†

‡

section by Act 13 of 1911

have been substituted by the words

'certificates of Marriage' and also for the words 'Marriage certificates' by the

Repealing and Amending Act (1 of 1903) Sch II Pt II

§ Bombay Government 1873 p 337 N W Provinces Gazette 1872, p 1088

Punjab Gazette 1873 p 74, British Burma Gazette 1875, pt II p 133

||

Fort St George Gazette, p 1874 p 501, 613

84 The Powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor General in Council \*

85 The Local Government, may, by notifications in the official Gazettee, declare who shall in any place to which this Act applies, be deemed to be the District Judge †

86 (1) The powers and functions exercisable by the Governor General in Council under sections 6, 8, 9, 47, 48 56 and 89 shall so far as regards any Native State, which is within the political charge of a Local Government, be exercised by that Local Government

The exercise under this section by any Local Government of powers and functions under sections 6, 8, 9, and 56 shall be by notification in the local official Gazettee

Act by the Governor-  
by, such officers as he

87. Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consulr Agent between subjects of the State which he represents and according to the laws of such State

88 Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

Notes—This Act does not deal with objections to validity of marriage Personal law is that applicable to religious community 124 Ind Cas. 776

\* *Gazette of India* 18th October 1873 p 902

† *Bombay Government Gazette*, April 10 1873 p 337 *N W Provinces Gazette*, Sept 21, 1872, p 1088 *Punjab Gazette*, 1873 p 74

† Section 86 has been added by Act 38 of 1920

## SCHEDULE I

(See sections 12 and 38)

## NOTICE OF MARRIAGE

To \_\_\_\_\_ a minister [or Register] of \_\_\_\_\_

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) —

Names.	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church, chapel, or place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts
<i>James Smith</i>	<i>Widower</i>	<i>Carpenter</i>	<i>Of full age</i>	<i>16 Clive Street</i>	<i>23 days</i>	<i>Free Church of Scotland Church, Calcutta</i>	
<i>Martha Green</i>	<i>Spinster</i>		<i>Minor</i>	<i>20 Hasting's Street</i>	<i>More than a month</i>		

Witness my hand, this

day of

*seventy two*

(Signed)

*JAMES SMITH*

(The italics in this schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district)

## SCHEDULE II.

(See sections 24 and 50).

## CERTIFICATE OF RECEIPT OF NOTICE

notice was duly entered in my  
ended between the parties therein named  
one of the parties (that is to say) —

Names,	Condition	Rank or pro fession	Age	Dwelling place	Length of resi- dence	Church chapel, or place of wor- ship in which the marriage is to be solemn- ized	District in which the other party resides, when the parties dwell in differ- ent districts
<i>James Smith</i>	<i>Widower</i>	<i>Carpenter</i>	<i>Of full age</i>	<i>16, Clive Street</i>	<i>23 days</i>	<i>Free Church of Scotland Church Calcutta</i>	
<i>Martha Green</i>	<i>Spinster</i>		<i>Minor</i>	<i>20, Hastings Street</i>	<i>More than a month</i>		

and that the declaration or oath\* required by section seventeen [or forty one] of  
The Indian Christian Marriage Act, 1872\* has been duly made by the said (*James  
Smith*)

Date of notice entered  
Date of certificate given  
Witness my hand, this

The issue of this certificate has not been prohibited  
by any person authorized to forbid the issue there  
of

day of *seventy two*  
(Signed)

The certificate will be void unless the marriage is solemnized on or before  
the day of

[The italics in the schedule are to be filled up as the case may be, and the blank  
division thereof is only to be filled up when one of the parties lives in another  
district]

\* The words 'or oath' have been inserted by the Repealing and Amending Act  
(1 of 1903), s 3





## SCHEDULE IV

(See sections 32 and 54.)

## MARRIAGE REGISTER BOOK

Number	WHEN MARRIED			NAMES OF PARTIES		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
	Day	Month	Year	Christian name	Surname					
1				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White } in the presence of us { John Smith }  
 { Martha Duncan } { John Green }

## CERTIFICATE OF MARRIAGE

Number	When Married			Names of Parties		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
	Day	Month	Year	Christian Name	Surname					
1				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White, } in the presence of us { John Smith }  
 { Martha Duncan } { John Green }

## SCHEDULE V.

(See section 2)

## ENACTMENTS REPEALED.

Number and year	TITLE	Extent of repeal
Statute 58 Geo 3, cap. 84	An act to Remove Doubts as to the Validity of certain Marriages had and solemnized within the British territories in India	The whole
Statute 14 and 15 Vict, cap 40	An act for Marriages in India . .	The whole
Act No. V of 1852	An act for giving effect to the provisions of an act of Parliament, passed in the 15th year of the reign of Her present Majesty, intitled "An Act for Marriages in India"	So much as has not been repealed
Act No V of 1865	The Indian Marriage Act, 1865	The whole Act, except so far as it relates to the Straits Settlements
Act No XII of 1866	An Act to extend the Indian Marriage Act, 1865 to the Hyderabad Assigned Districts and the cantonments of Secunderabad Trimulgherry, and Aurungabad	The whole

## THE CENTRAL BOARD OF REVENUE ACT, 1924

## ACT NO. IV OF 1924.

RECEIVED THE ASSENT OF THE G. G. ON THE 13TH MARCH, 1924.

*An Act to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board*

WHEREAS it is expedient to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board; It is hereby enacted as follows. —

Short title and commencement. 1. (1) This Act may be called the Central Board of Revenue Act, 1924.

(2) It shall come into force on the first day of April, 1924

2 As soon as may be after the commencement of this Act, the Governor General in Council shall constitute a Central Board of Revenue, consisting of one or more persons appointed by him, which shall be subject to the control of the Governor General in Council in the exercise of such powers and the performance of such duties as may be entrusted to it by the Governor-General in Council or by or under any law.

3 Governor General in Council may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue, and every order made or act

Procedure of the Board

## SCHEDULE IV

(See sections 32 and 54.)

## MARRIAGE REGISTER BOOK

Number	WHEN MARRIED			NAMES OF PARTIES		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
				Christian name	Surname					
	Day	Month	Year							
1				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White } in the presence of us { John Smith }  
 { Martha Duncan } { John Green }

## CERTIFICATE OF MARRIAGE

Number	When Married			Names of Parties		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
				Christian Name	Surname					
	Day	Month	Year							
1				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White } in the presence of us { John Smith }  
 { Martha Duncan } { John Green }

## SCHEDULE V.

(See section 2)

## ENACTMENTS REPEALED

Number and year	TITLE	Extent of repeal
Statute 38 Geo 3, cap. 84	An act to Remove Doubts as to the Validity of certain Marriages had and solemnized within the British territories in India	The whole
Statute 14 and 15 Vict, cap 40	An act for Marriages in India	The whole
Act No V of 1852	An act for giving effect to the provisions of an act of Parliament, passed in the 15th year of the reign of Her present Majesty, intitled "An Act for Marriages in India"	So much as has not been repealed
Act No V of 1865	The Indian Marriage Act, 1865	The whole Act, except so far as it relates to the Straits Settlements
Act No XII of 1866	An Act to extend the Indian Marriage Act, 1865 to the Hyderabad Assigned Districts and the cantonments of Secunderabad Trimulgerry, and Aurungabad	The whole

## THE CENTRAL BOARD OF REVENUE ACT, 1924

## ACT NO. IV OF 1924

RECEIVED THE ASSENT OF THE G. G. ON THE 13TH MARCH, 1924.

*An Act to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board*

WHEREAS it is expedient to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board, It is hereby enacted as follows.—

Short title and commencement. 1 (1) This Act may be called the Central Board of Revenue Act, 1924.

(2) It shall come into force on the first day of April, 1924

2 As soon as may be after the commencement of this Act, the Governor General in Council shall constitute a Central Board of Revenue, consisting of one or more persons appointed by him, which shall be subject to the control of the Governor General in Council in the exercise of such powers and the performance of such duties as may be entrusted to it by the Governor-General in Council or by or under any law

3 Governor General in Council may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue, and every

Procedure of the Board

done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Central Board of Revenue

4 The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof

Provided that, where the power to make any notification, order, scheme or rule, or prescribe any other authority, any such appointment, notification, order, Scheme, rule, or form made, issued or prescribed by the first mentioned authority before the commencement of this Act shall continue in force and be deemed to have been made issued or prescribed by the Central Board of Revenue or such other authority, as the case may be, unless and until it is superseded by an appointment, notification, order, scheme, rule or form made, issued or prescribed by the said Board or authority

### THE SCHEDULE

#### ENACTMENTS AMENDED.

(See Section 4)

Year	No	Short title	Amendments
1878	VIII	The sea Customs Act, 1878	<p>1 In section 3—</p> <p>(1) for clause (a) the following clause shall be substituted namely —</p> <p>(a) Chief customs authority means the Central Board of Revenue constituted under the Central Board of Revenue Act 1924 and includes in relation to any power or duty which the Governor General in Council may, by notification in the Gazette of India transfer from the Central Board of Revenue to a Local Government the Local Government or such officer as the Local Government may appoint in that behalf, and</p> <p>(2) after clause (j), the following clause shall be inserted namely —</p> <p>(k) 'Official Gazette' means in relation to a notification issued by a</p> <p>2 For section 10 the following section shall be substituted namely:—</p> <p>"6 The Governor General in Council may appoint such persons as he thinks fit to be officers of customs, and to exercise the powers conferred and perform the duties imposed, by this Act on such officers"</p>

Year	No	Short title	Amendments.
1878	VIII	The Sea Customs Act 1878, <i>contd</i>	<p>3 For section 7 the following section shall be substituted, namely,—</p> <p>‘7 The Governor General in Council may delegate to any Local Government or to the chief customs authority any power conferred upon him by section 6, and the Local Government or the chief customs authority may delegate to any officer of customs any power so delegated to it’</p> <p>4 In sections 11, 12 and 14 for the words ‘The Local Government or, if so authorised by the Local Government, the chief customs authority’ the words ‘The chief customs authority’ shall be substituted, and in section 11, the words ‘within the territories administered by it’ shall be omitted</p> <p>5 In section 23, for the words ‘The Local Government’ the words ‘The chief customs authority’ shall be substituted</p> <p>6 In sections 53 74 76 79 85 96, 116 128 133 and 147 the word local wherever it occurs in the expression ‘Local Official Gazette,’ shall be omitted</p> <p>7 In section 88, for the words ‘the Local Government may from time to time direct the words ‘the chief customs-authority may, with the concurrence of the Local Government direct’ shall be substituted</p> <p>8 In section 128 for the words ‘the Local Government’, the words ‘the chief customs authority’ shall be substituted</p> <p>9 In section 133, for the words ‘the Local Government, subject to the control of the Governor General in Council’ the words ‘the chief customs authority’ shall be substituted</p> <p>10 In section 155, after the words ‘the Local Government may the words “with the previous sanction of the Governor General in Council” shall be inserted and for the words ‘by its own officers’ the words “by officers of Government” shall be substituted</p> <p>11 In section 157, for the words ‘the Government’ the words ‘the Governor General in Council’ shall be substituted</p>

Year	No	Short title	Amendments
1878	VIII	The Sea Customs Act 1878, <i>contd</i>	<p>12 In section 188, for the words "the Local Government," in both places where they occur, the words "the Governor-General in Council" shall be substituted</p> <p>13 In section 191, for the words "the Local Government" the words "the Governor-General in Council" shall be substituted</p> <p>14 After section 204 the following sections shall be inserted, namely —</p> <p>"205. Any notification published in the Gazette of India by the chief Publica- customs authority under section tion of noti 53, section 74, section 76 fications in section 79, section 85, section local official 96, section 116, section 128, sec- Gazettes tion 133 or section 147 shall forthwith be republished in the local official Gazette of each province to which it relates,"*</p>
1908	X	The Indian Salt duties Act, 1908	<p>In section 2, for the words, "the Local Government" the words and figures "if so empowered by the Governor General in Council, the Local Government or the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924" shall be substituted</p>
1914	III	The Indian Copy right Act, 1914	<p>In sub section (2) of section 6, for the words "the Local Government" the words "the Chief Customs authority shall be substituted"</p>
1922	XI	The Indian Income tax Act 1922	<p>1 After clause (4) of section 2 the following clause shall be inserted namely —</p> <p>'(4A) 'the Central Board of Revenue means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924'</p> <p>2 In section 5—</p> <p>(i) in clause (a) of sub section (1) for the words "a Board of Inland Revenue" the words "the Central Board of Revenue" shall be substituted and</p> <p>(ii) Sub section (2) shall be omitted §</p> <p>3 "In section 64, for the words "the Board of Inland Revenue" the words "the Central Board of Revenue" shall be substituted</p>

\* Certain entries after this have been omitted by Act 12 of 1927

# LOCAL AMENDMENTS SUPPLEMENT

## Amendments by Allahabad High Court.

### ORDER XXXIII

(5) In rule 5 (a) add the words "and the applicant on being required by the Court to make any amendment within a time to be fixed by the Courts, fails to do so" between the figure 3 and the word 'or'

Add the following explanation to rule 5 at the end —

*Explanation* — An application shall not be rejected under clause (d) merely on the ground that the proposed suit appears to be barred by any law

### ORDER XLI

37 Delete the words "and of the suit" in lines 4 and 5 of the rule,

Where the appellate court has allowed the appeal, the original proceeding in the suit shall be continued with the same effect as if the appeal had not been allowed.

### ORDER XLIV

— "The following rule shall be allowed unless the proposed respondents

rule shall be allowed unless the proposed respondents

## Amendments by Calcutta High Court

### ORDER XVI

I Order 21, rule 11 — Where the property is agricultural produce, the possession of the land shall be made by actual seizure, and the property shall be kept in the custody of the Court or its officers and shall be responsible for the due custody thereof.

Provided that when the property seized does not, in the opinion of the attaching Court, undergo natural decay or the attaching

II Add the following as Rule 63A, Order 21 —

When an attachment of movable property ceases the Court may order the restoration of the attached property to the person in whose possession it was before the attachment

III Insert the following as Order XXIA

1 Every person applying to a Civil Court to attach movable property shall deposit with the Court a sum sufficient to defray the expenses of the Court in the custody of the property and the Court may direct, in its discretion, the manner in which the property shall be kept and the person or persons to whom the custody of the property shall be entrusted.

shall be released from attachment

2 The following daily rates shall be chargeable for custody and maintenance of livestock under attachment —

Goat and pig—Annas 2 to annas 4

Sheep—Annas 2 to annas 3

Cow and bullock—Annas 6 to annas 10

Calf—Annas 3 to annas 6

Buffalo—Annas 8 to annas 12

Horse—Annas 8 to annas 12

Ass—Annas 3 to annas 5

Poultry—Annas 2 to annas 3 pies 6

*Explanation* — Although the rates indicated above are regarded as the Courts should consider individual circumstances and the local permit deposit at reduced rates where the actual expenses are likely



of the minima or maxima. If any specimen of special value in any of the above classes is seized a special rate may be fixed by the Court. If any animal not specified is attached, the Court may fix the cost as a special case.

3 When the property attached consists of agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the provision of Rule 43, Order 21, he may, unless the Court has otherwise directed, leave it in the place or place, or places, to be attached —

in advance

4. If attached property (other than livestock) is not sold under the proviso to Rule 43, Order 21, or retained in the village of place where it is attached, it shall be brought to the Court house at the decree holder's expense and delivered to the proper officer of the Court. In the event of the decree holder failing to make his payment, or paying the cost previously to be withdrawn and the property shall be made over to the person in whose possession it was before attachment.

5. When livestock is attached it shall not, without the special order of the Court be brought to the Court or its compound or vicinity, but shall be left at the village or place where it was attached in the manner and on the conditions set forth in Part of the Order.

under Clause  
1 maintenance  
ll not be left in  
ss in addition  
care and main-  
tenance.

enclit.

7. Whenever it shall appear to the Court that livestock under attachment are not being properly tended or maintained, the Court shall make such orders as are necessary direct the attachment to cease and the livestock to be returned to the person in whose possession they were when attached. The Court may order the decree-holder to pay any expenses so incurred in providing for the care and maintenance of the livestock, and may direct that any sum so paid shall be refunded to the decree-holder by any other party to the proceedings.

9 Nothing in these rules shall prevent the judgment debtor or any person making such arrangements for y not be inconsistent with its safe

10 The Court may direct that by the attaching officer or are

the same the Court may rules be recovered as costs

11. In the event of the custodian of attached property failing, after due notice, to produce such property at the place named to the officer deputed for the purpose,

or to restore it to its owner if so ordered or failing in the case of livestock to maintain and take proper care thereof, he shall be liable to be proceeded against for the enforcement of his bond in the execution proceedings

12 When property other than livestock is brought to the Court, it shall immediately be made over to the Nazir, who shall keep it on his sole responsibility in such place as may be approved by the Court. If the property cannot from its nature be kept in the Court premises or in the personal custody of the Nazir, the Court shall, with the approval of the Court, make such provision as may be most convenient and economical. If any premises are to be hired and persons are to be engaged for watching the property the Court shall fix the charges for the premises and the remuneration to be allowed to the persons (not being officers of the Court) in whose custody the property is kept. All such costs shall be paid into Court by decree-holder in advance for such period as the Court may from time to time direct.

13 When attached livestock is brought to Court under special order as aforesaid it shall be immediately made over to the Nazir, who shall be responsible for its due preservation and safe custody until he delivers it up under the orders of the Court.

14 If the livestock is attached by Government or local authority in or near the Court, the Nazir shall, subject to the approval of the Court, keep the livestock as can be properly kept there, in such place as may be approved by the Court. The Nazir shall be responsible for the property to the Nazir and shall receive from the Nazir the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

15 If there be no pound available or if in the opinion of the Court it be inconvenient to lodge the attached livestock in the pound, the Nazir may keep them in his own premises, or he may entrust them to any person selected by himself and approved by the Court.

16 The attached livestock shall be paid into the Court as often as the Court may direct. In the event of failure to pay the costs within the time fixed by the Court, the attachment shall be continued and the livestock shall be at the disposal of the person in whose possession it was at the time of attachment.

17 So much of any sum deposited or paid into Court under these rules as may not be expended shall be refunded to the depositor.

O 37, r 1.—In Rule I of Order XXVII make the following amendments—

(a) in clause (c) the word "and" shall be omitted,

(b) after clause (c) the following clause shall be inserted, namely:—

"(cc) all Civil Courts (except Courts of Small Causes) in the districts of Chitagong, Dacca, Pabna and 24 Parganas and"

O 48, r, 1.—For Order LXIII read XLIII and for "insert the following" read "continue" read "Insert the following after clause (d) Rule I, Order XLIII—(u) an order under rule 57 of order XXI, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue"

Schedule I—Appendix A—Form no 13—In the form of 'Breach of agreement to purchase land No 13 of Appendix A to the First Schedule cancel the word "bigbas" and substitute therefor the words "acres" "bigbas"

Schedule I—Appendix E—Form No 15 A—Insert the following after the Form no 15, Appendix E—

#### Form no 15 A

Bond for safe custody of movable property attached and left in charge of any person any sureties

[ORDER XXIA Rules 3 (a) and 5]

In the Court of \_\_\_\_\_ at \_\_\_\_\_ Civil Suit No \_\_\_\_\_  
of \_\_\_\_\_ A B of \_\_\_\_\_ against  
C D of \_\_\_\_\_



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(ACT V OF 1908)

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## ACT NO V OF 1908.\*

RECEIVED THE G. G.'s ASSENT ON THE 21ST MARCH, 1908

*An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.*

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of the Civil Judicature, it is hereby enacted as follows:—

*Interpretation*—The present code like the previous ones of 1882 and 1877, is also a consolidating and amending Act. In interpreting such an Act the observation

\* For Statement of Objects and Reasons see Gazette of India 1907 Pt. V, p. 179, for Report of Select Committee, see *Ibid* 1908 Pt. V, p. 35 and for Proceedings in Council, see *Ibid* 1907 Pt. VI, pp. 135 *Ibid* 1908 p. 8, 12 and 212.

For portion of the Civil Procedure Code extended to the Presidency Small Cause Court, Calcutta, see Calcutta Gazette, 1910, Pt. I p. 81. Schedule A to Rules of practice.

ascertained by interpreting the language used instead of, as before, by roaming over

(1) The Districts of Jalpaiguri, Cachar (excluding the North Cachar Hills), Sylhet, Goalpara (including the Eastern Duars) Kamrup Dibrung, Nowgong (excluding the Mikir Hill Tracts), Sibsagar (excluding the Mikir Hill Tracts) and Lakhimpur (excluding the Dibrugar Frontier Tracts) Gazette of India, 1909 Pt I p 5 Gazette of India, 1914 Pt I p 1690

(2) Upper Burma (except the Shan States) Gazette of India, 1909 Pt I,

(3) The Province of Sindh Bombay Government Gazette, Extraordinary, 1909 Pt I, Gazette of India, 1909 Pt I, p 3\*

(4) The Districts of Darjeeling and Districts of Hazaribagh, Ranchi, Palamau and Manbhum in Chota Nagpur. Calcutta Gazette 1909 Pt I, p 25  
Gazette of India, 1909 Pt I p 33

(5) The Province of Kumaon and Garwal and the Tarai Parganas with modifications United Provinces Gazette, 1909, Pt I, p 3 Gazette of India, 1909, Pt I, p 31

(6) "Scheduled portion"  
1909 Pt I, p 4

(7)

Pt 1, p 33

(9) The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan composing the North West Frontier Province Gazette of India, 1909, Pt II p 80

(10) Sections 35 to 43 to all the Scheduled Districts in Madras, Gazette of India, 1909, Pt I, p 152

(11) To the Scheduled Districts of the Central Provinces, except so much as is already in force and so much as authorizes the attachment and sale of immoveable property in execution of a decree not being a decree directing the sale of such property. Gazette of India, 1909 Pt I p 239

(12) To Ajmer Merwara, except sections 1 and 155 to 158 Gazette of India 1909 Pt II, p 480

(13) To pargana Dhalbhum the municipality of Chaibassa in the Kolhan and the Porahat estate in the district of Singhbhum Calcutta Gazette 1909 Pt I p 453, Gazette of India 1909 Pt I, p 443

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Under s. 3 of the

Baluchistan Laws Regulation, 1913 (2 of 1913) Bal Code Sections 38 39 41 and 42 45 and 46 Order IX Rules 1 and 2 Order XVI, Rules 1—9 have been declared in force in the Arakan Hill District by Regulation I of 1916, s 2 *see* Supplement to Burma Code

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- 133 Exemption of other persons
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of Lord Chancellor, Lord Halsbury in *Vigiano v Bank of England* 60 L J Q B 145=64 L T 3,3=39 W R 657=(1891) A C 102 at p 107, must be borne in mind. There he observed "I am wholly unable to adopt the view that, where you are at liberty to go outside the Code, that code another law prevailed." In also observed "The proper course is in the first instance to examine the language of the statute and to ask, what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiry how assuming that it was probably intended to leave of the enactment will bear an interpretation in

branch of the law, is to be treated be almost destroyed and the illustrated. The purpose of such a with by it, the law should be ascertained by interpreting the language used instead of, as before by roaming over

The Act has been extended by notification under ss 5 and 5A of the Scheduled Districts Act, 1874 (14 of ) Districts —

- (1) The Districts of Sylhet Goalah Nongong (ex Mikir Hill Tracts) Gazette of India 1909 Pt I p 5 Gazette of India, 1914 Pt I p 1690
- (2) Upper Burma (except the Shan States) Gazette of India, 1909 Pt I p 5
- (3) The Province of Sindh Bombay Government Gazette, Extraordinary, 1909 Pt I Gazette of India 1909 Pt I p 37
- (4) The Districts of Darjeeling and Districts of Hazaribagh, Ranchi Palamau and Manbhum in Cioa Nagpur Calcutta Gazette 1909 Pt I, p 25 Gazette of India 1909 Pt I p 33
- (5) The Province of Kumaun and Garwal and the Tarai Parganas with modifications United Provinces Gazette 1909, Pt I p 3 Gazette of India 1909 Pt I, p 31
- (6) The Pargana of Janswar Bawar in Dehra Dun and the Scheduled portion of the Mirzapur District United Provinces Gazette 1909 Pt I p 4 and Gazette of India 1909 Pt I p 32
- (7) Coorg Gazette of India 1909 Pt I p 37
- (8) Scheduled Districts in Punjab Gazette of India, 1909 Pt I p 33
- (9) The Districts of Peshawar, Hazara Kohat Bannu Dera Ismail Khan composing the North West Frontier Province Gazette of India 1909 Pt II p 80
- (10) Sections 36 to 43 to all the Scheduled Districts in Madras Gazette of India, 1909 Pt I p 152
- (11) To the Scheduled Districts of the Central Provinces, except so much as is already in force and so much as authorizes the attachment and sale of immoveable property in execution of a decree not being a decree directing the sale of such property Gazette of India 1909 Pt I p 239
- (12) To Ajmer Merwara except sections 1 and 155 to 158 Gazette of India 1909 Pt II, p 480
- (13) To pargana Dhalbhum the municipality of Chaibassa in the Kolhan and the Porahat estate in the district of Singhbhum Calcutta Gazette 1909 Pt I p 453 Gazette of India 1909 Pt I, p 443

ent Regulation (3 of 1872), first Schedule have been be Code for the trial of Justice Regulation, 1893

(5 of 1893) Calcutta Gazette 1909 Pt I p 45 and the whole Code in the Angul District under s 3 of the Angul Laws Regulation, 1913 (3 of 1913) B & O Code

This Act has been declared in force in British Baluchistan under s 3 of the Baluchistan Laws Regulation, 1913 (2 of 1913) Bal Code Sections 38 39 41 and 42 45 and 46 Order IX Rules 1 and 2 Order XXI, Rules 1—9 have been declared in force in the Arakan Hill District by Regulation I of 1916 s 2 see Supplement to Burma Code



a vast number of authorities in order to discover what the law was extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such a demurrer to evidence I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. See also A I R 1928 B 35=30 Bom L.R. 1, 23 C 563=23 I A 18=6 M L J 71, 14 A 145, 22 B 112, 29 C 707=29 I A 196=6 C W N 825.

Every statute which takes away and impairs vested rights must not be presumed to have a retrospective operation, unless the language clearly supports a contrary construction. 36 C L J 132, 47 C 1108=24 C W N 1011=58 Ind Cas 327. This rule is based on the maxim *Nova Constitutio futuris formam imponere debet non praeteritis* (A new rule ought to be prospective not retrospective, in its operation). *Moon v Durdan*, 2 Ex Ch 27. But the general principle, indeed seems to be that alterations in the procedure are always retrospective, unless there be some good reason to the contrary. App Cas 603, *Kimbray v Draper*, L R Ch D 69, *Lurnbull v Forman*, 15 Q B D.

No rule of construction is more firmly established than that a retrospective operation is not to be given to a statute as to impair an existing right or obligation otherwise than as regards matter of procedure unless their effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of being construed as retrospective, it will be so construed. *Per Wright* in *Wright v Carter*, 11 Q B 271. procedure h to all actions

*Salga v Johnson*, 2 Ex 283. The rule is understood to overlie the whole and by showing the intention of interpretation of these provisions

2 A 74 (99)

It is not allowable to say *Vattel* to interpret what has no need of interpretation (Law of N S 23). *Absoluta sententia expositore no indiget* (2 Inst 533). The

absurdity 27 C 11=3 C W N 660. If the language admits of no doubt or secondary meaning, it is to be obeyed. 32 C W N 1136=A I R 1919 Cal 141. Where there is a positive enactment of the Indian Legislature the proper course is to examine the language of statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law or of the English Law upon which it is founded. A I R 1928 P C 2, A I R 1928 Lah 361.

## PRELIMINARY.

Short title commencement 1 [S. 1] (1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

(3) This section and sections 155 to 158 extend to the whole of British India the rest of the Code extends to the whole of British India, except the Scheduled Districts.

**British India.**—For the meaning of the expression, Vide the General Clauses Act, s 3 clause (7).

**Scheduled Districts.**—Vide Schedule I to the Scheduled Districts Act XIV of 1874. Where property is in Scheduled Districts an order for sale under mortgage-decree is without jurisdiction. 51 Ind Cas 185=A I R 1919 P C 150.

**Foreigners.**—Foreigners are not excepted from the jurisdiction of British Indian Courts. 49 A 669=A I R 1927 All 413.

Code whether exhaustive—The Code of Civil Procedure is not exhaustive  
39 Ind Cas 763=2 P L J 361

## Definitions

2 [S 2] In this Act, unless there is anything repugnant in the subject or context,—

(1) 'Code' includes rules

(2) 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47, or section 144 but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order or

(b) any order of dismissal for default

*Explanation*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final

(3) 'decree-holder' means any person in whose favour a decree has been passed or an order capable of execution has been made

(4) 'district' means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court') and includes the local limits of the ordinary original civil jurisdiction of a High Court

(5) 'foreign Court' means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor General in Council

(6) 'foreign judgment' means the judgment of a foreign Court

(7) 'Government Pleader' includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader

(8) 'Judge' means the presiding officer of a Civil Court

(9) 'judgment' means the statement given by the Judge of the grounds of a decree or order

(10) 'judgment debtor' means any person against whom a decree has been passed or an order capable of execution has been made

(11) 'legal representative' means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued

(12) 'mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession

(13) 'moveable property' includes growing crops

(14) 'order' means the formal expression of any decision of a Civil Court which is not a decree

(15) 'pleader' means any person entitled to appear and plead for another in Court and includes an advocate, a vakil and an attorney of a High Court

(16) 'prescribed' means prescribed by rules

(17) 'public officer' means a person falling under any of the following descriptions namely—

(a) every Judge

(b) every member of the Indian Civil Service

- (c) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while serving under the Government ;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties ;
- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;
- (f) every officer of the Government whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government ;
- (g) every person who is authorised by the Government to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government ;
- (h) every person who is authorised by the Government to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government ;

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125 ;

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds ; and

(20) "signed" save in the case of a judgment or decree, includes stamped.

**Code**—The method of construction properly applicable to an Act divided into sections and rules as the C P Code is, that the section lay down general principles and the rules provide the means by which they can be applied, and they cannot be contained in the fundamental and is details and machinery jurisdiction while vs that the body of in conjunction with is 329 see also

44 C 979=21 C W N 67=41 M J C 15 370

**Decree**—Final decree means decree which settles all disputed question between parties. A decree modified in a review must be considered as the final decree. A I R 1931 Cal 323=131 Ind Cas 258. Decision finally determining rights of parties, not finally drawn up is still a decree. 26 N L R 24=127 Ind Cas 887=Ind Rul (1930) Nag 359. To be appealable an order under s 47 must be of such a nature as to come within the word 'decree' as defined by S 2 (1) A I R 1927 All 208=99 Ind Cas 455. Where a court before deciding a case finally on the ground that the plaintiff is tantamount to an admission of the specific right of the parties and the property to be partitioned is a decree. The plaintiff's suit declaring that the property should be partitioned is a decree. It includes an interlocutory question between the parties. The question is embodied in the proceedings. An order cannot be regarded as a decree unless it is formally drawn up as such or at all events, unless it could be so drawn up. A 'preliminary decree' properly understood is passed only in those cases in which the court has first to adjudicate

upon the rights of the parties and has then to stay its hand for the time being until it is in a position to pass a final decree in the suit 115 P L R 1911, see also 82 P R 1911 Decree includes Revenue Court decree A I R 1925 All 264=85 Ind Cas 660 Decision delivered in default of plaintiff is not a decree 85 Ind Cas 393=A I R 1925 Oudh 485=28 O C 124

The question whether an adjudication is an order or decree is to be tested not by general principles but by the expressions, of the Code and these words are to be construed in their plain and obvious sense, only such orders of dismissal for default as are treated as such by the code itself are excluded from the definition 59 C L J 399=51 C 715=28 C W N 795=83 Ind Cas 220 If an order rejecting the claim of a person to be the legal representative of a deceased plaintiff is to have the character of a decree it must conclusively determine the right of the parties to the suit A I R 1914 Mad 813=47 M L J 370=1914 M W N 763=80 Ind Cas 942

**Matters in Controversy**—Matters in controversy\* in the suit may also come to arise at a subsequent stage of the suit A I R 1928 Oudh 362=5 O W N 633=3 Lu k 628 This term must not be understood as relating solely to the merits of the case It would cover any question relating to the character and status of the party owing to the jurisdiction of the court, to the maintainability of the suit and to other matters preliminary, which necessitate an adjudication before a suit is enquired into in fact all questions concerning a pending suit It does not include an order passed on an application preliminary to the institution of suit itself such as application for leave to sue 2 L W 519=17 M L T 417=29 Ind Cas 393

**What are decrees**—An order of the court appointing a committee to draw up a scheme of management with regard to *utrk* is a decree A I R 1930 Cal 476=31 P L R 120=121 Ind Cas 74 The Revenue officer's judgment as to be liability of the lands to assessment or otherwise in manner directed by s 20 Regulation II of 1819 has the force and effect of a decree A I P 1930 Cal 411=51 C L J 297=126 Ind Cas 69 Where an appeal against preliminary decree is withdrawn and dismissed such order of dismissal is decree within s 2 143 Ind Cas 412=1933 M W N 623=64 M L J 695=A I R 1933 Mad 444 Where lower Courts decree contain adjudication on several points each such adjudication is a decree A I R 1933 All 473 Order refusing to allow interest *pendereliste* is appealable 143 Ind Cas 43=14 P L T 133=A I R 1933 Pat 207 An order dismissing an application for a final decree in a mortgage suit is a decree A I R 1933 Lah 214 Order dismissing a cross-objection is a decree A I R 1933 Lah 951 An order of abatement of a suit is a decree and should not be made *ex parte* without notice to plaintiff 33 M L J 486=44 I A 218 (P C)=22 C W N 169=15 A L J 777=19 Bom L R 866=47 Ind Cas 43 (P C), 38 M L J 266=54 Ind Cas 565

A decree passed on the admission of the defendant is appealable by a person aggrieved thereby 56 Ind Cas 845 Order striking out name of a defendant and dismissing the suit against him is a decree 42 M 219=36 M L J 169=9 L W 48 Ind Cas 198=47 M 57=35 decree under Order 34 rule 6 is a 88 An order rejecting memoran

dum of appeal for deficient court fee is appealable 67 Ind Cas 225=A I R 1922 Nag 62=18 N L R 15 An order declaring the defendants not liable for mesne profits, amounts to a decree 67 Ind Cas 93=A I R 1913 Cal 308, 22 O C 289=54 Ind Cas 733 67 Ind Cas 901=3 L L J 237

Order defining mode and period of taking account is a decree A I R 1923 Pat 514=4 P L T 40, An order directing the decree holder purchaser to pay mesne profits on setting aside the sale is a decree A I R 1930 Cal 89=16 C 550=120 Ind Cas 807 Decision in reference under s 30 Land Acquisition Act being one on rights of contending parties, is a decree within s 2 (2) A I R 1929 Mad 273=56 M L J 387=115 Ind Cas 345 An order limiting the right of the decree holder to recover mesne profits for a certain period is of the nature of a final decree 115 Ind Cas 591=A I R 1928 Cal 804 When a Court refuses to ascertain mesne profits and holds that the claim is time barred that decision operates as a decree 109 Ind Cas 734=A I R 1928 Bom 236=52 B 360=30 Bom L R 503 The decree subsequently made on review, even if it does not modify the decree originally passed is a new decree and therefore no appeal can lie for the original decree A I R.

1928 Cal 418=107 Ind Cas 751 Refusal of adjournment and dismissal of suit in consequence is decree A I R 1927 Rang 148=6 Bur L J 77=101 Ind Cas 618

What are not decrees—Order refusing to stay execution is not decree A I R 1930 All 121=122 Ind Cas 182 An order passed under Order XXI r 22 for arrest not being a final order is not a decree A I R 1929 Mad 718=30 L W 230= (1929) M W N 74=119 Ind Cas 43 *Ex parte* order granting leave to apply for execution is not a decree A I R 1929 All 390=(1929) A L J 553=115 Ind Cas 865 Decision of the Court under Chapter VII of the Presidency Small Cause Courts Act is not a decree under s 2 (2) A I R 1929 Mad 69=56 M L J 199=29 L W 537=115 Ind Cas 504 Order striking off objection of judgment debtor for default is not appealable 112 Ind Cas 380 An order permitting the withdrawal of a suit or appeal is not a decree A I R 1928 Mad 416=51 M 664=55 M L J 345 An order for security to stay execution is neither an order under s 47 nor is it a decree 106 Ind Cas 890 No appeal lies from an order accepting security concerning sufficiencies thereof 106 Ind Cas 866 Where appellate Court the order of remand is not a decree under O r rule 10 (2) is not a decree der s mply refusing to official referee to take accounts is not a decree A I R 1924 Mad 406=73 Ind Cas 903 In a case charges is

is an interlocutory order 65 Ind Cas 983=24 O C 500 appeal is not a decree 55 Ind Cas 838=A I R 1922 All 113=20 A L J 214 An order granting permission to plaintiff to withdraw a suit under order XXIII rule 1 is not a decree A I R 1922 Lah 267=65 Ind Cas 719 Order rejecting husband's application for a decree of divorce is not a decree nor can apply as 78 A party cannot prefer an application of the value of the property under a decree order and there d Cas 452 Every Ind Cas 173 The art of it being on as 80=66 P R y under a decree 240 An order u a u u a decree 33 Ind Cas der order XXXIV rule 5 is an order n L R 38=40 B 321 A purely for decree But an order of abatement parties is a decree 34 Ind Cas 822=

128 P R 1910 (F B)—40 L J 190 appeal is not a decree 59 Ind Cas 388= 43 An order under s 52 of the Provincial or an order under s 47 and s

=83 Ind Cas 1035 124 Ind Cas 349= against some defendants on account of to blame is not a decree 33 C W N 74

Order under s 47—An order under section 73 is not an order under s 47 57 Ind Cas 421=A I R 1921 Pat 401=1 P L T 296 In order to be appealable an order in execution must fall within the definition A I R 1926 All 401=94 Ind Cas 1 Where on a mortgage decree being put in execution an objection Court fee but was negatived Held an appeal lay 70 Ind Cas 483=A I R 1922 Pat 59=3 P L T 146

Dismissal for default.—Rejection of appeal for failure to pay deficit Court fee is a decree and is not dismissal for default 63 Ind Cas 99—A I R 1922 Pat

281=3 P L T 117=6 P L J 625 An order dismissing an appeal for default is not a decree 47 Ind Cas 125 An order of dismissal for default includes an order of the execution court dismissing an objection for default A I R 1926 All 401=94 Ind Cas 1

**Preliminary Decree**—A preliminary decree must define the rights of the

Ind Cas 431 A preliminary decree is not extinguished by the passing of the final decree but is given effect to by the final one 21 C W N 1174=1 Pat L J 406=36 Ind Cas 873 An order rejecting a plaint as being void is a preliminary decree and a second appeal lies against it 39 Ind Cas 791=1 P L W 499 The decree dissolving partnership is final as regards matters finally decided and preliminary as regards matters still undisposed of 131 Ind Cas 160=A I R 1930 Mad 528=53 M 378 Mere use by Court of form for final decree for partition does not make it a final decree A I R 1930 Nag 206=13 N L J 83=26 N L R 166=122 Ind Cas 441 Where in a suit by a mortgagee for a final decree debarring the mortgagor from redeeming the mortgaged land the Court merely refuses to pass a final decree in terms of the preliminary decree, it is doubtful whether it is final order against which an appeal can lie A I R 1918 Lah 355=10 Lah L J 198=110 Ind Cas 81

**Decree holder**—It is not necessary that a decree holder in a decree for the sale of immoveable property should necessarily have been the plaintiff in the case A I R 1919 Lah 49=116 Ind Cas 712 Decree holder does not include an attaching creditor 80 Ind Cas 947=A I R 1915 All 173 Plaintiff got decree for specific performance of agreement to sell against defendant but did not want to execute the decree Defendants were also decree holders with this clause and as such could execute the decree 67 Ind Cas 667 see also 59 C 501 A I R 1937 Cal 579=56 C W N 172 A decree holder need not be a party to a decree It is enough if the decree confers some right enforceable under the decree upon some person mentioned in it 61 M L J 904=A I R 1932 Mad 193=35 L W 22

**District Court**—It is not legitimate in every instance to construe the words District Court wherever they appear to mean and include a High Court in its ordinary Original Civil Jurisdiction 100 Ind Cas 331=45 C L J 71=A I R 1927 Cal 290

**Foreign Court**—Definition of foreign court is not applicable to Provincial Insolvency Act 123 Ind Cas 20=A I R 1929 Mad 900=57 M L J 393

**Foreign judgment**—Judgment in the expression 'foreign judgment' as used in S 2 (6) has the English meaning and not the meaning (as regards the word judgment) given by s 2 (9) of C P Code 62 M L J 566=35 L W 763=138 Ind Cas 648=A I R 1932 Mad 661

**Judgment**—The decision of the trial court on preliminary issue is a judgment 97 Ind Cas 780=27 P L R 701=8 Lah L J 361=A I R 1916 Lah 638 Short hand notes dictated by but never approved by the Judge cannot be considered as part of his actual judgment 29 Bom L R 126=A I R 1927 Bom 113=51 Bom 167=100 Ind Cas 941

**Judgment debtor**—A defendant who is exempted and against whom no decree is passed is not a judgment debtor within s 2 (10) A I R 1933 All 57=54 A 1031 An assignee of a J D is not J D 13 Ind Cas 659

**Legal representatives**—A person who is entitled to the possession of the assets of the deceased becomes legal representative irrespective of whether he is actually in possession or not For the purpose of the suit it is sufficient if he is a person on whom the estate would devolve The question whether he is in actual possession or not can be determined in execution proceeding 27 N L R 147=A I R 1931 Nag 173=134 Ind Cas 862 A son taking by survivorship is a legal representative A I R 1931 Bom 484=134 Ind Cas 961=33 Bom L R 1144=5 B 709 Donee of a deceased legatee is a legal representative 35 C W N 1028 By this definition the Mahomedan Law has not been changed The heirs of a deceased Mahomedan are liable for the debt due to the estate proportionately to the share inherited by them 138 Ind Cas 746=1932 A L J 727=A I R 1932 All 591 Where there are two rival claimants to the estate of the deceased it

1928 Cal 418=107 Ind Cas 751. Refusal of adjournment and dismissal of suit in consequence is decree A L.R. 1927 Rang 148=6 Bur LJ 77=101 Ind Cas 618.

What are not decrees—Order refusing to stay execution is not decree  
A I R 1930 All 121=122 Ind Cas 182 An order passed under Order XXI r 22 for  
arrest, not being a final order is not a decree A I R 1929 Mad 718=30 L W 230=  
(1929) M W. N. 74=119 Ind Cas 43 *Ex parte* order granting leave to apply for  
execution is not a decree A I R 1929 All 390=(1929) A L J 553=115 Ind Cas  
865 Decision of the Court under C  
Act is not a decree under s 2 (2)

is an interlocutory order 65 Ind Cas 983=24 O. C 500 Order  
appeal is not a decree 55 Ind Cas 838=A I R 1922 All 113=20 A L J 214  
An order granting permission to plaintiff to withdraw a suit under order XXIII rule 1  
is not a decree A I R 1922 Lah 267=65 Ind Cas 719 Order rejecting husband's  
claim to be legal representative is not a decree 62 Ind Cas 303 An order under Order  
XXI = 66 Ind Cas 18 I T 612=50 Ind Cas 281 A party cannot prefer an  
is not a decree, nor can apply  
on a question of the value  
interlocutory order and there  
170=56 Ind Cas 452 Every  
R 1920=56 Ind Cas 173 The  
ate award part of it being on  
r 31 Ind Cas 80=66 P R  
tgage money under a decree  
is not a decree 39 M 870=29 M L J 700=31 Ind Cas 240 An order  
overruling a plea against the maintainability of a suit is not a decree 33 Ind Cas  
664=9 Bur L T 195 An order absolute under order XXXIV, rule 5 is an order  
and is not a decree 33 Ind Cas 749=18 Bom L R 38~40 B 321 A purely for-  
= 56 Ind Cas 18 I T 612=50 Ind Cas 281 But an order of abatement  
parties is a decree 34 Ind. Cas 822=

Insolvency Act, 1920 is not a decree, nor an order under s 52 of the Provincial

Order under s 47—An order under section 73 is not an order under s 47 73—A I R 1929 Cal 609.  
57 Ind Cas 421=A I R 1921 Pat 401=1 P L T 296 In order to be appealable  
an order in execution must fall within the definition A I R 1926 All 401=94  
Ind. Cas 1. Where on a mortgage decree being put in execution an objection  
was raised that execution could proceed only after payment of additional amount of  
Court fee, but was negatived. Held an appeal lay 70 Ind Cas 483=A I R 1922  
Pat 59=3 P. L. T 146

Dismissal for default—Rejection of appeal for failure to pay deficit Court fee  
is a decree and is not dismissal for default: 63 Ind Cas 99=A I. R 1922 Pat.

have made by his wrongful possession 59 C 859=55 C L J 205=138 Ind Cas 852=A I R 1932 Cal 600=A L R 1932 C 474, see also 35 C W N 367 In the case of a claim for mesne profits against several trespassers in wrongful possession two courses are left open to the Court A decree for mesne profits may be passed jointly and severally against all the trespassers who may have jointly kept the plaintiff out of possession for any particular period leaving them to have their respective rights adjusted in a separate suit for contribution, or the respective liabilities of such trespassers may be ascertained in the plaintiff's suit against them, and a decree on the basis of such several liabilities may be passed as against the respective trespassers in plaintiff's favour 59 C 859=55 C L J 205=A I R 1932 Cal 600, see also 53 Cal 992 P C

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A I R 1926

**Order**—Order by District Judge to guardian of minor step mother, to pay money to guardian of step daughter for her marriage is not contemplated by the section and cannot be executed against ward who in meanwhile attained majority 41 Ind Cas 341=41 M 241

**Pleader**—Barrister in Burma not filing power of attorney from client cannot bind client by compromise entered into without his express consent A I R 1930 Rang 313=17 Ind Cas 604 An Advocate of the High Court has when briefed on behalf of a party in a Subordinate Court the implied authority of his client to settle the suit A I R 1930 Pat 158=34 C W N 453=1930 A L J 489=58 M L J 551=31 Bom L R 645=51 C L J 309=Ind Rul (1930) P C 177

**Public officer**—A receiver appointed under Order XL of the Code is a public officer and he is entitled to notice as prescribed by s 80 C I Code 35 C W N 161=57 C 117=A I R 1931 Cal 61 but see 53 C L J 31=A I R 1931 Cal 175 Village Sanitation Panchayat is not a public officer within the meaning of s 80 of the C P Code A I R 1929 Nag 70=114 Ind Cas 288 A Municipal Council is not an officer of the Government A I R 1930 Mad 844=(1930) M W N 821=128 Ind Cas 161 The Sheriff of Bombay is a public officer A I R 1927 B 521=51 B 749=29 Bom L R 1071=104 Ind Cas 685 Official Assignee is a public officer A I R 1915 Bom 344=49 B 638=27 Bom L R 545=87 Ind Cas 1011 An Official Receiver appointed under Provincial Insolvency Act is a Public officer within the meaning of s 2 A I R 1925 All 241=47 A 291=22 A L J 1116=84 Ind Cas 739 A village headman is a public officer within the meaning of s 2 A I R 1923 Rang 250=2 Bur L J 29=79 Ind Cas 818 Person paid a fixed salary by Government out of commission charged to private person for services is a public servant A I R 1928 Sind 76=22 S L R 63=105 Ind Cas 729 So also a common manager appointed under Transfer of Property Act s 9, is a public officer 24 C W N 138=30 C L J 279=53 Ind Cas 747 But a manager of Court of Wards is not a public servant therefore not entitled to notice under s 80 55 Ind Cas 515 A British officer in Indian army is a public officer 50 Ind Cas 683

**Signed**—Use of stamp bearing the name of the party is sufficient even in cases where he is able to sign 107 Ind Cas 840=54 M L J 65=51 M 242=A I R 1928 Mad 175

**3 [S 2]** For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of small Causes is subordinate to the High Court and District Court

**Notes**—For matters covered by the Code Court cannot go beyond the Code A I R 1916 Cal 568=44 C L J 399=30 C W N 415=94 Ind Cas 235 The exercising his functions under s ven called a Court is certainly =123 Ind Cas 911 A Court the later Court has appellate



is open to decree holder to choose as the legal representative the one who appears to have *prima facie* title A I R 1929 Mad 487=120 Ind Cas 65=30 L W 778 Heirs of intestate Parsec who intermeddle with his estate are his legal representatives A I R 1927 Bom 474=51 B 771=29 Bom L R 900=51 B 771 Executor *de son tort* need not be added, when there is other legal representative 30 C W N 565=A I R 1926 Cal 825=96 Ind Cas 695 A suit against a legal representative should not be dismissed for want of assets 40 Ind Cts 407 Person in possession of deceased's estate can validly represent him 31 M L J 277=1916 M W N 233=35 Ind Cas 124 Legal representative does not necessarily mean beneficial owner 42 M 76=35 M L J 632=1918 M W N 107=49 Ind Cas 11 Decree obtained in good faith against wrong legal representative binds the real heir 36 M L J 106=52 Ind Cas 509 40 Ind Cas 57=4 O L J 463, 99 Ind Cas 865=A I R 1927 Pat 114=8 P L T 287, 96 Ind Cts 963=A I R 1926 Nag 476=9 N L J 183, 120 Ind

deceased judgment debtor is legal representative of a deceased 69 Ind Cas 179-A I R 1924 Cal 362 In case of decree for injunction against father in joint Hindu

the purpose of execution against them 745 An intermeddler with the property ie property taken by him 42 Ind Cas surviving co-parceners in a Hindu joint family are not legal representatives 61 Ind Cas 628=3 Lah L J 349=A I R 1921 Lah 34=2 Lah 114=73 P L R 1921, 42 B 504 An intermeddler is not a representative for the purposes of succession to the deceased's property 75 Ind Cas 114=A I R 1924 All 717 Trustees are not legal representatives of their predecessors in office A I R 1926 Mad 540=92 Ind Cts 520 Heirs of deceased mortgagor whose equity of redemption has already been sold are not his legal representatives relating to that property but the proper representatives are the purchasers of the equity of redemption 95 Ind Cas 904=(1926) M W N 276

Suit against legal representatives of a deceased should not be dismissed merely on

family estate it is he family When entative A I R al of the defendant executed against the succeeding *mohant* who was on the death of the first in *defacto* possession but who claimed to be treated as if 1924 Lah 251= of the deceased liable to satisfy before an order substituting him as legal representative is made A I R (1923) Pat 149=3 P L T 106=87 Ind Cts 803 To become legal representative it is necessary that a person should possess properties with intention of representing estate of estate but administers estate on its own authority and being person who in law represents estate of deceased is legal representative 29 N L R 118=A I R 1933 Nag 85 Decree obtained against mother as legal representative of a tenant binds daughter 29 N L R 89=A I R 1933 Nag 73

**Mesne profits**—The statutory definition of *mesne profits* includes interest A I R 1930 Cal 525=52 C L J 173=126 Ind Cas 717, 55 M 975 (1981)=63 M L J 845=1937 M W N 949=A I R 1932 M 722=139 Ind Cts 457=A I R 1932 M 136, Assessment of mesne profits must be made on the basis of plaintiff's loss by exclusion and not what defendant made or might with reasonable diligence

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cm,  
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1932

Cal 600, see also 53 Cal 992 1 C

Ordinarily interest on mesne profits is allowed but such interest may be disallowed on special grounds A. I R 1931 Mad 513=131 Ind Cas 833 In computing the mesne profits the expenses of management or collection are to be deducted 1931 M W N 813 Interest on mesne profits is in the discretion of the Court 44 C L J 182-A. I R 1916 Cal 1233=98 Ind Cas 198 Where decree is silent as to interest on profits the Executing Court cannot award the interest A. I R 1926 Mad 93=50 M L J 563=96 Ind Cas 697

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Subordination of Courts to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of small Causes is subordinate to the High Court and District Court

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509, 4c 865=A I R 1927 Pat 114=8 P L T 476=9 N L J 183; 120 Ind Cas 65= older has right to select among

the claimants, persons appearing to have *prima facie* the best title is legal representatives 29 M L J 698=31 Ind Cas 920 Person in possession of property of a deceased judgment debtor is legal representative of a deceased 69 Ind Cas 179=A I R 1924 Cal 362 In case of decree for injunction against father in joint Hindu

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Suit against legal representatives, of a deceased should not be dismissed merely on

892 Where a managing member sues and the suit refers to joint family estate it is really a suit in a representative character for all the members of the family When he dies the next managing member can come in as the legal representative A I R. 1915 Mad 456=21 L W 21=86 Ind

as *mohant* of shrine on the ground the succeeding *mohant* who was who claimed to be

be treated as the

1924 Lah 251=5 L

of the deceased judgment debtor as liable to satisfy decree, the objection

before an order substituting him is

Pat 149=3 P L T 106=82 Ind Crs 803 To become legal representative it is

37 C W N 758 Court of Wards represents no particular ward in administration

of estate but administers estate on its own authority and being person who in law

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Nag 85 Decree obtained against mother as legal representative of a tenant binds

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**Mesne profits**—The statutory definition of *mesne profits* includes interest

A I R. 1930 Cal 525=52 C L J 173=126 Ind Crs 717, 55 M 975 (981)=63

M. L J 845=1932 M W N 949=A I R 1932 M 722=139 Ind Cas 457=A I R.

1932 M 1365 Assessment of mesne profits must be made on the basis of plaintiff's

loss by exclusion and not what defendant made or might with reasonable diligence

7. [S 5] The following provisions shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, \* or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes ;
- (ii) the execution of decrees in such suits ;
- (iii) the execution of decrees against immoveable property , and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 [ so far as they authorise or relate to—

- (i) orders for the attachment of immoveable property,
- (ii) injunctions,
- (iii) the appointment of a receiver of immoveable property, or
- (iv) the interlocutory orders referred to in clause (c) of section 94] †

and sections 96 to 112 and 115

Notes—Small Cause Court has power to attach moveables before judgment 46 C 717=31 C L J 179=53 Ind Cas 814 A small Cause Court has power to attach immoveable property before judgment under order XXXVIII r 5 A I R 1925 Mad 589=48 M L J 406=48 M 488=87 Ind Cas 399 But a Provincial Small Causes Court has no power to attach immoveable property before judgment and to decide a claim case thereon A I R 1924 Cal 193=28 C W N 16=80 Ind Cas 300 A Small Cause Court can not sell a preliminary decree for foreclosure for immoveable property 44 Ind Cas 75 A Small Cause Court cannot attach immoveable property in execution of a decree even though it is also an ordinary court unless the decree has been formally transferred to the ordinary side A I R 1929 Lah 398=30 P L R 40=114 Ind Cas 329, 132 Ind Cas 208

8 [S. 8]

38 to 41, 75, clauses (a), (b) and 155 to 158 and by the Cause Court Act 1882, ‡ the

Presidency S Courts

provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta Madras and Bombay

§ [Provided that—

- (1) the High Courts of Judicature at Fort William Madras and Bombay as the case may be, may from time to time by notification in the local official Gazette direct that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 † and with such modifications and adaptations as may be specified in the notification shall extend to suits or proceedings or any class of suits or proceedings in such Court
- (2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act 1882 † shall be deemed to have been validly made]

Notes—Where a decree of the Madras Small Cause Court is transferred to a mofussil District Munsif's Court for execution not on its Small Cause side but on its original side against the immoveable property of the judgment debtor, an order

\* IX of 1887

† The words within brackets have been substituted for the words so far as they relate to injunctions and interlocutory orders by Act 1 of 1906

‡ XV of 1882

§ Provisos (1) and (2) were added to s 8 by the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914) s 2

or revisional jurisdiction over necessarily make the same 193  
1932 A 1083  
*Ibid*

by some statutory reference does not the Court deciding  
All 651=A L R  
is not exhaustive

4 [S 4] (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred or any special form of procedure prescribed, by or under any other law for the time being in force of the proposition deemed to limit or and may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land

Notes—In view of s 4 C P Code the law applicable to soldiers is defined in s 90 of the Army Act (1881) and it overrides s 60 of the C P Code 43 B 368= 21 Bom L R 137=50 Ind Cas 427 Under s 4 (1) the general provisions in res enacted in s 109 must special form of pro in force S 12 of the jurisdiction and as such abrogates the provisions of s 109 8 O W N 1207, see also A I R 1931 Oudh 385=132 Ind Cas 770=8 O W N 635

5 [S 4A] (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure Application of the Code to upon which any special enactment applicable Revenue Courts to them is silent the Local Government \* may by notification in the local official Gazette declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts or shall only apply to them with such modifications as the Local Government, \* may prescribe

(2) 'Revenue Court' in sub section (1) means a Court having jurisdiction to the rent but does not to try such

6 [S 6] Save in so far as is otherwise expressly provided nothing herein contained shall operate to give any Court Pecuniary jurisdiction jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction

Notes—Order of remand cannot confer jurisdiction A I R 1929 Lah 534= 30 P L R 244=116 Ind Cas 324 The proceedings before the President of the Calcutta Improvement Tribunal is not a suit and s 6 does not apply to an order passed in such proceedings 31 C W N 142=A I R 1926 Cal 853=94 Ind Cas 170 Where the Court sends a decree *suo motu* to another subordinate Court the latter must be a court of competent jurisdiction The competence cannot be determined irrespective of its pecuniary jurisdiction 67 Ind Cas 538=A I R 1922 Pat 188=3 P L T 422 Court's jurisdiction is not ousted where mesne profits allowable under order XX rule 12 (2) Civil Procedure Code exceed its jurisdiction A I R 1925 Cal 1076=53 C 14=42 C L J 49=29 C W N 169= 89 Ind Cas 726

\* The words 'with the previous sanction of the Governor General in Council' and the words 'with the sanction aforesaid' were omitted by s 2 and Sch I Part I, of the Devolution Act 1920 (38 of 1920)

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inspect account books kept in connection with caste lands and properties is not in any sense a caste privilege. It is a legal right. The members of the caste are and free inspection of the management of the lands. Bom L R 343=137 Bom L R 1014=34 Court has jurisdiction of caste but to the extent of 69=50 B 124=27

Bom L R 1503 Civil Courts can declare a *pat* marriage to be invalid. A I R 1926 Nag 488=22 N L R 134=9 N L J 160 A Court has jurisdiction to interfere where the excommunication decision of a *jamat* has not been arrived at in consonance with principles of justice. A I R 1930 Sind 704=126 Ind Cas 49, see also 23 B 122, 17 M 222, 24 B 13, 10 M 133, 7 M L T 190=5 Ind Cas 5, 33 M 67=17 Ind Cas 527 Rights of *Acharis inter se* can be adjudicated upon and enforced by civil courts. A I R 1928 Lah 703=10 Lah L J 242=112 Ind Cas 262.

**Jurisdiction of Civil Courts in religious matters**—Courts have power in any matter of spiritual and temporal character to enquire into the law or rules of the tribunal or authority which has inflicted the alleged injury. 39 M 1056=30 M L J 473=34 Ind Cas 587 But a suit does not lie for a mere honour or dignity unconnected with fees, profits or emoluments. 51 Ind Cas 905 Courts are not bound to enter into detailed considerations and decide rights of *Sanjasis* to receive honours in temples unless they are mixed up with matters of a civil nature. 53 Ind Cas 483=10 L W 480=7 Cr L J 755=1919 M W N 872 Right to worship on receiving emoluments or right to perform festivals periodically is civil right and can be enforced. 35 Ind Cas 88=3 L W 512 But the determination of question of orthodoxy is not within the province of Civil Courts. 37 Ind Cas 20

enforce claim to honours and perquisites are maintainable. So also a right to worship in a particular manner is a civil right. 31 M L J 758=36 Ind Cas 20

230-20 F R 1919

declaration of right to religious honours. A I R 1929 Mad 493=29 L W 604=115 Ind Cas 149, see also 63 Ind Cas 115=41 M L J 287, 1932 M W N 1090 The Civil Court will not entertain a suit to vindicate a right not to an office but to a mere dignity unconnected with any fees profits or emoluments. 33 Bom L R 479=A I R 1931 Bom 272=132 Ind Cas 440, 7 M 91, 2 B 476, 6 B 116, 28 Bom L R 60, 20 M L J 530 No suit will lie for the vindication of a right to gratuitous payments which are not the emoluments attached to an office by way of remuneration for services performed. 33 Bom L R 479=A I R 1931 Bom 273=132 Ind Cas 440 Suit by priest for voluntary gifts made by another *jayman* is not tenable either against the *jayman* or the other priest in the Provinces of Bihar and Orissa. 10 P L T 117=116 Ind Cas 513=A I R 1929 Pat 103 Where a dispute in Upper Burma involving ecclesiastical matter is within competence of Buddhist ecclesiastical authorities, the Civil Courts have no jurisdiction. 114 Ind Cas 540=A I R 1929 Rang 77=6 Rang 783 Suit for a right to religious office is of a civil nature though no emoluments are attached. A I R 1927 Cal 783=54 C 614=105 Ind Cas 188 Suit for a declaration by a body of Brahmins that they

of the C.P. Code A  
Small Cause Court in  
Small Cause Court,  
proceedings in  
cases of the  
Cas 509=

## PART I

### SUITS IN GENERAL.

#### JURISDICTION OF THE COURTS AND *Res Judicata*.

9. [S 11] The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies

*Scope.*—The Scope of the section is very vast, including even what are known as rent suits or suits cognizable by the Revenue Courts, but for the circumstances that such suits, though civil in their nature, are expressly excluded from the jurisdiction of Civil Courts, by dint of some Special Statutes 12 A 409 (F B.) In such cases, the Civil Courts have no jurisdiction over the questions of religion or dispute between the parties on *prima facie* to have jurisdiction. Persons who allege that Civil Courts have jurisdiction.

606=90 W N 400 It is not the part of ordinary Civil Courts to establish his contention 504=29 P L R 396 (F B), see also 54 A 646=A L J 437, 11 Rang 125=A I R 1933 Rang 124

No jurisdiction in caste question—A caste is a social combination, the members of which are entitled by birth, not by enrolment. Its rules consist partly of resolutions passed from time to time down from generation to generation. The usages like all other Hindu usages,

e, regarded as a  
unincorporated  
than trade, and

the legal consequences which now apply to both bodies 56 B 242=34 Bom L R 343=137 Ind Cas 461=A I R 1932 B 122=A I R 1932 B 342 (F B) A caste question is a question which relates to matters which affect internal autonomy of the caste and its social relations *Ibid* The Hindu law is so wholly unknown to the English law that English

inspect account books kept in connection with caste lands as a property is not in any sense a caste privilege. It is a legal right. The members of the caste are entitled to full and free inspection

trustees' management of

34 Bom L. R. 343=137

11 Bom L. R. 1014=34

569 Court has jurisdiction

tion over a matter not relating to internal administration of caste but to the property of the caste 92 Ind Cas 549=A I R 1926 Bom 69=50 B 124=27 Bom L. R. 1503 Civil Courts can declare a *pat* marriage to be invalid A I R 1926 Nag 488=22 N L R 134=9 N L J 160 A Court has jurisdiction to interfere where the excommunication decision of a *jamat* has not been arrived at in consonance with principles of justice A I R 1930 Sind 204=126 Ind Cas 49, see also 23 B 122, 17 M 222, 24 B 13, 10 M 133, 7 M L T 190=5 Ind Cas 5, 33 M 67=17 Ind Cas 527 Rights of *Acharis inter se* can be adjudicated upon and enforced by civil courts A I R 1928 Lah 703=10 Lah L J 242=112 Ind Cas 262.

**Jurisdiction of Civil Courts in religious matters**—Courts have power in any matter of spiritual and temporal character to enquire into the law or rules of the tribunal or authority which has inflicted the alleged injury 39 M 1056=30 M L J 473=34 Ind Cas 587 But a suit does not lie for a mere honour or dignity unconnected with fees, profits or emoluments 51 Ind Cas 905 Courts are not bound to enter into detailed considerations and decide rights of *Sanyasis* to receive honours in temples unless they are mixed up with matters of a civil nature 53 Ind Cas 483=10 L W 480=2 Cr L J 755=1919 M W N 877 Right to worship on receiving emoluments or right to perform festivals hereditarily is civil right and can be enforced 35 Ind Cas 88=3 L W 512 But the determination of question of orthodoxy is not within the province of Civil Courts 37 Ind Cas 780 Person having right to hold office at certain place in certain season can sue to maintain it But right to enter disciples' house though not called does not create legal character to maintain a suit for its declaration 1 P L J 381=2 Pat L W 390=35 Ind Cas 345 Suit for exclusive conduct of festival and suit to enforce claim to honours and perquisites are maintainable So also a right to worship in a particular manner is a civil right 31 M L J 758=36 Ind Cas

unless

r share

1 Cas

230—201 R 1919

declaration of right to religious honours A I R 1929 Mad 493=29 L W 604=119 Ind Cas 149, see also 63 Ind Cas 115=41 M L J 287, 1932 M W N 1090 The Civil Court will not entertain a suit to vindicate a right not to an office but to a mere dignity unconnected with any fees profits or emoluments 33 Bom L. R. 479=A I R 1931 Bom 272=132 Ind Cas 440, 7 M 91, 2 B 476, 6 B 116, 28 Bom L. R. 60, 20 M L J 530 No suit will lie for the vindication of a right to gratuitous payments which are not the emoluments attached to an office by way

479=A I R 1931 Bom

its made by another *nyan*

in the Provinces of Bihar

I R 1929 Pat 103 Where

a dispute in Upper Burma involving ecclesiastical matter is within competence of Buddhist ecclesiastical authorities, the Civil Courts have no jurisdiction 114 Ind Cas 540=A I R 1929 Rang 77=6 Rang 783 Suit for a right to religious office is of a civil nature though no emoluments are attached A I R 1927 Cal 783=54 C 614=105 Ind Cas 188 Suit for a declaration by a body of Brahmins that they



have a right to recite *Vedas* etc., in a temple is maintainable A I R 1927 Mad 131=98 Ind Cas 229 A Court will not decide mere questions of religious rites or ceremonies unless it is necessary to decide rights to property A I R 1921 Bom 338=24 Bom L R 1060=84 Ind Cas 759 A suit lies for share of income earned by Hindu priest on the river banks A I R 1924 Oudh 252=10 O L J 593=27 O C 114=78 Ind Cas 256 Where the plaintiff a female heir prayed that she should be allowed to take a turn at the worship in the temple so that her full share in the offerings might be secured to her *Held* that such a suit is maintainable A I R 1923 All 425=45 A 437=71 Ind Cas 1026 Where a *pujari* of a deity was removed for misconduct by private tribunal duly constituted under previous

was removed on valid Cal 328 Suit for share s 924=23 Bom L R

arried in a *palanquin* in e 60 Ind Cas 907 A

it up a similar flag so as to *held* that the plaintiff had making use of the emblem

or flag 18 A L J 679=59 Ind Cas 873 But a right to receive *dan* by offering of *kusha* grass to pilgrims on river bank cannot be declared A I R 1911 All 374=43 A 159=59 Ind Cas 659 Where defendant prohibits plaintiff a Hindu priest from officiating, a suit for injunction lies A I R 1921 Bom 209=45 B 234=42 M 668=

n office or a

business the person is entitled to it can sue for possession of *gaddi* and its books and for a declaration that he is the lawful holder of the *gaddi* 3 Pat L W 136= A I R 1933 Mad 776=140

*Swamiyar* is a possessory right in a

W N 382=113 Ind Cas 476 (P C)

emoluments

Mad 377=109 Ind Cas 771 A suit to recover where offerings are not connected with any

1 Court A I R 1928 Mad 851=110 Ind Cas right to receive offerings and incidentally to

the right of worship is maintainable A I R 1925 Bom 207=76 Ind Cas 629

an established principle of any person for a public purpose he mode of redress is also will be ousted A I R 1928 ts are satisfied that conditions

11 Rang 125=A 1

overruled by rule 40 37 C W N 122=A

f the ordinary course h are the creation

or expressly implied ive It is an essen

ie manner prescribed re is no ouster of the

there is no change in er *Jenkins C J* in

604, see also 36 M I R 1933 Nag 193

**Actions of public body**—Misuse of the powers given to a public body by attempting to acquire land not in furtherance of the objects of the body

a dispute about a question of title with another person Civil Court can interfere in such a suit 52 Ind Cas 785=17 A L J 976 When a Collector's decision in confiscating silver is not in accordance with the provisions of Sea Customs Act, a Civil Court can interfere 49 Ind Cas 427 Where the Corporation of Calcutta refuses to admit the was erected after 186

to entertain a suit

C W N 194=24 C I

If action of municipal

461=93 Ind Cas 127

603=20 Bom L R

69, 32 C W N 1055=56 C 280=A I R 1929 Cal 33

**10 [S. 12]** No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council

**Explanation**—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action

**Scope**—The provisions of the section leave no discretion to the Courts in respect of the stay of suit when circumstances are such as to involve the operation of the section 36 C W N 667 140 Ind Cas 13 A I R 1937 Cal 751 One test of the applicability of this section to a particular case is whether on the final decision being reached in the previous suit such decision would operate as *res judicata* in the subsequent suit *Ibid* A suit must commence with a plaint 22 M 256 This section is inapplicable unless both subject matter and relief are identical The fact of one issue being common would not necessitate stay of subsequent suit A I R 1929 All 805=51 A 1017=(1930) A L J 284=122 Ind Cas 752, 114 Ind Cas 775=A I R 1929 Oudh 351 This section does not apply to execution proceedings A I R 1929 Lah 694=119 Ind Cas 488 Before an order under s 10 staying a suit is passed, the court must see (1) if the matter in issue is also directly and substantially in issue in a previously instituted suit, (2) between the same parties, (3) in the same or any other Court in British India, and (4) having jurisdiction to grant the relief claimed 110 Ind Cas 418, 106 Ind Cas 661=A I R 1927 Mad 1199, A I R 1929 Mad 113=26 L W 241=103 Ind Cas 274 This section is not applicable where the parties are not the same but the question is the same A I R 1922 Mad 321=68 Ind Cas 167, 15 L W 667, 61 Ind Cas 830 The three essential conditions that are necessary for bringing into operation s 10 are (1) that the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit, (2) that the parties in the two suits are the same, and (3) that the Court in which the first suit is instituted, is a Court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit A I R 1933 Cal 887=60 C 1096 Where a suit was first instituted in wrong Court and subsequently in a proper Court the second suit is not a continuation of the first suit even though subject matter and parties are the same A I R 1933 Sind 117=144 Ind Cas 56 S 10 does not make the trial of the later suit without jurisdiction unless it is between parties under whom the parties in the earlier suit claim litigations under the same title 31 Ind Cas 25 Concurrent jurisdiction of both Courts is an essential requisite for a stay order under this section 12 N L R 174=37 Ind Cas 540 The word jurisdiction has no reference to territorial jurisdiction 13 Bur L T 19=10 L B R 154=57 Ind Cas 904 Stay does not prevent passing of interlocutory orders A I R 1922 Bom 276=46 B 431=33 Bom L R 1228 Section 10 does not bar suit nor justifies dismissal A I R 1925 Pat 701=77 Ind Cas 157 It is doubtful whether a Subordinate Court in British India has power to

power even where it does not come within the provision of s 10 A I R 1919 Oudh 341=7 O W N 157=114 Ind Cas 775

**Matter in issue**—Matter in issue means entire subject in controversy and not main question involved A I R 1925 Mad 574=48 M L J 251=88 Ind Cas 421, 24 C L J 514=36 Ind Cas 641, A I R 1917 Bom 245=19 Bom L R 382, A I R 1929 All 80,=51 A 1017=1930 A L J 284=122 Ind Cas 752, A I R 1922 Mad 304=31 M L T 360=70 Ind Cas 682, A I R 1923 Lah 69=69 Ind Cas 111=33 P W R 1922, 70 Ind Cas 5=A I R 1913 Mad 88 For a stay of a suit under this section identity of relief is no longer essential If the matter in issue in two suits is the same the latter suit must be stayed without regard to the relief sought 55 Ind Cas 254=12 Bur L T 203

Suit includes appeals 75 Ind Cas 231= suit on same cause of action was stayed balance of convenience A I R 1931 7 Applying for obtaining leave to appeal to His Majesty does not amount to pendency of appeal A I R 1929 Rang 67=6 R 775=115 Ind Cas 665 Where same matter is in issue in suit in another Court and appeal in High Court between same parties the High Court can order stay A I R 1926 Lah 692=96 Ind Cas 958

**Revision**—High Court can interfere in revision against order under s 10 if suitable grounds are disclosed 139 Ind Cas 48=33 P I R 787=A I R 1933 Lah 34, 34 P L R 123=141 Ind Cas 186 Orsuit is interlocutory order and is therefore not however interfere under s 151 or Government of 49=A I R 1930 Lah 525=31 P L R 174 see 86=A I R 1933 Lah 191 Order refusing to ex reversible A I R 1928 Oudh 355=5 O W N order refusing to stay a suit under s 10 there being A I R 1924 Lah 567=75 Ind Cas 101, 67 Ind Cas 167=4 Lah L J 475

11 [S. 13] No Court shall try any suit or issue in which the matter directly and substantially in issue has been

*Res judicata* directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court

**Explanation I**—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto

**Explanation II**—For the purposes of this section the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court

**Explanation III**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other

**Explanation IV**—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit

**Explanation V**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused

**Explanation VI**—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating

**Principle**—The rule of *res judicata* is for the benefit of wisdom which is for all time 43 I A "It hath been well said declared Lord Col otherwise great oppression might be done

*Priddle v Napier*, 6 Coke 9A. Though the rule of the Code may be traced to English source, it is not the law as it stands now. It includes the purpose of the rule as defeated, and is not the law as it is.

at law sue again 1

called the plea of former judgment. And so the application of the rule by the Courts of India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. 43 I A 91=43 C 694=20 C W N 738 (744).

The following rule was laid down by *Sir William De Grey C J* in the *Dutchess of Kingston's case*, 20 How St Tr 355 (357). "As a general principle, a transaction between two parties, in a judicial proceeding ought not to be binding upon a third, for it would be unjust to bind any person who could not be admitted to make a defence or to examine witnesses, or to appeal from a judgment he might think erroneous, and therefore the depositions of witnesses in another cause in proof of a fact the verdict of a jury in finding the fact, and the judgment of the Court upon the facts found, although evidence against the parties, and all claiming under them, are not in general, to be used to the prejudice of strangers. From the variety of cases relative to judgments being given in evidence in civil suits these two deductions seem to follow as generally true, first that the judgment of a Court of concurrent jurisdiction directly upon this point is a plea a bar, or is evidence conclusive, between the same parties, upon the same matter, directly in question in another Court, secondly, that the judgment of a Court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties coming incidentally in question in another Court for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter incidentally cognizable nor of any matter to be inferred by argument from the judgment. If said *Lord Kenyon C J* in *Great Head v Bramley* 7 T R 456 an action be brought and the merits of the question be discussed between the parties and a final judgment obtained by either the parties are concluded and cannot canvass the same question again in another action, although perhaps some objection or argument might have been urged upon the first trial, which would have led to a different judgment." The same learned judge said in *Mairrott v Hampton* 7 T R 269 "If this action could be maintained I knew not what cause of action could ever be at rest. After recovering by process, of law there must be an end of litigation otherwise there would be no security for any person."

**Section is not exhaustive**—This section is not exhaustive, but the statutory principles in this section must be fulfilled before any of the principles of *res judicata* can be applied. 126 Ind Cas 570=A I R 1930 Lah 487, see also A I R 1930 Bom 431=54 B 696=32 Bom L R 389=120 Ind Cas 305, A I R 1930 Cal 5=56 C 639=120 Ind Cas 710, A I R 1929 Lah 627, 45 M 320=49 I A 129 P C. General principles of *res judicata* cannot be invoked for cases covered by s 11 30 C W N 415=A I R 1926 Cal 568=44 C L J 399 96 Ind Cas 910=A I R 1926 Lah 670, 110 Ind Cas 554=56 M L J 52=A I R 1928 Mad 840, 108 Ind Cas 623, 117 Ind Cas 68. The statement of doctrine of *res judicata* in section 11 is not exhaustive. 53 A 103 (P C)=58 I A 158=A I R 1931 P C 114=53 C L J 552=35 C W N 661=1931 A L J 453=33 Bom L R 979=61 M L J 196=132 Ind Cas 598 (P C). The question of *res judicata* is not confined within the limits of s 11 of the C P Code but has a wider extension than that. 33 Bom L R 1139=A I R 1931 Bom 507, 57 I A 24, 49 I A 129, 11 I A 37.

**Scope of the Section**—Section 11 is not applicable when the previous suit was not dismissed on merits, but had abated. 12 Lah 275=A I R 1931 Lah 79=131 Ind Cas 20. If the suit and the claim, the decision

in a subsequent suit. 32 P L R 815. This section does not in terms apply to subsequent proceedings in the same suit. Such proceedings are only a part of the original proceedings and it cannot be said that the matter was decided either specifically or generally. *Res judicata* has been applied in subsequent proceedings. But where there can not apply s 2 A.



meaning of s 11 and would operate as *res judicata* 33 Bom L R 1139=A I R 1931 Bom 507 Where a prior suit has been dismissed both on merits and as not maintainable, it operates as a bar 1931 A L J 104=A I R 1931 All 131=130 Ind Cas 1 In order to constitute *res judicata* the previous suit should have been heard and finally decided and not have been dismissed as the Court had no jurisdiction to entertain the suit A I R 1931 All 200=130 Ind Cas 4

**Dismissal of suit for want of evidence**—Dismissal of suit for want of evidence bars fresh suit 34 Ind Cas 640=3 O L J 236, see also 1 M 84, 12 W R 34 (P C), A I R 1928 Cal 271 Dismissal of suit for non prosecution under Order XVII r 3 bars subsequent suit 40 A 590=16 A L J 462 Dismissal owing to failure of party to produce evidence is one on merits and operates as *res judicata* A I R 1929 Mad 404=122 Ind Cas 519

**Dismissal for default**—In case of dismissal for default no question of *res judicata* arises 41 Ind Cas 905, 9 C 476 10 C 98 (P C), 24 Ind Cas 480=12 A L J 911, 56 Ind Cas 937, 54 Ind Cas 789, 80 Ind Cas 933=46 A 820=22 A L J 749 Dismissal for default of an appeal does not bar fresh appeal. A I R 1973 Pat 514=2 Pat 739=75 Ind Cas 284

**Other cases of dismissal, which does not bar**—Dismissal of suit for want of proper court fees is not *res judicata* A I R 1928 Oudh 503=114 Ind Cas 120=5 O W N 895=4 Lu L 159 13 M 44, 35 B 38, 8 A 782 Dismissal of suit for non joinder does not operate as *res judicata* 104 Ind Cas 576 Where a suit is dismissed on the ground that it is not properly framed the decisions on other issues by the Court, do not operate as *res judicata* A I R 1975 Cal 996=41 O L J 396=88 Ind Cas 616 A dismissal under order IX r 3 creates no *res judicata* A I R 1975 Oudh 337=12 O L J 1=28 O C 8=85 Ind Cas 509 Dismissal for misdescription of suit property does not bar a subsequent suit A I R 1921 Lah 193 58 Ind Cas 579 7 Pat L J 313=39 Ind Cas 126 Dismissal of prior suit for non order of parties is not *res judicata* A I R 1922 Mad 259=43 M L J 57=1977 M W N 45 3 Ind Cas 491 A dismissal of an appeal for want of a copy of the first Court's judgment necessary under the Allahabad High Court rules does not operate as *res judicata* 19 A L J 706 63 Ind Cas 344 Dismissal on pleadings is no bar to second suit 45 Ind Cas 969 24 M L T 311=7 L W 557

**Same cause of action**—Where cause of action in two suits are different *res judicata* should be restricted to questions of fact and mixed questions of fact and law and should not be extended to pure questions of law A I R 1979 Cal 415=49 C L J 357=125 Ind Cas 709 Where in the first suit plaintiff sued as reversioner and in the subsequent suit he claimed as widow's heir the later suit is not barred A I R 1931 All 21=1930 A L J 1254=130 Ind Cas 13 Where suit for arrears of rent was dismissed on the ground that no relationship of tenancy existed subsequent suit on title for ejectment is not barred A I R 1921 Cal 355=35 C L J 334=61 Ind Cas 201

**Decision when resjudicata**—Award of arbitrators is *res judicata* on questions decided by the award A I R 1930 Oudh 389=7 O W N 541=127 Ind Cas 254 Where a suit has been decreed but permission has been given to defendant to file another suit the permission does not prevent the bar of *res judicata* 33 Bom L R 613=A I R 1931 Bom 417 Though section 109 of B T Act may not in express terms prohibit a Civil Court from entertaining a defence which is at variance with a decision under s 106 yet it is clear provisions of s 107 (1) of the B T Act read with s 11 C P Code that a Court trying a rent suit had no jurisdiction to decide an issue between the parties which has already been finally and definitely decided by a decision under s 106 of the B T Act 12 P L T 717=A I R 1931 Pat 215=10 P 337 The retrial of issues that have been finally decided in the same suit is barred by *res judicata* A I R 1971 P C 11=40 M L J 423=48 C 499=48 I A 187=19 A L J 366=23 Bom L R 648=33 C L J 405=75 C W N 915=60 Ind Cas 631 Dismissal of suit to contest alienation is *res judicata* in a subsequent suit by the same reversioner for possession after the death of the widow A I R 1921 Lah 187=4 Lah L J 442=59 Ind Cas 946

**Decision when not resjudicata**—Decision on assumed fact is not *res judicata* 113 Ind Cas 384=30 Bom L R 1089=A I R 1929 Bom 116 Where a particular question in dispute is expressly left open for a separate proceeding the question is not *res judicata* 96 Ind Cas 307 When appeal from decision in previous suit is pending before Privy Council the decision is not *res judicata* A I

R 1931 Lah 161 Issue raised and decided by --  
 A I R 1916 Cal 163=42 C L J 560=92 Ind  
 decides case on grounds other than those of tri  
 on issues decided by it, is not *res judicata* A I R 1916 Cal 179=90 Ind Cas  
 480, 86 Ind Cas 795 Where a point is expressly left undecided by the Court  
 in a suit it can be agitated in subsequent suit 88 Ind Cas 822=A I R 1921  
 All 770=48 A 34=23 A L J 930 Where there is no express adjudication on  
 a particular point there is no *res judicata* A I R 1924 Lah 469=6 Lah L J  
 45=80 Ind Cas 525 Where a finding is recorded only to avoid a possible remand  
 and is not the basis of the judgment the point is not *res judicata* 82 Ind Cas  
 485=47 M L J 532 In a suit for specific performance and possession, where  
 latter relief has not referred to in judgment and the decision on that relief was not  
 necessary the decision  
 42=86 Ind Cas 137—  
 and determined by law  
 relief is not *res judicata*  
 decided behind the back of the judgment debtor without notice to him cannot  
 operate as *res judicata* A I R 1930 All 669=1930 A L J 1400=128 Ind Cas  
 607 *Obiter dicta* not necessary for the decision of a suit cannot have the force of  
*res judicata* 14 L R 457 Rev Where plea of occupancy right was raised but  
 not decided, the decision is not *res judicata* A I R 1922 P C, 241=30 M L T  
 (P C) 279=48 I A 49=48 C 460=64 Ind. Cas 231

**Ex parte decrees**—*Ex parte* decrees in prior suits in which no issue was  
 raised as to the rate of rent and there was no decision with regard to rate do not  
 operate as *res judicata* on that point 65 Ind Cas 581 *Ex parte* decision in rent  
 suit involving questions of status and rate of rent operates as *res judicata* A I R  
 1930 Oudh 335=7 O W N 507=127 Ind Cas 241 *Ex parte* decree is *res judicata*  
 quite as much as decree passed on contest A I R 1919 All 761=127 Ind Cas  
 664, see also A I R 1929 All 761=122 Ind Cas 664, see also A I R 1919 All  
 346=119 Ind Cas 567, A I R 1926 Mad 1144=97 Ind Cas 601, A I R 1925  
 Mad 378=82 Ind Cas 990, A I R 1924 Oudh 419=11 O L J 448=79 Ind Cas  
 660, A I R 1923 Lah 560=5 L L J 163=74 Ind Cas 577 An *ex parte* decree  
 can operate as *res judicata* only on a necessary issue 2 Pat L W 108 But a decree  
 for foreclosure passed *ex parte* against a person joined as defendant on the only  
 ground that he possesses the mortgaged property does not bar defendant or his  
 transferee from setting up a title paramount in a subsequent suit, where there has  
 been the final decree orders delivery of  
 15 N L R 114 (F B)=32 Ind  
*ex parte* is void for fraud can not be  
 been dismissed unless based on  
 =2 Pat 833=5 P L T 666=2 Pat  
 rejection of application under order IX, r 13 does  
 not bar a suit to set aside decree as fraudulent and also of proving non service of  
 summons incidentally A I R 1914 Pat 241=1923 Pat 336=5 P L T 37=75  
 Ind Cas 343

Decision against absent defendant is as much *res judicata* as one on contest  
 A I R 1928 Cal 717=48 C L J 184=32 C W N 828=115 Ind Cas 588  
 An *ex parte* decree for rent does not more than affirm that a certain amount is  
 claimed and allowed There is no *res judicata* as to rate of rent especially when it  
 relates to a later year L R 9 A 345 Rev In a suit for rent *ex parte* judgment  
 of the Revenue establishes that the relationship of landlord and tenant does exist  
 between the present parties A I R 1927 All 55=49 A 658=25 A L J 467=101  
 Ind Cas 516 *Ex parte* decree is admissible in a subsequent rent suit to prove rate  
 of rent allowed but is not conclusive A I R 1916 Cal 767=91 Ind Cas 380  
 An *ex parte* decree for rent which was subsequently satisfied can operate as  
*res judicata* on the question of the relationship of landlord and tenant A I R  
 1926 Cal 114=87 Ind Cas 672 Subsequent suit to set aside  
 continued matters  
 Rule 13 which  
 summons was not  
 281=29 C W N  
 case lay a com  
 against the pl  
 decision. A I

**Decision must be a necessary one**—A finding not necessary to the relief granted by the decree cannot operate as *res judicata*. A I R 1924 Oudh 205=10 O L J 404=79 Ind Cas 666. An adverse finding against the defendants in whose favour a decree is passed is not *res judicata* but will lay onus on them of displacing the finding. A I R 1922 P C 241=48 C 460=30 M L T 279=48 I A 49=64 Ind Cas 231 (P C). So a finding cannot be conclusive against a party if the decree is not based upon it but is made in spite of it. A I R 1929 All 910=1929 A L J 1110=121 Ind Cas 102. However definite a finding may be, it will not operate as *res judicata* when it is not the basis of the decision. A finding in a suit will operate as *res judicata* in a subsequent suit against a party, when he has a right of appeal. 2 Pat L J 189=38 Ind Cas 211, 30 C W N 415=44 C L J 399, 53 Ind Cas 558, A I R 1927 Mad 613. But an unfavourable finding on a necessary point

cannot operate as *res judicata*, if decree is passed in spite of it, such a finding not being necessary for its decision. A I R 1926 Cal 672=43 C L J 116=94 Ind Cas 844. Favourable decree with adverse finding may amount to *res judicata* under certain circumstances to the extent of the finding itself. A I R 1924 Mad 626=46 M L J 515=34 M L T 175=84 Ind Cas 799. Adverse finding in a decree in favour of a party is not *res judicata*. A I R 1924 Mad 469=47 M 453=46 M L J 198=84 Ind Cas 622, A I R 1930 Cal 5=56 C 639=120 Ind Cas 710. Decision on an issue not necessary for final decision is not *res judicata*. 44 B 321=27 Bom L R 64=55 Ind Cas 322, 19 O C 69=3 O I J 677=36 Ind Cas 643, 52 Ind Cas 258=25 M L T 66, 2 Lah L J 605. Where the finding on an issue is unnecessary but still it is embodied in the decree itself it operates as *res judicata*. 34 M L J 431=78 M L T 291=7 L W 482=45 Ind Cas 975. Finding not incorporated in the decree and not the basis of the decree cannot be held as finally decided and to operate as *res judicata*. 33 Ind Cas 620. Decisions arrived at in previous suit though dismissed operate as *res judicata*. A I R 1979 Cal 449=122 Ind Cas 547. Where the decree is in favour of a party an adverse finding the judgment is not *res judicata*. 3 Pat L J 178=44 Ind Cas 725.

**Compromise and consent decree**—This section does not apply in terms to consent decrees. A consent decree, however has to all intents and purposes the same effect as *res judicata* as it raises an estoppel as much as a decree passed in *invitum*. A I R 1930 Lah 487=12 Lah L J 157=126 Ind Cas 570, 43 C L J 116=A I R 1976 Cal 672=94 Ind Cas 844, A I R 1929 Mad 96=(1928) M W N 654, A I R 1925 Oudh 650=2 O W N 684=90 Ind Cas 408, A I R 1921 Pat 131=2 P L T 678=6 Pat L J 708=62 Ind Cas 4, 57 Ind Cas 621, 14 N L R 35=43 Ind Cas 962.

Compromise decree constitutes *res judicata*. A I R 1924 Mad 88=75 Ind Cas 336, see also A I R 1929 Oudh 63=5 O W N 1081=8 Luck 181=115 Ind Cas 294.

**Directly and substantially in issue**—When a matter directly and substantially in issue in a subsequent suit has been directly and substantially in issue in a previous suit and has been finally heard and decided between the same parties, the issue cannot be re-opened in a subsequent suit notwithstanding the fact that the previous suit could have been decided independently of the decision upon that issue. A I R 1927 Oudh 625=4 O W N 307=101 Ind Cas 527. A fact can not be in issue directly when the judgment can be correct whether the fact exists or not. A I R 1931 Cal 353=34 C W N 859=131 Ind Cas 562. In such cases *res judicata* by reason of a prior decision is not confined to the actual decision or finding in the case but extends to the common basis or facts accepted by both parties which are incorporated and made the foundation of the judgment and decree in the case. 36 L W 414=A I R 1932 Mad 519=139 Ind Cas 761=A I R 1932 M 1466. The rule of *res judicata* is inapplicable to matters in respect of which no controversy was raised and no express decision arrived at. 137 Ind Cas 606=A I R 1932 Oudh 199=9 O W N 488=A I R 1932 Oudh 507 (F B). A judgment is conclusive only in respect of the matter necessarily consistent with it. 34 C W N 839=A I R 1931 Cal 353=131 Ind Cas 562. So a judgment is not conclusive on matters brought incidentally during trial. *Ibid*. The rule that a judgment or decree is not conclusive of anything not required to support it is an unyielding restriction of the power of parties and of the Courts. A I R 1931 Cal 353=34



C W N 839=131 Ind Cas 562, 58 C L J 196 Decision on issue in previous suit not necessary for decree, does not bar the issue in subsequent suit A I R 1930 Oudh 124=4 Luck 404=6 O W N 1320=122 Ind Cas 610, 34 P L R 115=A I R 1933 Lah 412=142 Ind Cas 606, A I R 1933 Lah 404, A I R 1930 Lah 149=30 P L R 744=120 Ind Cas 795 Decision of a collateral issue in the previous suit necessary for the purposes of that case operates as *res judicata* 1930 A L J 1309=130 Ind Cas 194 Although a finding upon an issue which is immaterial and unnecessary may not have the force of *res judicata* yet where the parties go to trial evidence is given and the court at their invitation decides the point raised, a finding on one of the issues is conclusive between the parties in spite of the fact that it is only one of the several grounds on which the judgment was based and in no other way the decree would have been the same 129 Ind Cas 310, see also 126 Ind Cas 190 A judgment operates as *res judicata* to sustain the judgment A I R 1930 Pat 71=10 P L T 630=120 Ind Cas 292 A useful test for considering whether a finding is *res judicata* is to see whether an appeal would lie against the finding A I R 1930 Pat 71=10 P L T 630=120 Ind Cas 292

Suit dismissed on the ground that there is no cause of action is not a bar under the principles of *res judicata* A I R 1929 All 844=(1929) All 919=118 Ind Cas 711 A stray remark not incorporated in operative portion of award cannot supersede previous decree A I R 1929 All 521=1929 A L J 540=117 Ind Cas 361 If in a previous suit brought by a person claiming to be next reversioner on the ground of an illegal relationship it is held that he and the deceased and on that finding the person was not declared as invalid against the reversioner on inheritance opening by death of last female owner 1930 Pat 71=10 P L T 630=120 Ind Cas 292 A matter arising in a previous redemption suit which was dismissed for failure to pay decretal amount, and decided in that suit cannot be re-opened in a subsequent redemption suit A I R 1929 All 409=(1929) A L J 761=(1929) All 1053=119 Ind Cas 525 Decision on a point not directly and substantially in issue cannot operate as *res judicata* in subsequent suit A I R 1928 Nag 169=113 Ind Cas 225 A finding against a defendant who has joined only as a *pro forma* party and against whom no relief was claimed cannot operate as *res judicata* A I R 1928 Lah 493=10 Lah L J 237=11 Ind Cas 394 Issues raised by parties even improperly and admitted by the Court as relevant and argued by both parties and decided is *res judicata* A I R 1927 All 803=10 Ind Cas 28 Section 11 though not exhaustive is binding as far as it goes and according to that section there is no bar of the *res judicata* unless there is a final decision A I R 1927 Lah 804=102 Ind Cas 22

as to the same person though one and the same person

310 Where in a suit for the determination of a person's share in issue for the purpose of determining his share in the rent, the decision on the issue operates as *res judicata* A I R 1925 Cal 1004=8, Ind Cas 804 A previous decree in a rent suit without the judgment cannot amount to more than a strong piece of evidence regarding the amount of rent realized from year to year A I R 1925 Cal 1116=8, Ind Cas 770 So far as the rents of the years which were in contest in the previous suit were concerned, the decision no doubt is an absolute bar for the rents of those years But so far as the rents or rates of rent of subsequent years are concerned that is not the case Pat 213=77 Ind Cas 213=77 Ind Cas to the previous suit, previous litigation which dispute was covered by her A I R 1924 Cal

128=38 C L J 291=76 Ind Cas 917 The decision in a previous rent suit that rent was payable as *Bhault* rent does not operate as *res judicata* in a suit for the rent of the subsequent years at the cash rent system A I R 1924 Pat 371=1 Pat L R 109=72 Ind Cas 138

In order to see what was in issue in a suit, or what has been heard or decided, the judgment must be looked at 37 Ind Cas 674=14 A L J 1171 An incidental determination of an issue of title in a suit for rent is no bar to any issue of the title being raised subsequently 34 Ind Cas 123 A decision as to rate of rent in previous suit is *res judicata* as to rate of rent in subsequent suit between the same parties for the same land for the same period 41 Ind Cas 584 Though a finding may be unnecessary to sustain the ultimate decision of the case still if it is embodied in the decree it will operate as *res judicata* 33 M L J 740 An *ex parte* decree in a rent suit decreeing the claim as prayed for, does not operate as *res judicata* as regards the rate of annual rent unless there was a prayer in the plaint for a declaration as to the rate of rent as part of the substantive relief claimed 45 Ind Cas 416

Where some of the co-shieldants of a deity filed a suit against other shieldants for a scheme for the better management of the debutter properties of the deity, and one of the defendants denied the debutter character of the properties, it was held, that the decision on the question of debutter was only incidental to the suit, and did not amount to *res judicata* A I R 1915 Cal 996=41 C L J 396=88 Ind Cas 616 Where a prior suit for share of profits was decreed and no question of right to partition was raised or decided in a subsequent suit the question of partition was not *res judicata* A I R 1925 P C 184=21 N L R 117=57 C 971=30 C W N 122=50 M L J 136=23 A L J 667=52 I A 294

**Explanation IV**—Where a matter which ought to have been made a ground of defence in the previous suit was not made it must be presumed that the matter was constructively in issue in that case and as such is *res judicata* in the subsequent suit 11 Lah L J 97 117 Ind Cas 805 Where a question has been necessarily decided in effect though not in express terms between the parties to a suit they cannot raise the same question as between themselves in any other suit in any other form 24 C W N 723=54 Ind Cas 952 Point ought to have been raised in previous suit is *res judicata* A I R 1927 Mad 120=24 L W 812=99 Ind Cas 525 A ground of attack which must have been but was not referred to in plaint cannot be the basis of another suit A I R 1925 P C 55=48 M L J 64=57 I A 100=17 A 158=27 O C 334=77 Bom L R 725=29 C W N 749=23 A L J 739=91 Ind Cas 280, A I R 1913 Lab 560=5 Lah L J 163=74 Ind Cas 577 Explanation IV, cannot be given effect to bar a suit, unless all the requisite conditions laid down in the body of the section are also fulfilled A I R 1930 Mad 764=127 Ind Cas 139 Whether a particular matter

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Cas 929

**Question of law**—A decision on a point of law will not operate as *res judicata* only if the matter in issue in the two suits is not the same or if the parties are not litigating under the same title, that is when the requirements of s 11 have not all been satisfied 138 Ind Cas 161=A I R 1932 Nag 90=15 N L J 1 The rule that an erroneous decision on a question of law is not *res judicata* is subject to the important qualification that the decision on the question in the subsequent suit should not in any way affect the operation of the former decree or take away any rights acquired by the parties thereunder Though the former decision may be deemed to have been based on a wrong view of law the decision arrived at in the decree given can in no way be affected by giving a different finding in a subsequent suit on the same question 36 L W 664=140 Ind Cas 326=1932 M W N 1274=1 R 1932 Mad 854 Decis on based on erroneous view of law does not operate as *res judicata* in subsequent proceedings for different relief A I R 1930 Lah 907=12 Lah 52=129 Ind Cas 12 In other cases, an erroneous decision on a point of law operates as *res judicata* in the same manner as correct decisions on a question either of law or of fact A I R 1930 Pat 585=9 Pat 674=178 Ind Cas 337, A I R 1930 Bom 135=53 B 676=31 Bom L R 778=122 Ind Cas 113, 56 C 723=45 C L J 327=33 C W N 176, 32 C W N 82=48 C L J 184=A I R 1928 Cal 717=

115 Ind Cas 588, 48 C L J 590=A I R 1929 Cal 156=115 Ind Cas 269, 49 A 543=25 A L J 564=A I R 1927 All 297=100 Ind Cas 601, A I R 1927 All 206, A I R 1926 Bom 481=28 Bom L R 879

**Competent Court**—Previous decrees passed without jurisdiction being invalid altogether can not be pleaded as *res judicata* A I R 1930 All 681=52 A 568=130 Ind Cas 801, A I R 1929 Lah 781=117 Ind Cas 83 Competency refers to jurisdiction of Court at the time A I R 1928 Lah 928=30 P L R 620=10 Lah 528=113 Ind Cas 90, 108 Ind Cas 623, 107 Ind Cas 149, 28 Bom L R 879=1926 Bom 481=98 Ind Cas 341 The amount as well as the nature of the suit must be taken into consideration in deciding whether a subsequent suit is barred under s 11 A I R 1926 Mad 829=23 L W 653=51 M L J 630=9, Ind Cas 968 Where a judgment has been delivered by a court of incompetent jurisdiction that is to say by a court which had no jurisdiction to hear the case, the judgment cannot be pleaded as *res judicata* A I R 1926 All 650=95 Ind Cas 406, A I R 1926 Cal 603=91 Ind Cas 1026, A I R 1925 Mad 1270=49 M L J 430=22 L W 178=91 Ind Cas 497, 73 Ind Cas 874=5 Lah L J 494=A I R 1923 Lah 141 Civil Court will not disturb a decree passed by competent Revenue Court of exclusive jurisdiction A I R 1923 All 437=L R 5 A 144=72 Ind Cas 276 Court trying former suit must have had jurisdiction to try later suit and not merely the issue 29 C. L J 237=51 Ind Cas 127

**Execution proceedings**—The principle of constructive *res judicata* applies to orders in execution A I R 1928 Mad 746=28 L W 895=114 Ind Cas 545, see also A I R 1930 Oudh 305=7 O W N 363=123 Ind Cas 881, 121 Ind Cas 702=A I R 1930 All 628 47 A 86=22 A L J 928=80 Ind Cas 722, 24 Bom L R 1291=A I R 1923 Bom 36=76 Ind Cas 148, A I R 1924 Pat 265=2 Pat 771=5 P L T 7=74 Ind Cas 781 A decision in the course of execution proceedings is final between the parties, though as to the some of the parties it was based on agreement and as to others on an adjudication 47 C 446=30 C L J 496=24 C W N 269=55 Ind Cas 189 Where a decision of the Executing Court is that no property of the judgment debtor can be attached, that decision is final 4 Pat L W 279=44 Ind Cas 654 A judgment debtor is barred by *res judicata* from contending in the course of execution proceeding that a particular person is not his legal representative of a deceased plaintiff while at his instance the particular decree passed 45 Ind Cas 657

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operates as *res judicata* Ind Cas 562

**Parties and their representatives**—The whole policy of the code is that if the proceeding originally instituted is right and proper any decision obtained therein is binding on all persons on whom the interest or right may devolve pending the disposal of the proceedings A I R 1928 Mad 246=1927 M W N 743=108 Ind Cas 401 A party is privy to decree and is bound by it irrespective of notice 53 Ind Cas 143 But a judgment not *inter partes* does not operate as *res judicata* in subsequent suit A I R 1921 Mad 246=41 M L J 223=44 M 778=67 Ind Cas 971 Where the very question raised in the suit was raised in a previous suit, and a decision was given therein, the same operates as *res judicata* M L J 443=A I R 1923 Mad 111

tries to a suit but omitted in formal A I R 1930 P C 22=58 M L J 111 n L R 505=121 Ind Cas 200 (P C)



115 Ind Cas 588, 48 C L J 590=A I R 1929 Cal 156=115 Ind Cas 269; 49 A 543=25 A L J 564=A I R 1927 All 297=100 Ind Cas 601, A I R 1927 All 206, A I R 1926 Bom 481=28 Bom L R 879

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**Parties and their representatives**—The whole policy of the code is that if the proceeding originally instituted is right and proper any decision obtained therein is binding on all persons on whom the interest or right may devolve pending the disposal of the proceedings A I R 1928 Mad 246=1927 M W N 743=108 Ind Cas 401 A party is privy to decree and is bound by it irrespective of notice 53 Ind Cas 143 But a judgment not *inter partes* does not operate as *res judicata* in subsequent suit A I R 1921 Mad 246=41 M L J 223=44 M 778=67 Ind 1 in a previous suit as given therein, A I R 1923 Mad 1 omitted in formal C 22=58 M L J Ind Cas 200 (P C) ee to be in their A I R und that f

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judication 47 C 446=30 C L J decision of the Executing Court attached, that decision is final debtor is barred by *res judicata* holding that a particular person is not able at his instance the particular decree passed 45 Ind Cas 657

Objection to application for execution proceedings once dismissed operates as *res judicata* order passed in execution P C 341=31 M L T Cas 882 Decree holder's application for execution is barred by amendment but his objection was overruled The decision operates as *res judicata* A I R 1926 Cal 1019=53 C 582=43 C L J 596=96 Ind Cas 562

of the code is that any decision obtained may devolve pending M W N 743=108 Ind Cas 401 A party is privy to decree and is bound by it irrespective of notice served as *res judicata* 44 M 778=67 Ind in a previous suit was given therein, 519=72 Ind Cas 552 Persons, who were parties to a suit, but omitted in formal judgment, are bound by it 3 M L J. 100 (P. C) decree is binding in their

1018 Mad 1102=117 Ind Cas 128 A suit which was dismissed on the ground that it was barred by *res judicata* in favour of the plaintiff, the plaintiff, who had sold the property, mortgagee is not bound by the decision A I R 1931 Pat 64=

115 Ind Cas 588, 48 C L J 590=A I R 1929 Cal 156=115 Ind Cas 269; 49 A 543=25 A L J 564=A I R 1927 All 297=100 Ind Cas 601, A I R 1927 All 206, A I R 1926 Bom 481=28 Bom L R 879

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Ind Cas 562

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The principle of constructive *res judicata* applies to all decrees. 48 Mad 746=28 L W 895=114 Ind Cas 545, see O W N 363=123 Ind Cas 881, 121 Ind Cas 86=22 A L J 928=80 Ind Cas 722, 24 Bom 36=76 Ind Cas 148, A I R 1924 Pat 265=2 Pat 771=5 P L T 7=74 Ind Cas 781 A decision in the course of execution proceedings is final between the parties, though as to some of the parties it was based on agreement and as to others on an adjudication 47 C 446=30 C L J 496=24 C W N 269=55 Ind Cas 180 Where a decision of the Executing Court is that no property of the judgment debtor can be attached, that decision is final 4 Pat L W 279=44 Ind Cas 654 A judgment debtor is barred by *res judicata* from instituting a fresh suit against a particular person is not instance the particular person is not the same person as the one who issued the decree 45 Ind Cas 657 The decree holder operates as *res judicata* in execution proceedings. P C 341=31 M L T 1882 Decree holder is not bound to execute the decree but his objection is not a bar to the execution of the decree. The decision is final. 2=43 C L J 596=96 Ind Cas 562

The code is that a decision obtained in execution proceedings devolve pending the execution of the decree. I W N 743=108 Ind Cas 108 A decision in execution proceedings is not a bar to the execution of the decree. A I R 1923 Mad 171=51 C L J 142=34 C W N 201=32 Bom L R 505=121 Ind Cas 200 (P. C.) A decision in execution proceedings is not a bar to the execution of the decree. In their

115 Ind Cas 588, 48 C L J. 590=A I R 1929 Cal 156=115 Ind Cas 269; 49 A 543=25 A L J 564=A I R 1927 All 297=100 Ind Cas 601, A I R 1927 All 206, A I R 1926 Bom 481=28 Bom. L R 879

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**Parties and their representatives**—The whole policy of the code is that if the proceeding originally instituted is right and proper any decision obtained therein is binding on all persons on whom the interest or right may devolve pending the disposal of the proceedings A I R 1928 Mad 246=1927 M W N 743=108 Ind Cas 401 A party is privy to decree and is bound by it irrespective of notice 53 Ind Cas 143 But a judgment not *inter partes* does not operate as *res judicata* in subsequent suit A I R 1921 Mad 246=41 M L J 223=44 M 778=67 Ind Cas 971 Where the very question raised in the suit was raised in a previous suit

115 Ind Cas 588, 48 C L J. 590=A I R 1929 Cal 156=115 Ind Cas 269; 49 A 543=25 A. L J 564=A I R 1927 All 297=100 Ind Cas 601, A. I R 1927 All 206, A I R 1926 Bom 481=28 Bom L R 879

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Execution proceedings—The orders in execution A I R 1928 Ma also A I R 1930 Oudh 305=7 O V 707=A I R 1930 All 628, 47 A 86—Ind Cas 148; A I R 1924 Pat 265=281 A decision in the course of execution though as to the some of the parties it was 47 C 446=30 C L J of the Executing Court that decision is final barred by *res judicata* particular person is not instance the particular issued 45 Ind Cas 657 missed operates as *res* passed in execution P C 341=31 M L T proceedings and not appeal 219=21 A L J 195=27 C W N 279 (P C)=73 Ind Cas 882 Decree holder applied for partial execution but subsequently applied for amendment for executing the whole decree The judgment debtor objected to the amendment but his objection was overruled No appeal was made by the judgment debtor The decision operates as *res judicata* A I R 1926 Cal 1019=53 C 582=43 C L J 596=96 Ind Cas 562

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519=72 Ind Cas 512 Persons, who were parties to a suit, but omitted in formal  
or by oversight are barred from suing again A I R 1930 P C 22=58 M. L. J.  
5=121 Ind Cas 200 (P C)  
an effective decree to be  
all representatives in their  
proceedings or not A I R.  
issued on the ground that  
res judicata in favour of  
L J 1100=121 Ind. Cas.  
102 Where in a suit against mortgagor relating to mortgaged property, mortgagee is  
not impleaded, the mortgagor is not bound by the decision A I R 1931 Pat. 64=

1929 Rang 183

A I R 1926  
 re auction  
 he is not  
 or and the  
 22=A I R

If in a litigation a decision, fair and square, is obtained against the adoptive mother, to the effect that she possessed no authority to adopt, that decision must be considered to be binding upon the adopted son by virtue of expl 6, s 11 A I R 1928 Oudh 155=1 Luck. 733=108 Ind Cas 817 Plaintiff sued the first defendant and purchasers through him for setting aside a sale in favour of first defendant. The sale deed was held valid as between first defendant and plaintiff and the suit was dismissed. In appeal plaintiff joined the subsequent purchasers as respondents but not the defendant No 1. It was held that the finding as to validity of sale deed was *res judicata* as between plaintiff and defendant No 1 and

A I R 1927 P C 232=32 C W N  
 54 M L J 88 (P C)=107 Ind Cas 237

to attach the property cannot operate as *res judicata* as against the judgment debtor in a suit brought by him against the claimant. A I R 1928 C 150=55 C 448=32 C W N 248=105 Ind Cas 647 Where a mortgagor dies and his property devolves upon an insolvent over whose estate a receiver has been appointed, a decree for foreclosure in favour of the mortgagee in a suit to which the receiver has not been made a party is not *res judicata* against him even though he has been heard on petitions and objections against the decree. 31 C W N 741=A I R 1927 I C 108=52 M L J 734=54 C 595 54 I

A previous decision  
*res judicata* in a sub-  
 Bom 270=29 Bom  
 added to a subsequent

in the previous suit is not *res judicata*. A I R 1927 Lah 259=100 Ind Cas 849 An execution purchaser is the representative of the judgment debtor so as to bring him within the rule of estoppel and the principle of *res judicata*. A I R 1926 Pat 478=1926 Pat 249=97 Ind Cas 205

A suit brought by widow in possession of the whole estate holding as widow's estate to challenge an alleged adoption is a representative suit and all persons having a common interest (namely the reversioners in the case) must be deemed to have been represented through her under s 11, Expl VI A I R 1925 All 79=46 A 637=22 A L J 690=87 Ind Cas 938 see also 73 Ind Cas 284=18 L W 491 Dismissal of suit by certain reversioners for setting aside alienation by sonless proprietor bar another suit for the same purpose by other reversioners who had been co defendants in previous suit. A I R 1925 Lah 89=5 Lah 421=84 Ind Cas 477 A lessee who claims under a title previously created by a lessor is not bound by subsequent finding between the lessor and third parties. A I R 1914 Mad 576=19 L W 369=34 M L T 160=(1924) M W N 378=83 Ind Cas 965 Decision against insolvent after insolvency is no bar as against Official Assignee who is not made a party. A I R 1924 Mad 689=20 L W 63=(1924) M W N 491=47 M 633=83 Ind Cas 960 In a proceeding by or against the *benamidar* the person beneficially entitled is fully affected by the rule of *res judicata*. A I R 1924 Lah 702=75 Ind Cas 1048 A decree passed against the widow as representing the estate in previous suit operates as *res judicata* against the reversioners in a  
 L T 129=70 Ind  
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721=47 Ind. Cas 315, 24 C W N 746 (P C) A decision in a suit by or against  
 a *benamidar* is *res judicata* against the real owner. 46 C 566=28 C W N 521=36  
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1929 Rang 183

130 Ind Cas 237, 91 Ind Cas 1015=A I R 1926  
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 execution of the mortgage decree though he is not  
 he in a sense represents the mortgagor and the  
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reversioner does not 558=63 Ind Cas 524. A lessor as such is not a person claiming under lessee within the meaning of M L J 288=63 Ind Cas 205 by adjudication against owner after 28 C L J 223=22 C W N ) A decision in a suit by or against 46 C 566=28 C W N 521=36

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Permanent lessee or mortgagee is not bound by adjudication against owner after creation of mortgage or lease unless party to suit. 28 C L J 223=22 C W N 721=47 Ind Cas 315, 24 C W N 746 (P C). A decision in a suit by or against a *benamidar* is *res judicata* against the real owner. 46 C 566=28 C W N 521=36 M L J 68 (P C).

**Representative suit**—Findings in a representative suit enure for the benefit of the entire family. They are *res judicata*. A I R 1929 All 775=122 Ind Cas. 673 Application of Expt VI, implies a community of interest claimed and the claim should be made in good faith. A I R 1925 Oudh 75=77 Ind Cas 1028, 75 Ind Cas 626=1 decree in a subsequent suit operates as *res judicata* in a subsequent suit. A decision against a managing member of the family in subsequent suit. 42 A 3. A decree fairly and properly obtained against husband's estate is in the absence of fraud or collusion binding on the reversionary

benefit of all persons. 6 M vate ghts 26= the all

A I R 1920 P C 56=43 M 550=47 I A 33=38 M L J 444=22 Bom L R 568=18 A L J 489=56 Ind Cas 163. A decision against a *karnavan* when he has litigated in good faith is binding on *farward*. A I R 1921 Mad 520=40 M L J 338=62 Ind Cas 598. Decision in a suit by some reversioners in the interest of the whole body is binding on the entire reversionary body. 7 O L J 342=23 O C 238=57 Ind Cas 541, see also 64 Ind Cas 980=40 C 45=33 C L J 421=25 C W 1 explanation VI to granted under W N 545=75 assed in a suit I R 1925 Mad persons before

the Court. A I R 1927 Mad 645=52 M L J 641=101 Ind Cas 58. Unless the cause title shows that the suit is brought in a representative capacity the suit cannot be treated as one brought in a representative capacity. A I R 1929 Mad 445=54 M L J 587=27 L W 769=109 Ind Cas 199. Order Ind Ca under 1070

the Court. A I R 1927 Mad 645=52 M L J 641=101 Ind Cas 58. Unless the cause title shows that the suit is brought in a representative capacity the suit cannot be treated as one brought in a representative capacity. A I R 1929 Mad 445=54 M L J 587=27 L W 769=109 Ind Cas 199.

**Minor**—Where it was not shown that a guardian *ad litem* acted in fraud of the minor's interests or that his or her interest was adverse to the minor, the minor is bound by the decree in the prior suit. 51 Ind Cas 74=25 M L T 154=9 L W R 1918, A I R 1925 Oudh 633=87 Ind Oudh 354=4 O W N 748=10, Ind appointment of a guardian *ad litem* and represented in the former suit, the decree *res judicata*. A I R 1928 All 447=26 A L J 777=114 Ind Cas 743.

**Resjudicata between co-defendants**—*Res judicata* as between parties arrayed on same side does not arise in the absence of active controversy between them and of the necessity for adjudication between them for granting relief to plaintiff. 80 Ind Cas 389=20 M L R 197, 79 Ind Cas 22=A I R 1974 Nag 168. A judgment can operate as *res judicata* between co-defendants whose interests are conflicting. 57 Ind Cas 594, 62 Ind Cas 665=A I R 1921 Lah 47=2 Lah 88=3 Lah L J 223=72 I L R 1921, 49 Ind Cas 369=8 L W 473, 35 C L J 173=64 Ind Cas 603, 67 Ind Cas 881=3 Lah L J, 295, 70 Ind Cas 769=31 M L T 370, 77 Ind Cas 862. Where there is no conflict between co-defendants and the point is not necessary for disposal of plaintiff's suit, the decision on the point is not *res judicata* between co-defendants. A I R 1974 Mad 711=34 M L T 147=47 M L J, 20=78 Ind Cas 1055, see also A I R 1974 Nag 142=78 Ind Cas 987. A I R 1974 Mad 604=46 M L J 258=34 M L R 1930=78 Ind Cas 921, 73 Ind Cas 912=47 B 534=25, Bom L R 268=A I R 1933 B 203. A I R 1972 A. 19=44 A 334=20 A L J 193=67 Ind Cas 523, 50 Ind Cas 802, 41 Ind Cas 460=2 I L W 108, A I R 1931 P C 114=33 C W N 661 P C, 88 Ind Cas 150=A I R 1925 All 446=47 A. 778=23 A L J 453, 31 C 997=84 Ind Cas 844, 46 A 220=22 A L J 91=7 Ind Cas 803, 40 B 210=17 Bom L R 141 5 n1 Cas. 9-9. A I R 1976 or fraudulently obtained is not 9=53 C L J 91=130 Ind Cas 369. and deciding a case between

co-defendants the court will try and decide that case, and the co-defendants will be bound. But if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other by any proceeding which may be necessary only to the decree the plaintiff obtains. Three conditions are necessary for the applicability of the rule of *res judicata* between co-defendants: (1) there must be a conflict of interest between the defendants concerned, (2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims, and (3) the question between the defendant must have been finally decided. *Per Fort Russell of Killoren* in 59 I A 247=10 Rang 322=36 C W N 7-6=34 Bom L R 1040=1932 A L J 735=63 M L J 64=1 I R 1932 P C 161=A L R 1932 P C 260 (P C), A I R 1933 Lah 274=34 P L R 313=14 Lah 31 A I R 1933 Pat 146, see also 59 C 636=35 C W N 1203=A I R 1932 Cal

that suit. The adjudication would not any less be an adjudication because its consequence was the dismissal of the suit than it would have been if its tenor had been the other way. 10 Rang 322=55 C L J 403=36 C W N 726=33 P L R 519=137 Ind Cas 28=34 Bom L R 1040=59 I A 247=A I R 1932 P C 161

**Resjudicata between co-plaintiffs**—The conditions which are necessary to give rise to the plea of *res judicata* between co-defendants are also necessary to bar a suit by *res judicata* between the co-plaintiffs. 11 B 216, 21 M 8 36 B 207 8 A L J 807, 38 Ind Cas 213, A I R 1933 Lah 569, 57 B 488=145 Ind Cas 262=35 Bom L R 418=A I R 1933 B 287, 90 Ind Cas 124=A I R 1925 Mad 645. Where there is no conflict of interest between co-plaintiffs the decision cannot be held binding as *res judicata* on their successors. A I R 1921 Pat 218=70 Ind Cas 232

**Litigating under same title**—The word litigating under the same title means that the demand should have been of the same quality in the second suit as in the first. 33 C W N 876=57 C 258=124 Ind Cas 161. When personnel of plaintiff in two suits are different. Lah 161, 117 I capacity or interest. It has nothing. A I R 1929 All 400=116 Ind Cas 738. Where relief claimed by plaintiffs in the

does not bar a second suit by the same person in representative capacity under's. 92 A I R 1922 Mad 43=16 L W 122=31 M L J 125=43 M L J 418=69 Ind Cas 15, 69 Ind Cas 528=A I R 1924 Lah 275, see also 24 C W N 690=47 C 866=58 Ind Cas 705, 31 C L J 165=55 Ind Cas 767

**12. [Ac v]** Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

**Notes**—A decree against a supposed legal representative does not bar a fresh suit on the same cause of action against the real one. A I R 1928 Pat 362=108 Ind Cas 558=9 Pat L T 807

**13 [S 14]** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—  
When foreign judgment not conclusive

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ,
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ,
- (e) where it has been obtained by fraud ,
- (f) where it sustains a claim founded on a breach of any law in force in British India.

**Scope**—This section applies to plaintiffs as well as defendants A I R 1928 Rang 319=6 Rang 552=116 Ind Cas 465, A I R 1928 Mad 327=51 M 720=54 M L J 479 Section 13 refers to cases where for one reason or another, the controversy raised in the action has not been the subject of direct adjudication by the Court 40 M 112=44 I A 6=32 M L J 35=15 A L J 92=19 Bom L R 206=21 C W N 358 P C

**Clause (a)**—Decision of a foreign Court under the authority of the state on a subject matter of *res* is conclusive A I R 1928 P C 83=47 C L J 263=30 Bom L R 753 (P C)=107 Ind Cas 352 Foreign judgment in connection with the land outside the jurisdiction of the Court are not binding on the British Indian Courts A I R 1929 Lah 627=119 Ind Cas 482 Foreign judgment passed without jurisdiction is not binding 144 Ind Cas 557=1933 M W. N 657=37 L. W 410 =A I R 1933 Mad 393=64 M L J 531

**Clause (b)**—Foreign judgment is not binding on the British Indian Courts if it was not decided on merits A I R 1928 Mad 146=121 Ind Cas 6

ex on Cas 425 =2. L v 640

**Ex parte** judgment of ment on merits A I R 1927 Mad 265=52 M L Mad 544=38 L W 232 filed his written statement but his solicitor reported no further instruction 11 L W. 609=57 Ind Cas 742, 17 A L J 501=50 Ind Cas 780 Judgment is a judgment on merit if evidence is taken although there is default A I R 1925 Mad 788=21 L W 330=86 Ind Cas 492 But decision against a party due to default on his part is not judgment given on merits of the case A I R 1927 All 510=25 A L J 887=105 Ind Cas. 186, see also 140 Ind Cas 82=A I R 1932 Lah 649=I R. 1932 Lah 689.

C reign Courts 1925 Mad 7 in favour of J submission 677=82 Ind Cas 425, A I R 1926 Mad 259=92 Ind Cas 491 Section 13 should be determined by the International Law and not by the law of the Country 39 M 733=3 L W 90=19 M L T 68=30 M L J 148=(1916) M W N 83=32 Ind Cas 597

**Clause (d)**—Proceedings against minor defendant without appointing guardian *ad litem* are opposed to natural justice A I R 1927 Lah 200=8 Lah 54=102 Ind Cas 523 Suits based on foreign judgments should not be dismissed although they are merely contrary to natural justice 13 P W R 1916=34 Ind Cas 255 Mistake of law in a foreign judgment does not vitiate it unless the procedure is opposed to natural justice 41 M 205=34 M L J 295=45 Ind Cas 703

**Clause (e)**—Vide A I R 1922 Lah 175

**Clause (f)**—Foreign judgment cannot be challenged even if opposed to Indian law 9 Bur L T 106=35 Ind Cas 741

jurisdic-  
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original

action or the propriety of the decision A I R 1924 All 101=46 A 119=21 A L J 890=79 Ind Cas 332

**Submission**—What is submission is a question of some nicety Submission need not be by some overt act in Court Part payment towards decree is an impor

person enters into a contract in a foreign country, does not lead to the inference that he agrees to be bound by the decisions of the Courts of that country 63 M L J 761=1932 M W N 1314=36 L W 756=140 Ind Cas 588

**14. [S 13 Exp VI].** The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record, but such presumption may be displaced by proving want of jurisdiction

**Notes**—In a suit on foreign judgment every presumption is made in favour of foreign judgment 24 M L T 244=49 Ind Cas 202 The jurisdiction of the court trying the previously insituted suit depends upon allegations made in a plaint 43 C 144=33 Ind Cas 288 A judgment of a foreign court obtained against a defendant cannot be enforced in British India where he at the time of the commencement of the suit was not a subject of, nor resident in the country in which the judgment was obtained A I R 1927 All 510=25 A L J 887=105 Ind Cas 186

#### PLACE OF SUING

**15. [S. 15]** Every suit shall be instituted in the Court of the lowest grade competent to try it

revised to ss 19 and 20 of the intended 7 A 230=A W N 1885 1 (F B) per Petheram C J This section is a rule of procedure and not of jurisdiction Ibid per Brodhurst and Mahmood J A subordinate Judge trying a Munsiff's Court suit does not act without jurisdiction, and his decree cannot be reversed on appeal on the ground of want of jurisdiction 7 A 230 (F B)=A W N 1885 1, see also 15 M 241 17 C 155

Even where two Courts have concurrent jurisdiction to try the same suit, in view of the imperative wording of s 15 C P Code every suit must be instituted in the

122 Ind Cas 187 *Prima facie* the plaintiff's claim determines the jurisdiction unless some other principles come into operation to prevent such a result A I R 1924 Cal 783=51 C 737=78 C W N 710=78 Ind Cas 747, see also A I R 1933 Pat 246=145 Ind Cas 294 The party should file his suit in the Court of lowest grade The higher Court can try a suit triable by the Court of lower grade A I R 1925 Rang 278=4 Bur L J 104=90 Ind. Cas 78 Date of presentation to the proper Court is the date of institution of the suit A I R. 19 8 Bom 421=52 Bom 548=30 Bom L R 970 The section is exhausted once the institution takes place in accordance with its provision 54 Ind Cas 655 The

- (a) where it has not been pronounced by a Court of competent jurisdiction,
- (b) where it has not been given on the merits of the case,
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable,
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice,
- (e) where it has been obtained by fraud,
- (f) where it sustains a claim founded on a breach of any law in force in British India

**Scope**—This section applies to plaintiffs as well as defendants. A I R 1928 Rang 319=6 Rang 552=116 Ind Cas 465, A I R 1928 Mad 327=51 M 720=54 M L J 479. Section 13 refers to cases where for one reason or another, the controversy raised in the action has not been the subject of direct adjudication by the Court. 40 M 112=44 I A 6=32 M L J 35=15 A L J 92=19 Bom L R 206=21 C W N 358 P C.

**Clause (a)**—Decision of a foreign Court subject matter of *res* is conclusive. A I R L R 753 (P C)=107 Ind Cas 352. land outside the jurisdiction of the Court. A I R 1929 Lah 627=119 Ind Cas 482. Foreign judgment passed without jurisdiction is not binding. 144 Ind Cas 557=1933 M W N 657=37 L W 410=A I R 1933 Mad 393=64 M L J 531.

**Clause (b)**—Foreign judgment is not binding on the British Indian Courts if it was not decided on merits. A I R 1930 Mad 146=123 Ind Cas 600. An *ex parte* decree of a foreign Court is not a decree on merits and as such not binding on the British Indian Courts. A I R 1930 Mad 149=57 M L J 459=123 Ind Cas 579, A I R 1928 Mad 133=26 L W 803=107 Ind Cas 810, 82 Ind Cas 425=47 M 877=47 M L J 356, but see 92 Ind Cas 491=A I R 1926 Mad 259=22 L W 820.

**Ex parte** judgment of foreign Court passed only on plaintiff's pleading is no judgment on merits. A I R 1928 Rang 319=6 Rang 552=116 Ind Cas 465, A I R 1927 Mad 265=52 M L J 240=50 M 261=100 Ind Cas 555. A I R 1933 587=105 Ind Cas 186. see also 140 Ind Cas 83=A I R 1932 Lah 649=L R 1932 Lah 689.

be determined by the International Law and not by the law of the Country. 39 M 713=31 W 90=19 M L T 68=30 M L J 148=(1916) M W N 83=32 Ind Cas 597.

**Clause (d)**—Proceedings against minor defendant without appointing guardian *ad litem* are opposed to natural justice. A I R 1917 Lah 200=8 Lah 54=102 Ind Cas 523. Suits based on foreign judgments should not be dismissed although they are merely contrary to natural justice. 13 P W R 1916=34 Ind Cas 255. Mistake of law in a foreign judgment does not vitiate it unless the procedure is opposed to natural justice. 41 M 205=34 M L J 295=45 Ind Cas 703.

**Clause (e)**—Vide A I R 1922 Lah 175.

**Clause (f)**—Foreign judgment cannot be challenged even if opposed to Indian law. 9 Bar I T 106=35 Ind Cas 741.

**Objection to jurisdiction when can be taken**—Objection as to jurisdiction of foreign Court can be raised even in execution proceeding A I R 1925 Cal 955=89 Ind Cas 747=41 C L J 503=30 C W N 785=98 Ind Cas 740, see also *inter alia* original 21 A L

J 890=79 Ind Cas 332

**Submission**—What is submission is a question of some nicety Submission of payment towards decree is an import inferred (1931) A L J 653 The effect of the Courts of a foreign country subject not resident in that country

761=1932 M W N 1314=36 L W 756=140 Ind Cas 588

**14 [S 13 Exp VI]** The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction

**Notes**—In a suit on foreign judgment every presumption is made in favour of foreign judgment 24 M L T 244=49 Ind Cas 202 The jurisdiction of the court trying the previously instituted suit depends upon allegations made in a plaint 43 C 144=33 Ind Cas 288 A judgment of a foreign court obtained against a defendant cannot be enforced in British India where he at the time of the commencement of the suit was not a subject of, nor resident in the country in which the judgment was obtained A I R. 1927 All 510=25 A L J 887=105 Ind Cas 186

#### PLACE OF SUING

**15 [S. 15]** Every suit shall be instituted in the Court of the lowest grade competent to try it

**Scope of the section**—This section is a proviso to ss 19 and 20 of the Bengal Civil Courts Act The word shall in this section is imperative on the suitor and not upon the Court for whose benefit it is intended 7 A 230=A W N 1885 1 (F B) per *Petheram C J* This section is a rule of procedure and not of jurisdiction *Ibid per Brodhurst and Mahmood J* A subordinate Judge trying a Munsiff's Court suit does not act without jurisdiction, and his decree cannot be set aside 30 (F B)=A W N

**same suit, in view of the fact that it should be instituted in the Court of the lowest grade competent to try it** S L R 264, but

122 Ind Cas 187 *Prima facie* the plaintiff's claim determines the jurisdiction unless some other principles come into operation to prevent such a result A I R 1924 Cal 783=51 C 737=28 C W N 710=78 Ind Cas 747, as 294 The party should file his suit in the Court in which the cause of action arose or in which the defendant resides or in which the subject-matter of the suit is situated Bur L J 104=90 Ind. Cas 728 Date of institution of the suit A I R 1928 Bom 421=52 Bom 548=30 Bom L R 970 The section is exhausted once the institution takes place in accordance with its provision 54 Ind Cas 655 The

value put

Cas 629

ministerially

direct a suit which might be tried by a Court of lower jurisdiction to be tried by a Court of higher jurisdiction. But a suit is barred by the provision of this section 110 Ind Cas. 293=A I R 1928 Lah 484

9 S L R. 164=32 Ind

proper Courts, he acts

5, in so far as he can

Suits to be instituted where subject matter situate 16 [S 16] Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits
- (b) for the partition of immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal local limits or carries

on business, or personally works for gain

**Explanation.**—In this section "property" means property situate in British India

**Scope of the section**—Non compliance with provisions of ss 16 to 20 is not fatal to jurisdiction of Court and does not render decree passed by Court of competent to execute it A I

sin of the case it has

son for holding that

M L J 448 A suit

ie plaintiffs and for

the administration of the estate left by the testator does not fall under s 16 A I R 1926 Lah. 456=94 Ind Cas 1046 Where the properties are situate in different jurisdictions these sections are no bar to parties bringing successive suits 32 Ind Cas 423=(1916) 1 M W N 146=3 L W 107 Section 16 applies only to suits determining rights in immoveable property A I R 1923 Mad 109=16 L W 785=43 M L J 615=72 Ind Cas 920 An agent of plaintiff's firm at Delhi obtained an order from the defendant who had a shop in Nasik District The parties had agreed that all claims should be settled at Delhi Further the goods were sent by rail from Delhi Held that both Courts had jurisdiction, that the Delhi Court had jurisdiction as the goods were made over to railway company in Delhi and that section 39, Sale of Goods Act would apply A I R 1934 Lahore 44=144 Ind Cas 828

of s 16 C P Code 1882 is

able property to Court within

and as a rule, Indian Courts

have no power to decide on rights and interests in immoveable property lying outside their local jurisdiction 23 B 22 A suit for rent can be brought where property is situate or where the tenant resides But a suit for ejectment can be brought only where property is situate A I R 1923 Cal 619=27 C W N 542

Ind Cas 253 Suit for administration of the estate of the deceased is cognizable

if the immoveable property is

Ind Cas 691 Ss 16 and 17

latter must be situate wholly



or in part within the jurisdiction of the Court A I R 1926 Lr 506=27 P L R 398-96 Ind Cas 691 Courts in British India cannot entertain a suit with respect to property outside its jurisdiction A I R 1928 Nag 295=24 N L R 95=111  
 1 land is a suit for  
 456 A suit for setting  
 10wment Act that a  
 is situate A I R  
 1928 Mad 1272=78 L W 535=55 M L J, 605=116 Ind Cas 561 A suit for  
 declaring that a will set up is a forgery and for its cancellation can be instituted  
 under s 20 (c) in a Court having jurisdiction over any part of the properties dealt  
 with by the will A I R 1923 Mad 109=43 M L J 615=(1922) M W N 834  
 =16 L W 785=72 Ind Cas 920

Clause (b)—Where the property in respect of which a partition suit is filed,  
 consists of both moveable and immoveables the immoveable property being outside  
 verble within jurisdiction, the Court may  
 concerned but must decline jurisdiction  
 -5 S L R 275=A I R 1931 Sind 50=  
 131 Ind Cas 186

Clause (c)—This section does not apply to a suit for declaration, that a  
 mortgage decree in respect of properties at Patna passed by the Court at Benares is  
 in operation against the plaintiff A I R 1924 Pat 831=75 Ind Cas 469

lude  
 A  
 Cou

67-40 B 337=32 Ind Cas 985 A suit for specific performance is not a suit for  
 land or for the determination of any right to or interest in immoveable property  
 9 Bur L T 119=56 Ind Cas 431 A suit to enforce a charge created of the land  
 can be instituted in the Court where the land is situated 29 M L J 639=42 M  
 795=2 L W 1046=18 M L T 464=31 Ind Cas 255 A suit on a promissory  
 note and also for declaration that the decretal amount is a charge on a certain  
 property mortgaged as security for payment of the amount on promissory note falls  
 96 Ind Cas 752 A suit for accounts  
 of an interest in immoveable property  
 merely be cause the accounts relate to a

factory 32 P L R 464

Clause (f)—Court in whose jurisdiction moveable property is kept has jurisdic-  
 tion to try suit relating to moveable property A I R 1934 All 226=1934 A L J  
 234=147 Ind Cas 441

of immoveable property situate without  
 t can entertain a suit in respect of it when  
 rough the defendant's obedience (1885)  
 tnership can be instituted in the Court  
 or the cause of action arises 17 A L J

567=52 Ind Cas 146 A suit that the defendant should execute and register a  
 deed of surrender of the occupancy holding or should pay back to the plaintiffs  
 the consideration of his promise is triable in a Court within whose jurisdiction  
 the defendant resides A I R 1926 Nag 313=93 Ind Cas 103 When business  
 is carried on in two places Court in both places can entertain a suit for dissolu-  
 tion of partnership A I R 1926 Mad 427=50 M L J 298=23 L W 361 'Defen-  
 dant means all the defendants A I R 1924 Cal 443=73 Ind Cas 405 A  
 suit for mesne profits of land situate outside British India can be instituted in  
 British India if the decree can be executed by the personal obedience of the defen-  
 dant A I R, 1922 Bom 188=46 B 108=23 Bom L R 903=68 Ind Cas 510 In  
 administration suit, where property is partly outside jurisdiction the Court cannot  
 order delivery of such property to administrator but can order person in possession  
 to account for the portion as condition to his obtaining his share, if any, in the  
 estate A I R 1921 L B 82=11 L B R 188=66 Ind Cas 530 A British Indian  
 Court will not adjudicate on questions relating to the title to or the right to the  
 possession of, immoveable property out of British India But the Code does not  
 forbid the institution of a suit for mesne profits of immoveable property outside  
 British India where the decree of the Court can be effectively enforced by the  
 personal obedience of the defendant within the jurisdiction A I R 1923 Nag  
 56=10 N L J 232=23 N L R 170=106 Ind Cas 7

**17. [S. 19]** Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court

**Scope**—Under this section, the plaintiff's right is absolute to institute his suit in any of the districts in which his property is situate, without getting the sanction of a Superior Court to P R 1891, see also A W N 1894, 4 'Courts' means courts to which C P Code applies 51 Ind Cas 185=A I R 1919 P C 150 Suits for price of goods sold lie at the place where part of cause of action arose. A I R 1924 Mad 789=46 M L J 371=19 L W 499=34 M L T 116=(1924) M W N. 336=84 Ind Cas 691 Suit for price of goods sold lies at the place where it was agreed to be paid A I R 1922 Lah 36=3 Lah L J 499=69 Ind Cas 424 The words a suit to obtain relief respecting immoveable property" covers suits for foreclosure, sale or redemption but the words in s 17 within the jurisdiction of the different Courts' must mean within the jurisdiction of different Courts to which the Code applies British Indian Courts have no jurisdiction to try a suit on mortgage so far as it relates to property situate outside British India A I R 1930 P C 185=59 M L J 379=57 I A 194=34 C W N 854 (P C)=126 Ind Cas 417 A Court having jurisdiction to try the question as to who the successor of the *wakf* is has jurisdiction also to decide as to the *mutualship* of the *wakf* property A I R 1928 Oudh 67=109 Ind Cas 835 Jurisdiction once portion of the property which gave plaintiff unless its inclusion was not 103=124 Ind Cas 703 There is of the trust property elsewhere than situate such justification cannot be

found in s 17 59 I A 268=7 Luck Ind Cas 539=56 C L J 36=36 C 336=A I R 1932 P C 172=A in British India have no jurisdiction and the assumption of jurisdiction by a British Indian Court over such property may be justified by virtue of the provision of s 17 of the Code even if a part of the property in suit be situated in British India A I R 1931 Rang 2,2=9 Rang 480 (F B), see also 42 M 813 (P C) Immoveable property in a suit which confine distinct causes of action against different defendants if situate within jurisdiction of different Courts suit may be instituted under s 17 37 M L W 681 Where mortgaged property is situate in Native State, a Sub Judge cannot order sale even if mortgage is valid, because the code cannot apply to such sales 142 Ind Cas 130=57 B 234=34 Bom L R 1384=A I R 1932 Bom 642 691=137 M L J - Courts sh India,

**18. [S. 16A.] (r)** Where it is alleged to be uncertain within the local

limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to

the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

**Scope**—In a suit by the proprietors for a declaration that certain land awarded by the Settlement authority should be included in their village, and the suit was filed, not being certain whether the suit was determined the question before the Court possessed jurisdiction. The Divisional Judge was wrong in setting aside the decree passed by the Munsiff for want of jurisdiction, ignoring the provision of this section 25 P L R. 1901=1 P R 1901

19. [S. 18] Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

#### Illustrations

(a) A, residing in Delhi beats B in Calcutta B may sue A either in Calcutta or in Delhi

(b) A residing in Delhi, publishes in Calcutta statements defamatory of B B may sue A either in Calcutta or in Delhi

**Scope**—Persons may be sued at the place where he carries on business though the cause of action arose at a different place A I R 1926 P C 88=1926 M W N 592=31 C W N 174 P C ) In this section the term business means commercial business A I R 1927 Mad 689=50 M 449=53 M L J 355=39 M L R 301= cause of action arises must contract, 65 Ind Cas 65= wrongful seizure of two cargo by order of a Magistrate of a question to be decided was

whether on the allegations in the plaint the wrong was done in Rangoon so as to bring the suit within the jurisdiction of the Chief Court Held that the seizure of the boats having been made at Rangoon, it was the place, where the 'wrong was done' within the meaning of this section and the Chief Court of Rangoon, consequently was competent to entertain the suit 3 L B R 164 Where the plaintiff has the option to file suit at two places, institution of suit at one of such places does not affect the question of jurisdiction or plaintiff's *bona fide* A I R 1933 Lah 264

20 [S 17] Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution, or
- (c) the cause of action wholly or in part, arises,

**Explanation 1**—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside

at both places in respect of any cause of action arising at the place where he has such temporary residence.

**Explanation II**—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any case of action arising at any place where it has also a subordinate office, at such place

### Illustrations

(1) A is a tradesman in Calcutta B carries on business in Delhi B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company A delivers the goods accordingly in Calcutta A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business

(b) A resides at Simla, B at Calcutta and C at Delhi A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A A also sues C of these C cannot proceed without the leave of the Court

**Scope of the Section**—*Prima facie* the question of jurisdiction must be decided on the averments contained in the plaint 114 Ind Cas 507=A I R 1929 Oudh 91=4 Luck 347 British Indian Courts cannot pass a partition decree with regard to the moveable property with a defendant living out of British India A I R 1928 Nag 295=24 N L R 95=111 Ind Cas 135

**Actually or voluntarily resides**—The words 'actually and voluntarily resides' refer only to natural persons and not to legal entities such as Limited Companies and Government A I R 1930 Lah 818=126 Ind Cas 514 A person is deemed to reside at the place where he actually and voluntarily resides and carries on business; he cannot be said to reside at a place where he has the family home and which he only occasionally visits 2 Bom L R 604, see also 34 P L R 658=A I R, 1933 Lah 851 But a defendant who has a permanent dwelling at one place and a temporary residence at another and where cause of action arose at the place of his temporary residence, he can be sued at both places 143 Ind Cas 357=34 P L R 908=A I R 1933 Lah 120 The Court within whose jurisdiction plaintiff ordinarily resides has jurisdiction to try a suit to set aside an *ex parte* fraudulent decree obtained against plaintiff in another suit by a husband against his wife on arises from the wife's tort within whose local jurisdiction suit 54 Ind Cas 120 actually residing outside the

jurisdiction, was within the jurisdiction does not give jurisdiction A I R 1921 All 193=19 A L J 822=64 Ind Cas 688 Suit instituted in Court within whose jurisdiction defendant has permanent residence is properly instituted though he resides for business elsewhere A I R 1930 Cal 347=57 C 65=125 Ind Cas 320, see also 12 Bur L T 120=54 Ind Cas 65

**Carries on business**—The meaning of the term 'business' is commercial business and not the business of Government A I R 1930 Lah 818=126 Ind Cas 514 The test of carrying on business is not the continuity or intermittency of the business but the fact of owning interest in the business and receiving profits The expression 'carrying on business' is used as distinct from personally working It does not necessarily involve personal presence or personal effort It only means having an interest in a business at that place a voice in what is done, a share in the gain or loss and some control if not over the actual method of working, at any rate upon the existence of the business 28 N L R 118=A I R 1932 Nag 114=140 Ind Cas 63, see also 19 A L J 696=3 U P L R 18=65 Ind Cas 91 A person can be sued at a place where he carries on business through an agent 5 Bom L R 494 Where a partnership was entered into to carry on business at a certain place a suit for its dissolution can be brought only at the place of business and not at any other place where capital for the concern might have been subscribed 42 P R 1916=98 P W R, 1916=33 Ind Cas 953 It is doubtful whether the mere letting of house property through an agent can be said to be carrying on business

A. I R 1922 Lah 164=66 Ind Cas 865 The term residence is naturally a flexible one, but in the case of trader, carrying on business it is manifestly the place where they have a living and do their daily work A I R. 1924 All 669=22 A L J 457=79 Ind. Cas 566

**Leave of the Court**—Clause (b) provides that a suit may be instituted within the local limits of whose jurisdiction each of the defendants where there are more than one, at the time of the commencement of the suit actually carries on business, and secondly in the alternative, within the limits of whose jurisdiction any of the defendant at the time of the commencement of the suit, carries on business, provided that in such a case either the leave of the Court is given or a defendant who does not carry on business acquiesces in the suit being brought A I R 1922 All 397=19 A L J 696=65 Ind Cas 93 Where leave granted without notice under s 20 (b), Court can hear objection under s 151 and pass necessary orders A I R 1933 Lah 266 An application under this section can be made after the decision of the preliminary issue regarding jurisdiction 145 Ind. Cas 706=27 S L R 230=A I R 1933 Sind 179 Discretion used under this sub-section should not be lightly treated by the appellate court A I R 1933 Sind 179=145 Ind Cas 706 Leave to sue may be granted without previous notice to the defendant 11 L B R 26=64 Ind Cas 794

**Acquiesce** for stay of proceedings is acquiescence . Where some defendants lived outside Court the suit cannot go on unless outside defendants acquiesced A I R 1922 Bom 152=46 Bom 229=23 Bom L R 1086=64 Ind Cas 919

**Cause of action**—Cause of action includes every fact necessary to be proved in order to enable plaintiff to sustain his action *Bona fide* voluntary assignment affords cause of action A I R 1933 Sind 179=145 Ind Cas 706=27 S L R 230, *Reed v Brown* (1889) 2 Q B D 178 see also 57 B 306=143 Ind Cas 335=35 Bom L R 168=A I R 1933 Bom 179, A I R 1921 Mad 664=14 L W 311=70 Ind Cas 284 65 Ind Cas 452=A I R 1922 Oudh 109, 39 A 506=41 Ind Cas 233, 34 P L R 771=A I R 1933 Lah 940, A I R 1934 Cal 175 Cause of and so no cause of action can be founded edings A I R 1929 Cal 830=50 C L J aggravation of damage caused by a tort of the defendants does not furnish a cause of action A I R 1930 Pat 528=11 P L T 384=122 Ind Cas 153 The term cause of action means the cause of action as it was at the time when the right to sue arose for the first time 51 M L J 316=5 L W 246=37 Ind Cas 681 The cause of action has no relation to the defence set up or to the character of the relief prayed for in the plaint but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour 46 Ind Cas 913 Cause of action means all facts which plaintiff must prove for his relief A I R 1934 All 226

**Cause of action in suits on contracts**—The words 'cause of action' are not limited as to mean the whole cause of action but include any material fact of it, not necessarily all the facts constituting the right to sue 25 A 48=A W N 1902, 79 Where a plaintiff sues the drawer acceptor and subsequent endorers of a *hundi* the cause of action arises out of the original contract *in eundi*, in the place where it was made and payable though the *hundi* might have been endorsed to him by some nanting a but was impliedly payable at the place where the plaintiff worked and resided 2 Bom L R 514 A place of suing is the place where the contract is to be performed 7 C W N 912, 306= Cas of the t the reach occurred 26 S L R 167=139 Ind Cas 114=A I R 1932 Sind 9=A L R 1932 Sind 248 The cause of action for a contract may arise wholly within jurisdiction, though in proving the terms of the contract it may be necessary to give evidence of some facts occurring outside the jurisdiction 56 B 324=34 Bom L R 236=137 Ind Cas 381=A I R 1932 Bom 291=A L R 1932 Bom 498 Where it can not

be said to  
ular plac  
pay him,

32 P L R 737 Where actual contract for despatch of goods was entered in Native State, but first item of performance namely the entrusting of the goods by the con- British Territory the British Court was 930) M W N 816=130 Ind Cas 658  
tract is part of the cause of action 126  
e also A I R 1930 Nag 30=12 N L J  
A I R 1928

the  
defe

An action for  
Delhi to the  
railway, as  
livery to the

Ind Cas 751

brought at the

A I R 1925

Nag 408=89 Ind Cas 181 The cause of action in suits arising out of a contract arises at the place where the contract was made or the place where the contract was to be performed or performance completed or at the place where in performance of

ly or impliedly payable  
breach of contract the  
f its breach in a place  
ract was to be completed  
he in Karachi A I R.

at Nag 177=19 S L R 207=29 Ind Cas 30 Where a breach of a contract performed or its per

that place in perfor  
of that contract will  
is situated A I R  
he goods sold to the  
delivery to the buyer

Contract to deliver goods by the

Railway Company under s 91 Contract Act and a s  
buyer would lie at the place where  
A I R 1922 Lah 474=67 Ind C  
the goods were to be sent to Benj  
the goods were despatched from  
wholly or in part arose in Azamgarh A I R 1922 All 448=66 Ind Cas 501 The  
place where the cause of action arise in respect of a pledge must be determined with  
reference to the terms of the original contract and not by subsequent negotiations  
thereafter A 65 In a suit upon a contract the  
offer is a part an be instituted in the Court with n  
whose jurisdiction W 44=54 Ind Cas 260 Where  
the contract is made at the time and

is revocable  
by the place  
on arises 17  
tent for, and  
ce where the  
ry of a portion  
place where  
=56 Ind Cas  
annot sue at  
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case of a  
for breach  
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the breach  
d Cas 139

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not at a place,  
re cause of action  
e or at the place  
=137 Ind Cas.

381=A I R 1932 Bom, 291=A I R 1932 Bom 498; A I R 1928 Lah. 297=9 Lah 455=10 Lah L J. 87=29 P. L. R. 496=109 Ind Cas. 28. A Court having jurisdiction at the place where in compliance with the orders of the principal, the commission agent works, is competent to entertain a suit for balance of accounts by the agent against his principal 92 Ind Cas 273=A I R 1926 Lah 287, see also 88 Ind Cas 930=26 P. L. R 335=A I R 1925 Lah 387=6 Lah 153=7 Lah L J 562.

**Suit against Insurance Company**—A suit against an Insurance Company can be brought in a place where the insurer died, because there can be no claim unless the death has taken place 34 Bom L R 815=A I R 1932 Bom 392=140 Ind Cas 262=A I R 1932 Bom 779 Where a Life Assurance Company has agency in Madras, but the Agency acts as a post office not having any discretion on the matter either to conclude contracts or to vary them or to enter into them, it does not carry on business in Madras A I R 1929 Mad 347=56 M L J 299=29 L. W 628=121 Ind Cas 155 The death of the assured being a part of the plaintiff's cause of action in a suit on an insurance policy the suit is maintainable at the place of his death 22 C W N 517=44 Ind Cas 694, 41 Ind Cas 392 For the purposes of s 20 of the Code the words "cause of action" in cases based on contract of insurance, do not include the loss or damage of the property insured, which is merely a cause of the cause, and is not even a proximate cause since the real cause of action is the failure to pay the money due under the contract and the primary cause of that the property being only a secondary merely to the nature of the particular 1924 Rang 2=76 Ind Cas 482

**Suit against non resident foreigner**—The Civil Procedure Code empowers a British Court to pass judgment against a non resident foreigner, provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment 3 Bom L R 82=25 B 528, A I R 1927 All 413=49 A 669=25 A L J. 356=101 Ind Cas 673 The Court cannot pass a decree against a person, subject to foreign Government which cannot be enforced against him by that Court. A I R 1927 Sind 160=23 S L R 46=101 Ind Cas 438

**Suit between principal and agent**—In a suit for accounts based upon agency for collection of dues, it is the general contract of agency with liability to account and refund the balance which is the cause of action A I R 1930 Bom 150=32 Bom L R 171=54 B 192=129 Ind Cas 586 Suit for accounts for agency is cognizable by Court having jurisdiction at place where agency was or was not to be carried on A I R 1929 Lah 605=11 Lah L J 282=119 Ind Cas 481 In a suit between principal and agent the cause of action arises where the contract of agency is made or where it was to be performed, and where the refusal to account takes place 94 Ing 287 Cas=A I R 1926 Sind 238, see also A I R 1929 Sind 227=126 Ind Cas 62, 80 Ind Cas 661=46 A, 465 Plaintiff was employed by the defendant to sale his goods at M, the defendant was not to sale the goods in the area allotted to the plaintiff Defendant sold goods at M in contravention of the terms M Court has jurisdiction to try a suit for damages A I R 1927 Mad 1150=103 Ind Cas ant's dishonesty or plaintiff has suffered a conduct complained of occurred A I R 1924 Sind 22=76 Ind Cas 197 As a rule the principal cannot, where agent carries on business elsewhere call upon him to render an account at his own place of business on the ground that the money or goods were sent to the agent from such place A I R 1924 Lah 593=75 Ind Cas 849 The cause of action in a suit for accounts against an agent arises at the place where the contract of agency took place or where it was to be performed and where account was refused 12 Bur L T 198=55 Ind Cas 266

**Suit for money borrowed**—Ordinarily where money is borrowed, the repayment of the money must be presumed to have been agreed to be made at the place of residence of the lender A I R 1929 Lah 868=118 Ind Cas 898, 48 A 310=24 A L J 291=92 Ind Cas 492 A suit based on hundi can be brought in the High Court in whose made after default, because of action A I R 1928 the creditor resided at P loan was borrowed at B, where the debtor had a temporary residence, Court at P had jurisdiction to try the suit in respect of the loan A I R 1926 Mad 1207=24

L W 576=97 Ind Cas 1027 Where the loan was borrowed at S but the defendants were residents of H and the loan was also repayable at H, the Court at S has no jurisdiction to entertain a suit for recovery of the loan A I R 1925 P C 290=49 M L J 806=23 L W 3=43 C L J 1=24 A L J 48=27 Pat L R 1=53 C 88=28 Bom L R 211=53 I A 58=30 C W N 577 (P C)=92 Ind Cas 760 Ordinarily if goods are purchased, or money is borrowed, the payment for the goods or re payment of money must be presumed to have been agreed to be made at the place of the residence of the seller or the lender as the case may be A I R 1923 All 465=71 Ind Cas 431 Where money on a pro note was intended to be paid in place A, the Court at A has jurisdiction to entertain a suit on the pro-note under this section 20 P R 1916=10 P W R 1916=31 Ind Cas 693 A suit on a *hundi* dishonoured after acceptance against the drawee proper forum if instituted in the Court having 3 O L J 132=34 Ind Cas 191 The ordinary creditor to pay him 15 A L J 633=41 Ind the place where the money under a bond is payable intention of the parties and where this cannot be determined, a presumption as to the place may be drawn 49 Ind Cas 950.

#### Other cases—Where a pers

Agra but fell out of the train  
Company at B the cause of action  
Agra 41 A 488=17 A L J 501  
a bale of cotton to the plaintiff at *Jhansi* without an order or direction from the latter Plaintiff accepted to hold the goods on behalf of the defendant at defendant's risk In a suit for recovery of charges the cause of action was held to arise at *Jhansi* 15 A L J 513=41 Ind cause of action The cause of action W N 811=72 Ind Cas 982 ee on tion to another Court, the ground of fraud A I R 1928 Oudh 88=3 Luck 142=4 O W N 1103=106 Ind Cas 541, see also A I R 1927 Lah 778=100 Ind Cas 164, 27 P L R 517= A I R 1926 Lah 277 Where defendant is ordinarily a resident in the Punjab but carried on business at *Quetta* he can be sued in *Quetta* though the cause of action took place in Persia 31 C W N 174=A I R 1926 P C 88=96 Ind Cas 887 The proper course to set granted the decree A I for breach of contract the marriage is to take place 65 Ind Cas 81 virtue of adjudication of cause of action in a suit in respect of that claim and the Court within whose limits the said assignment takes place can entertain the suit A I R 1926 Sind 31=70 S L R 209 foreign Railwa carrying was in A I R 1925 A at C and the property passes to the vendee but part of the purchase money is paid at D, to which place the article is sent a Court at D has jurisdiction to try suit by vendee for return of purchase money on the ground of breach of warranty by the vendor A I R 1926 Cal 100=86 Ind Cas 1046 Where payment was according to the contract to be made in one place but was made in another owing to the en of the fact to give him a choice R 1922=64 Ind Cas 587 If the the Court be ship commenced and was carried on in foreign 45 B 1228=23 Bom L R 543=63 Ind Cas that account should be taken elsewhere, a partnership should be instituted in the Court with whose jurisdiction the business of the partnership was carried on 17 A L J 1015=52 Ind Cas 635 In a suit on fire insurance, part of cause of action arises where fire occurs and the suit is maintainable at that place A I R 1928 Nag 305=11 N L J 184=113 Ind Cas 896 In a suit for damages for conversion of land it is open to the plaintiffs to proceed against any one or more of the joint tortfeasors as they may elect Therefore a



suit started  
maintained  
acquiescent  
Cas 727  
Court no le

=117 Ind Cas 150 A Court, w  
to have jurisdiction over the suit  
ceases to be situate within its  
114 Ind Cas 545 No hard and  
decisions as to jurisdiction under

A. I R. 1923 Lah, 565=77 Ind Cas 764 Where in order to bring a suit within the  
jurisdiction of a Court of a particular locality the plaintiff makes false statements  
knowing them to be false that is fraud on the Court and cannot give the Court  
jurisdiction which it originally had not A I R 1923 All 137=45 A 193=71 Ind  
Cas 411

**Explanation 11**—A corporation resides wherever it carries on its business,  
irrespective of the location of its head office and if a corporation such as Bank has  
50 branch offices it has fifty separate and distinct jurisdictions, and a suit can be  
brought in any one of such Courts for the enforcement of a right in respect of which  
a cause of action exists within the limits, of each independent jurisdiction 4 Pat  
L J 14

cannot  
be claim

that province A I R 1930 Lah 818=126 Ind Cas 514

**21 [Nw.]** No objection as to the place of suing shall be allowed by any  
appellate or revisional Court unless such objec  
Objections to jurisdiction tion was taken in the Court of first instance  
at the earliest possible opportunity and in all cases where issues are settled  
at or before such settlement, and unless there has been a consequent failure  
of justice

**Scope**—Section 21 refers only to an objection made as to the place of suing and  
not as to the nature of the Court in which the suit has been filed A I R 1931 All  
406 Where a decree has been passed by a court having no territorial jurisdiction  
over the matter in controversy and no objection was taken as to the place of suing,  
an independent suit for its avoidance is not barred by s 21 and it is not legitimate  
to extend the bar of the section 1931 A L J 240=A I R (1931) A 454=131  
Ind Cas 248 Section 21 does not apply to the Chartered High Courts in the  
exercise of their original jurisdiction It does not also apply to a case where the  
objection is not one to the place of suing, but one which goes to the root of the whole

1 be taken at any  
appeal 33 Bom  
the point taken in  
on the pecuniary  
il to the place of  
suing, on the ground that the defendant resided outside the jurisdiction of the  
trial Court, cannot be entertained as the point was not specifically raised at the  
earliest possible opportunity 33 Bom L R 1437 This section is inapplicable to  
High Court in its ordinary original civil jurisdiction 56 B 324=34 Bom L R 236=  
137 Ind Cas 381=A I R 1932 Bom 291=A L R 1932 B 498 Where there is no  
competency at all in the original court to hear a case, objection to jurisdiction before  
the appellate court is not barred by s 21 16 R D 279-12 U D 348 Where  
the court has no jurisdiction over the subject matter of the suit, mutual consent of the  
parties cannot confer jurisdiction A I R 1933 Mad 471=38 L W 896=146  
Ind Cas 204, A I R 1933 Lah 425 A court cannot also acquire jurisdiction by  
the acquiescence of the parties A I R 1933 Mad 346=1933 M W N 208 =

applies to proceedings  
318 In a case under  
ie territorial jurisdiction  
about the matter and  
at 533 Initial jurisdic-  
I R 1933 All 298=141  
Ind Cas 25 Question of jurisdiction can be allowed to be raised on completion  
of proceedings if questions depend upon decision of some fact or point of

utta can be properly  
of the Court or with  
W N 208=116 Ind  
ie jurisdiction of the  
70=23 S L R 365

1933 Pat 104 Questions of  
O W N 143=A I R 1933  
collaterally except when there  
142 Ind Cas 113=12 Pat  
C W N 999=A I R 1931  
of suing cannot be raised

for the first time in appeal or second appeal A I R 1931 Oudh 136=7 O W N  
1079=129 Ind Cas 331, see also A I R 1930 Mad 541=126 Ind Cas 730, 48 Ind  
Cas 465, 41 Ind Cas 161

Order in a mortgage suit for sale of land in a scheduled district can be set aside  
Section 21 does not apply to such a case 42 M 813=46 I A 151=17 A L J 694=37  
M L J 11=21 Bom L R 914=30 C L J 209=23 C W N 1033=51 Ind Cas 185  
1 by s 21 of C P Code A I R  
Cas 577 Decree passed cannot

1929 Lah 449  
application for s

997=52 A 947=

293=(1919) M

proceedings also

Ind Cas 579,

also A I R 19

that the princip

Court against a

British territory A I R 1928 Lah 297=9 Lah 455=29 P L R 406=10 Lah L. J

87=109 Ind Cas 28 This section also has no application to cases of foreign

elements on right under the provisions of s 44 to be executed in British Indian

of the property A I R 1927 Mad 627=50 M 882=52 M L J 805=30 I L J  
351=103 Ind Cas 245 All conditions under s 21 must be fulfilled for setting aside  
decree 96 Ind Cas 111 This section can be applied to cases which do not  
strictly fall within its t

161=95 Ind Cas 17

being raised in a fresh s

Cas 341 Section 21

1924 Mad 697=34 M L T 275=20 L W 467=87 Ind Cas 341 Objection as to

jurisdiction cannot be raised in any subsequent proceeding if its absence was

dependent upon a fact within the knowledge of the party A I R 1922 Pat 322=67

Ind Cas 686 Party not objecting to irregularities in institution of suit cannot

subsequently dispute jurisdiction of Court on ground of such irregularities A I R

1934 Sind 1 Question of jurisdiction can be considered by the Appellate Court

from a Revenue Court even though a plea of want of jurisdiction is not raised in

the trial Court A I R 1934 All 139 Question regarding Court's jurisdiction to

try suit should be decided by aid of Civil Procedure Code A I R 1934 All 226.

1 of jurisdiction should

can hear it if preju-

171=79 Ind Cas 857,

as 745, 136 Ind Cas

ersional Court cannot

n a consequent failure

as 276, 128 Ind Cas

496=A I R 1930 Lah 1016 A I R 1929 All 236=117 Cas 824, 32 P L R 874,

A I R (1931) A 556=131 Ind Cas 603, 136 Ind Cas 17=32 P L R 874=A I R

1932 Lah 135=I R 1932 L 193, 108 Ind Cas 321=A I R 1928 Pat 324=7 Pat

216=9 P L T 789, A I R 1922 Oudh 124, 62 Ind Cas 399=A I R 1921 A 66

=19 A L J 305, 52 Ind Cas 801=47 A 74=7 A L J 1034, 49 Ind Cas 441=

21 P W R 1919 47 Ind Cas 764=(1918) M W N 661, 22 C W N 517=44 Ind

Cas 694 93 P R 1916 37 Ind Cas 114, 9 Bur L T 119=36 Ind Cas 431,

128 Ind Cas 496=31 P L R 616=A I R 1930 Lah 1016

Objection to jurisdiction taken in lower court at a later stage must be entertained

in revision A I R 1930 All 873=52 A 947=132 Ind Cas 35=1930 A. L. J 997

The principle underlying s 21 is that the objection to territorial jurisdiction is cured

not merely for the purpose of the Appellate and Reversional Court, but cured entirely and for all purposes A I R 1925 Mad 117=47 M L J 441=87 Ind Cas 152 An objection as to territorial jurisdiction raised before appellate court must be determined on merits A I R 1921 All 66=19 A L J 303=6 Ind Cas 397

22. [S. 22] Where a suit may be instituted in any one of two or more

Power to transfer suits which may be instituted in more than one Court

Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before

such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objection, of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed

two Courts,  
or Where

616-11 P R 1917=150 P W R 1916=16 P L R 1917 Ss 22 and 23 do not of a High Court from a Court subordinate R 1914 Lah 306=69 Ind Cas 77 In the mere taking erroneous view is not sufficient for transfer A I R 1934 All 37=1933 A L J 1573=146 Ind Cas 791

Notice—Provisions as to notice not being merely directory, but application for transfer if not complied with 107 Ind Cas 593 The words after notice to other parties mean notice prior to application 11 P R 1917=150 P W R 1916=16 P L R 1917=35 Ind Cas 616 It is doubtful whether absence of notice contemplated by s 22 is fatal to an application under s 23 A I R 1934 All 14=1933 A L J 1201

Where the law allows a plaintiff who has the right by Court except under

per  
to  
special circumstances A I R 1928 the defendants must show that considerable right as *arbitrator lites* and one should rat

A I R 1928 Mad 15=39 Lah 159=106 Ind Cas J 578-97 Ind Cas 390 of each case mere con Lah 304=69 Ind Cas its are, by showing clear entitled to have the case

transferred to another Court A I R 1924 Oudh 410=11 O L J 377=86 Ind Cas 495, see also 72 Ind Cas 592=A I R 1923 Lah 383, 48 C 53-A I R 1921 Cal 210=62 Ind Cas 115, 3 O L J 200=34 Ind Cas 636 Where the application is merely an attempt to get an order from the court which would enable the petitioner to evade the question of jurisdiction decided against him the application should not be allowed A I R 1927 Lah 183=100 Ind Cas 67 Where it was established that almost all the evidence would be available only at the place to which the transfer is applied for, the transfer should be allowed Application for transfer should be made as early as possible A I R 1921 Lah 304=69 Ind Cas 239, but see 167 P R, 1919=54 Ind Cas 93, Fact that defendant's witnesses will be put to inconvenience is no ground for transferring a case 21 O C 217=48 Ind Cas 105 In an application for transfer under ss 22 and 23 the question of want of jurisdiction of trying Court could not be raised 1 Pat L T 277=56 Ind Cas 90

23 [Ss 22-24.] (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court

(3) Where such Courts are subordinate to different High Courts the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate

Scope—For the purpose of transfer of a case original side is subordinate to the High Court A I R 1928 Lah 183 A I R 1923 Rang 72=1 Bur L J 194=111 L B R 71=100

Ind Cts t being  
subordin before  
him will t case

to be tried by Court subordinate to High Court other than making such direction A I R 1928 Pat 640=110 Ind Cas 693 Application to a High Court to transfer a suit pending in a subordinate Court to another High Court falls under s 23 (3) of and to however, can be

will not be an impartial trial  
ponderance of convenience to  
hurt The convenience of the  
1 Pat L T 277=(190) Pat  
more convenient to the appli  
reason to force the plaintiffs

summarily out of the Court in which they are entitled to sue and to deprive them of the substantial sum expended by them on Court fees by the application of inherent powers not utilized in practice except for the purpose of preventing or remedying

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14 Where an *ex parte* decree was passed by the Calcutta Small Cause Court and the decree null and void made under s 23 (3) High Court 51 B 26—

Ss 22 and 23 have  
be tried by a sub  
ordinate Court or a High Court or a Chief Court But the High Court can exercise powers similar to those as contemplated by Ss 22 and 23 1933 A L J 1507 A Court of Small Causes is not competent to make a reference in a case under s 23 cl (3) if the Court has no jurisdiction to hear the suit And the Chief Court will not order transfer of the suit when no great inconvenience will be caused to the defendant by the trial of the suit in the Court in which it is filed 77 P L R 1909

24 [S 25] (1) On the application of any of the parties and after notice to the parties and after hearing such General power of transfer of them as desire to be heard, or of its own and withdrawal motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
  - (i) try or dispose of the same, or
  - (ii) transfer the same for trial or disposal to any Court Subordinate to it and competent to try or dispose of the same, or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub section (1), the Court which hereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes, shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

**Scope**—Where original Court finds that it has no jurisdiction to hear a suit the District Judge has no jurisdiction under s. 24 for that section contemplates only a transfer from one competent Court to another to transfer the suit. A I R 1930 Lah. 195=125 Ind Cas 334. Two suits raising same issue instituted in two different Courts may be ordered to be tried together. A I R 1926 Cal 326=87 Ind Cas 170. No Court has jurisdiction to transfer a suit from one Court to another unless both

than that which decide the case is illegal' 50 Ind<sup>c</sup> Cas 910, see also 45 Ind<sup>c</sup> Cas

except under most exceptional circumstances transfer suit instituted in a Court subordinate to itself to another Court which is beyond its territorial jurisdiction even if the High Court is presumed to have such power. A I R 1924 Nag 152=75 Ind action went into the case in the defect was found out Court. Held that under s 24 the High Court should send it for disposal to the first Court itself. A I R 1973 All 249-21 A L J 86=73 Ind Cas 495

Application for transfer of suit by defendant raising issue as to jurisdiction of Court in which suit is pending is not maintainable 26 S L R 277=139 Ind Cas 496=A I R 1932 Sind 215=A L R 1932 Sind 241 District Judge can transfer suit remanded to one Court by Additional District Judge, to another Court of equal or competent jurisdiction under his control 140 Ind Cas 238=33 P L R 1015=13 Lah 806=A I R 1933 Lah 29 It is no doubt true that proceedings on remand under Order 41 rule 25 C P Code were proceedings in appeal which remained pending in the Court of the Additional District Judge, but this circumstance does not affect the power of the District Judge under s 24 C P Code to transfer any suit, appeal or civil proceedings from one Subordinate Court to another Court of equal or competent jurisdiction 140 Ind Cas 238=I R 1932 Lah 638

High Court has no power to transfer Insolvency proceedings from one Court to the other A I R 1927 Rang 105=4 Rang 554=100 Ind Cis 263, see also A I R 1925 Bom 543=49 B 788=27 Bom L R 1207=91 Ind Cas 160.

**Application**—An application to transfer an insolvency petition from the file of subordinate Judge to the original side of the High Court for trial and disposal is not maintainable. A. I. R. 1928 Mad. 1091 = 55 M. L. J. 671 = 28 L. W. 369 = 32 M.

57=114 Ind. Cas 352 Where numerous suits are sought to be transferred an application should be made in respect of each separately. A I R 1932 All 1061=53 A

of c  
13 Ind Cas 136 Ind Cas 384=1931 A L J 1061=53 A  
916=A I R 1933 = 781, see also 74 Ind Cas 249=A I R 1923 Oudh 240, A  
I R 1926 All 17=23 A L J 948=90 Ind Cas 287, A I R 1923 Oudh 240=26  
O C 62=74 Ind Cas 249, 137 Ind Cas 430=A I R 1932 Cal 265=I R 1932  
Cal 302

An order of transfer made without notice to the other party can be set aside on revision and on the application of one party A I R 1925 Lah 189=78 Ind Cas 614 Where District Judge transfers case on his own motion, he can do so without notice to the parties, but if the transfer is applied for by a party, he must issue notice before ordinary transfer under s 24 18 A L J 351=U P L R (All) 83=58 Ind Cas 560 It is illegal to transfer suit without notice to parties see also 13 N L R 203=42 Ind Cas 746 parties of the transfer of case a party may well ple Court he had to appear A I R 1923 Lah 441=81 pleader in original court is not sufficient I R institution is necessary A I R 1933 Lah 635=146 Ind Cas 38

**At any stage**—Where High Court refuses to transfer a case on its own motion, it can still transfer the case at a subsequent stage on plaintiff's application and after notice to defendant A I R 1923 All 153=20 A L J 97=70 Ind Cas 942

**Suit appeal etc**—Suit includes execution proceedings and so execution proceedings can be transferred under this section A I R 1925 All 276=47 A 57=85 Ind Cas 746, A I R 1926 Lah 345=95 Ind Cas 243, A I R 1926 Mad 421=49 M 746=50 M L J 161=95 Ind Cas 12 The word 'proceeding' covers only those proceedings which were contemplated at the time of the passing of the C P Code 25 A L J 433=A I R 1927 All 469=49 A 460=101 Ind Cas 247

**Any Court Subordinate to it**—Divisional Court not being subordinate to High Court, latter cannot transfer petition for alimony to Divisional Court 40 B 109=17 Bom L R 948 31 Ind Cas 331 District Judge can transfer case from Munsif to Sub Judge having Small Cause Jurisdiction, though thereby party is deprived of his right of appeal 36 Ind Cas 881, A Sub Judge cannot exercise the powers under s 24 unless the same are delegated to him by the District Judge under ss 37 and 44, Punjab Courts Act 33 P W R 1917, A District Judge can delegate power of transfer but when so delegated it can only be exercised in cases pending in a Court Subordinate to the Court exercising the power 52 Ind Cas 352

**Competent to try**—The word 'competent' refers to pecuniary jurisdiction only 143 Ind Cas 75=54 A 824=1932 A L J 984=A I R 1932 All 660 Court not possessing both pecuniary and territorial jurisdiction is not competent 136 Ind Cas 384=1931 A L J 1061=53 A 916=A I R 1933 All 178 Proper construction to be put on the word is to hold that court is competent when it can as regards nature and subject matter of case and as regards pecuniary value entertain transferred suit Word does not include competence from point of view of territorial jurisdiction 10 O W N 443=A I R 1933 Oudh 174=mpetent' means of jurisdiction competent to try L W 476=139 Ind Cas 477=661 M L J 689=ic from one, if made is Cas 413

**Grounds for transfer**—Where the Judge has expressed his opinion the case should be better transferred to another court 109 Ind Cas 402 (Lah) Applicant under s 24 must make out strong case for transfer Court should not interfere unless expense and difficulties are so great as to be A I R 1930 Lah 544=130 Ind Cas 523 it of law arising in a previous case is not a court another case involving the same point, A I R 1926 Lah 343=94 Ind Cas 394, 70 A L R 1922=67 Ind Cas 228=1921 Lah 357 The burden always lies on the applicant to make out a strong case for transfer Mere balance of convenience would not be a sufficient ground, unless the expense

and difficulties of the trial would be so great as to lead to injustice, or the forum was deliberately chosen for the purpose of working injustice A I R 1931 Lah 115=31 P. L R 920=130 Ind C1s 523 Defendant having influence in the town is no ground for transfer A I R 1927 Lah 80=93 Ind Cas 859 Prejudice of Judge against party's pleader cannot be presumed to operate against the party and hence it is no ground for transfer unless it is likely to affect judicial attitude of Judge

plaintiffs will from  
17 A L J 371=  
conduct of litigation is certainly a relevant consideration and it is perhaps not too much to say that it is the basis of nearly all statutory jurisdiction on the civil side 135 Ind Cas 402 - A L R 1932 Nag 15, see also A I R a judgment-debtor is justified in thinking him, the case should be transferred to some other court A I R 1933 Lah 915 Mere fact that a subordinate Judge is subordinate to commissioner in his executive capacity is no ground for transfer of suit where the person applying transfer has been confirmed in office f Ghatwaj 8 Where evidence d, it was 10 O W

N 443=A I R 1933 Oudh 154-8 Luck 347 An order for transfer by the High Court is competent where two appeals are pending involving the same questions in the District Court and the High Court respectively A I R 1933 Lah 1033 Close relationship of the Judge to one of the parties is a ground for transfer A I R 1932 Sind 206 Mere balance of convenience is not sufficient ground for transfer, though it may be a relevant consideration A I R 1931 Lah 115 Where in some prior proceedings the Judge has expressed an opinion very definitely as to the nature and value of the plaintiffs account books and the same books have to be considered in the subsequent suit it is desirable to transfer the case in the interest of Justice 32 P L R 388 In ordering transfer convenience of the parties is not merely a relevant but also a material consideration, and such convenience is at the basis of all the arrangement for statutory jurisdiction on the civil side Where in a partition suit the greater part of the property is situated in B District, that is a reason why it should be advantageous to both parties to have the suit tried in that district The mere fact that the majority of the parties reside there, is not very weighty consideration in favour of transfer That a party has engaged a counsel with heavy fees is a circumstance to be considered when ordering transfer A I R 1927 Nag 219=10 N L J 67=101 Ind Cas 723

Sub section (4).—The expression "Court of Small Causes" includes a Court vested with the powers of a Court of Small Causes as well as Courts constituted under Act IX of 1887, and where a suit is transferred under that sub section procedure for trial is governed by the Provincial Small Cause Courts Act and no appeal lies from the decision A I R 1919 Cal 354=49 C L J 237=56 C 588=120 Ind Cas 589, A I R 1923 Pat 49=4 Pat L T 259=69 Ind Cas 717, 14 A L J 705, 38 A 425=14 A L J 549=34 Ind Cas 113, 39A 214=15 A L J 69=37 Ind Cas 809, 38 M 25=23 M L J 373=(1912) M W N 1086=17 Ind Cas 425, A I R 1928 All 609=26 A L J 839=110 Ind C1s 493, 46 Ind Cas 893=40 A 525=16 A L J 548, 1931 A L J 953, 12 A L J 853=26 Ind Cas 56, 27 C L J 461=44 Ind Cas 881, A I R 1919 Cal 334=49 C L J 237=56 C 588=120 Ind Cas 589, 43 Ind Cas 314=20 O C 350 Section 24 (4) does not apply to cases transferred from Small Causes Court to Honorary Munsifs Court Decrees passed by latter Courts are therefore appealable 1 U P L R (H C) 27, 54 Ind Cas 435 Where Small Cause Court finding question of title involved sends a case to District Judge and the latter transfers the same to a Munsif, the District Judge's order of transfer is under s 23 Provincial Small Cause Courts Act and not under s 24 C P Code An appeal therefore lay from the decision 64 Ind Cas 335, see also 115 Ind C1s 127=26 A L J 772=50\ 810=1 I R 1929 A 50 The Small Cause Court

does not cease to exist if at any time there should be no Judge to preside over it A I R 1925 Lrh 561=26 P L R 303=88 Ind Crs. 139 Where a suit instituted in the Court of Small Cause is transferred to the regular side the Judge trying the suit has the same powers as the Small Cause Court possessed in the matter of awarding compensation under s 35A A I R 1930 Nag 131=120 Ind Cas 412, Order of Court not having Small Cause an order enable a Judge having suit exceeding that limit as a (40=20 I W 810=121 Ind

Cas 481 Where with any Small C

is not invested for the purpose =1932 M W N

id Cas 477=A I R 1932 Mad 683=

27 N L R 307=A I R 1932 Nag

6=A I R 1933 All 662=145 Ind Cas

Court to which a case is transferred

with Small Cause powers upto any parti

cular extent or indeed with Small Cause Court powers at all The terms of the section appear rather to be intended to confer the powers of a Small Cause Court upon the trying Court for that particular case irrespective of the powers with which the Court is invested Sub sectio

be made *Per Biler J* in 56 B 387=34 Bom L R 931=139 Ind Cas 194-1932 Bom 486=A L R 1932 Bom 681 Sub clause (1) does not deal with transfers to a Court already invested with small cause s to

indicate that it deals with transfers to a Court here

a suit is transferred to a Small Cause Court which

requires that suits of higher value when transferred should be tried as small cause

suits or that there shall be no appeal therefrom 55 M 960=1932 M W N 763=

36 L W 479=63 M L J 689=139 Ind Crs 477=A I R 1932 Mad 683=A L R

1932 Mad 1213 Obviously s 24 contemplates the transfer of a case from one existing

Court to another exist If therefore a Court of Small Causes has ceased

to exist or the officer from the District

be no Court from ordinary Civil Court

Small Cause Court J-

Courts Act 54 A 171=A I R 1931 All 574=136 Ind Cas 357=1931 A L J

953 (F B)

**Revision**—High Court in its general powers of superintendence can direct transfer of a case where District A I R 1926 Cal 326=87 Ind Ca Ind Cas 456 The High Court Original Court without the for which the case is transferred A I R 1933 All 249=21 A L J 86-73 Ind Cas 495

## 25 [Ss 20-21] (1) Where any part

proceeding pend Power of Governor General over by a single in Council to transfer suits by him and the Judge is satisfied that there are reasonable grounds for the objection he shall make a report to the Governor General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court

pend or proceeding so transferred the suit, appeal or proceeding was to such case

**Scope**—Where Governor General in Council transfers a case to High Court on its Original Side appeal lies to Appellate Side of the High Court A I R. 1921 Mad 637=(1922) M W N 830



## INSTITUTION OF SUITS.

26 [S 48] Every suit shall be instituted by the presentation of a  
Institution of suits      plaint or in such other manner as may be  
   prescribed

as filed in Court and not on the date  
1921 Cal 277=34 C L J 465=66  
Cas 550, 17 S L R 223=85, Ind  
without jurisdiction the second suit in  
proper Court is not continuation of former A I R 1919 P C 103=56 C 1048=56  
L W 682=56 M L J 614=6  
=115 Ind Cas 550 (P C) The  
at the private residence of the  
so A I R 1922 Nag 167=  
82 (F B)=9 A L J 743=14 Ind  
presented plaint and also signed  
*Vakil patra*, and the plaintiff did not make effort to show that servant was his recog-  
nized agent, it was held that the plaint was not properly presented A I R 1922  
Bom 113=46 B 150=23 Bom L R 911 Section 26 merely provides that every suit  
shall be instituted by the presentation of the plaint or in such other manner as may  
be prescribed It does not say that the presentation should be by the plaintiff or his  
duly authorized agent (1931) A L J 777=A I R (1931) All 507 Section 26 enacts  
that 'every suit shall be instituted by the presentation of a plaint or in such other  
manner as may be prescribed No other manner of instituting a suit has so far  
been prescribed It may, therefore be stated as a general proposition that unless there  
is a special provision to the contrary, a proceeding that does not commence with a  
plaint cannot be held to be a suit 13 L 67 157 I I Cas 266-35 P L R 508=  
A I R 1932 Lah 54 I R 15 Lah 514

## SUMMONS AND DISCOVERY

27. [S 64] Where a suit has been duly instituted, a summons may  
Summons to defendants      be issued to the defendant to appear and answer  
   the claim and may be served in manner pre-  
   scribed

under the Limita-  
Court fees not having  
missed Thereafter  
without any notice  
t Court fee Held  
as opposite party on  
whom the notice could be served as the summons in the suit had not yet been issued  
on the defendant and as until the suit was registered the suit could not be said to  
have been duly instituted The order of dismissal passed at that stage of case can be  
reviewed without notice to the defendant 26 C W N 391=A I R 1922 Cal  
234=69 Ind Cas 43

Service of summons where  
defendant resides in another  
province

28 [S 85] (1) A summons may be sent  
for service in another province to such Court  
and in such manner as may be prescribed by  
rules in force in that province

(2) The Court in which such summons is sent shall upon receipt thereof,  
proceed as if it had been issued by such Court and shall then return the  
summons to the Court of Issue together with the record (if any) of its pro-  
ceedings with regard thereto

29 [S 650A] Summonses issued by any Civil or Revenue Court  
situate beyond the limits of British India may  
Service of foreign summonses      be sent to the Courts in British India and  
   served as if they had been issued by such  
   Courts

does not cease to exist if at any time there should be no Judge to preside over it A I R 1925 Lah 561=26 P L R 303=88 Ind Cas, 139 Where a suit instituted in the Court of Small Cause is transferred to the regular side the Judge trying the suit has the same powers as the Small Cause Court possessed in the matter of awarding

120 Ind Cas 412, Order of  
urt not having Small Cause  
1 order enable a Judge having  
uit exceeding that limit as a  
649=29 L W 810=121 Ind  
Court which is not invested  
be deemed for the purpose

55 M 960=1932 M W N  
id Cas 477=A I R 1932 Mad 683=  
27 N L R 307=A I R 1932 Nag  
6=A I R 1933 All 662=145 Ind Cas

from a Small Cause Court being invested with Small Cause powers upto any parti-  
cular extent or indeed with Small Cause Court powers at all The terms of the  
Court to which a case is transferred  
of the powers with which  
to transfer a suit from a  
Small Cause Court powers

of the Court to which the suit is transferred provided the suit to be transferred is  
within the limits of the pecuniary jurisdiction of the Court to which the transfer is to

4 Bom L R 931=139 Ind Cas 194=A I R

Sub clause (4) does not deal with transfers to  
ause powers The word 'deemed' seems to  
Court without such powers Therefore where

a suit is transferred to a Small Cause Court there is nothing in the sub section which  
r has a value when transferred should be tried as small cause

932 M W N 763=  
2 Mad 683=A L R

ase from one existing  
Causes has ceased  
has been transferred  
power there would  
transfer the case to an  
officer invested with  
rovincial Small Cause

Courts Act 54 A 171=A I R 1931 A 357=1931 A L J  
953 (F B)

**Revision**—High Court in its general powers of superintendence can direct  
transfer of a case where District Judge has refused to exercise that power under s 24  
A I R 1926 Cal 326=87 Ind Cas 170 A I R 1927 Pat 383=8 P L T 777=103  
Ind Cas 456 The High Court in revision has authority to retransfer a case to the  
Original Court without the formality of first having the plaint filed in the Court to  
which the case is transferred A I R 1933 All 249=21 A L J 86=73 Ind  
Cas 495

**25 [Ss 20—21]** (1) Where any party to a suit, appeal or other  
proceeding pending in a High Court presided  
Power of Governor General over by a single Judge objects to its being heard  
in Council to transfer suits by him and the Judge is satisfied that there are  
reasonable grounds for the objection he shall make a report to the Governor  
General in Council, who may, by notification in the Gazette of India, transfer  
such suit, appeal or proceeding to any other High Court

(2) The law applicable to any suit, appeal or proceeding so transferred  
shall be the law which the Court in which the suit, appeal or proceeding was  
originally instituted ought to have applied to such case

**Scope**—Where Governor General in Council transfers a case to High Court on  
its Original Side, appeal lies to Appellate Side of the High Court A I R 1921  
Mad 687=(19-2) M W N 850

INSTITUTION OF SUITS.

26 [S 48] Every suit shall be instituted by the presentation of a  
 Institution of suits      plant or in such other manner as may be  
    prescribed

Scope—Suit is presented when the plaint was filed in Court and not on the date when it was ordered to be registered A I R 1921 Cal 277=34 C L J 465=66 Ind Cas 923, A I R 1919 Mad 480=113 Ind Cas 550, 17 S L R 223=85 Ind Cas 893. Where a suit is instituted in Court without jurisdiction the second suit in proper Court is not continuation of former A I R 1929 P C 103=56 C 1048=56 I A 128=(1929) A L J 254=33 C W N 485=29 L W 682=56 M I J 614=6 O W N 473=49 C L J 462=31 Bom L R 741=115 Ind Cas 550 (P C) The presentation of a plaint after the usual Court hours at the private residence of the Judge is valid though the Judge is not obliged to do so A I R 1922 Nag 167=19 N L R 23=65 Ind Cas 674, see also 34 A 482 (F B)=9 A L J 743=14 Ind Cas 744. Where plaintiff's servant signed and presented plaint and also signed *Vakil patra*, and the plaintiff did not make effort to show that servant was his recognized agent, it was held that the plaint was not properly presented A I R 1922 Bom 113=46 B 150=23 Bom L R 911. Section 26 merely provides that every suit shall be instituted by the presentation of the plaint or in such other manner as may be prescribed. It does not say that the presentation should be by the plaintiff or his duly authorized agent (1931) A L J 777=A I R (1931) All 507. Section 26 enacts that 'every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed'. No other manner of instituting a suit has so far been prescribed. It may, therefore, be stated as a general proposition that, unless there is a special provision to the contrary, a proceeding if it does not commence with a plaint cannot be held to be a suit. 13 L 67=157 Ind Cas 766=55 P L R 508=A I R 1932 Lah 54=1 R 193 Lah 514.

SUMMONS AND DISCOVERY

27. [S 64] Where a suit has been duly instituted, a summons may  
 Summons to defendants      be issued to the defendant to appear and answer  
    the claim and may be served in manner pres-  
    cribed

under the Limita-  
 court fees not having  
 dismissed. Thereafter  
 without any notice  
 t Court fee. Held  
 that at the time the order of dismissal was set aside there was no opposite party on  
 whom the notice could be served as the summons in the suit had not yet been issued  
 on the defendant and as until the suit was registered the suit could not be said to  
 have been duly instituted. The order of dismissal passed at that stage of case can be  
 reviewed without notice to the defendant 76 C W N 591=A I R 1922 Cal  
 234=69 Ind Cas 43.

Service of summons where  
 defendant resides in another  
 province      28 [S 85] (1) A summons may be sent  
    for service in another province to such Court  
    and in such manner as may be prescribed by  
    rules in force in that province

(2) The Court in which such summons is sent shall, upon receipt thereof,  
 proceed as if it had been issued by such Court and shall then return the  
 summons to the Court of issue together with the record (if any) of its pro-  
 ceedings with regard thereto

29 [S 650A] Summonses issued by any Civil or Revenue Court  
 Service of foreign summon-      situate beyond the limits of British India may  
 ses      be sent to the Courts in British India and  
    served as if they had been issued by such  
    Courts

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

Notes—Where a witness in a Native State fails to appear he should be examined on commission 144 Ind Cas 983=10 O W N 173=A I R 1933 Oudh 128

**30** [New]. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production impounding and return of documents or other material objects producible as evidence,
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid,
- (c) order any fact to be proved by affidavit

**31.** [New] The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects

**32.** [New] The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest,
- (b) attach and sell his property
- (c) impose a fine upon him not exceeding five hundred rupees,
- (d) order him to furnish security for his appearance and in default commit him to the civil prison

Scope—This section does not apply to the case of a party who fails to produce

Pr L J 550=1 Pat L T who fails to attend on the required to give evidence e A I R 1929 All 850= 1929 A L J 1216=123 Ind Cas 97 jurisdiction to impose fine vested by s 32 has to be exercised only in the manner laid down by Order XVI ibid

#### JUDGMENT AND DECREE

**33** [S. 198] The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow

Scope—Decree drawn up by the Court must be in accordance with judgment A I R 1924 All 818=22 A L J 791=46 A 864=82 Ind Cas 184 Court's omission to draw up decree following judgment does not deprive party of his right to appeal 66 P R 1919=52 Ind Cas 479 A party is not required to apply to draw up decree nor is he required to apply for copy of a decree until it is drawn up Hence party's failure so to apply does not affect right to appeal A I R 1924 Nag 271=20 N L R 131=78 Ind Cas 976 The judgment having been pronounced a decree must be prepared in accordance with it and the Court cannot direct the stoppage of the preparation of the decree 11 P 532=13 P L T 304=137 Ind Cas 855=A I R 1932 Pat 228=1 R 1932 P 195

## INTEREST

34. [S. 209] (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reason-

Interest

able to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie

Scope—Rate of interest is a matter to be decided on the facts of each case A I R 1924 Nag 346=76 Ind Cas 131 Grant of interest is a matter within the discretion of Court. A I R 1921 Lah 954=29 P L R 670=111 Ind Cas 354 High Court will not interfere with lower Court's discretion in granting interest unless exercised unreasonably 13 O L J 338=92 Ind Cas 679 Where lower Court does not consider question of interest, the appellate Court may grant it A I R 1927 Lah 679=9 Lah L J 347=104 Ind Cas 146 Where compound and *post diem* interest is clearly stated in the document it should be allowed by the Court A I R 1931 Nag 91=13 N L J 213=130 Ind Cas 817 Where money due to plaintiff was not paid and there was no stipulation for interest interest may be allowed by way of damages A I R 1930 Cal 357=34 C W N 121=57 C 955=127 Ind Cas 76 Compound interest at 2 per cent should be allowed when it is stipulated It is high but not extortionate A I R 1931 Nag 91 13 N I R 712=130 Ind Cas 817 The *of D and up to* for the period between the repayment in the preliminary decree A and Cas 159 Where the rule of *Dam lupat* ds interest, comes to an end as soon as the when that obligation has come to an end before suit is filed, the court has discretion to award interest from the date of the suit over and above the amount of interest allowed by the rule A I R 1929 Nag 355=121 Ind Cas 45 Where a lessee knowing that the lessor would not be able to put him in possession waits for three years and then institutes suit for recovery of possession he cannot claim interest on the sum paid as premium or for amount of rent paid at the time of the loan A I R 1930 Cal 385=57 C 114=125 Ind Cas 607 Interest allowed as stipulated for mortgage deed at Re 18 1/2 per cent (compound) *pendente lite* is not excessive A I R 1929 Nag 6=113 Ind Cas 891

art will not inter-

A I R 1921 Pat

suit brought by

e as a mortgage

Procedure Code

Lah 721=9 Lah

L J 301=28 P L R 380=103 Ind Cas 437 In mortgage suits question of interest is determined not by s 34 but order XXXIV A I R 1927 P C 1=54 C 161=25

8 M L T (P C) 53=54 I A 1=

=8 P L T 173=99 Ind Cas 686

N 173=A I R 1933 Oudh 218

I of law, can award interest in

ct It is impossible to say that

contract A question of equity

must apply to all cases A I R 1927 Mad 47=97 Ind Cas 453 The expression

'decree for the payment of money' is very general and must be construed so as to

include a claim to unliquidated damages A I R 1926 Mad 1021=51 M L J 243=

1926 M W N 691=97 Ind Cas 871 Mortgage decree should give interest at

contract rate till date fixed for repayment, and not at 6 per cent 6 L W 296=

33 M L J 679=42 Ind Cas 349 Court may allow *post diem* interest though not

allowed in mortgage deed 3 O L J 390=36 Ind Cas 685 Courts jurisdiction to

grant further interest after period of grace allowed by preliminary decree is under

s 209 of the Code of 1882 The proper period for allowing such further interest is when decree absolute is made 27 C L J 576=46 Ind Cas 469 It is within competence of trial Court in a suit for arrears of rent against an under proprietor to award future interest at such rate as it considers reasonable 6 C L J 362=22 O C 287=52 Ind Cas 86, Although 24 per cent. per annum is high rate Small Cause R 1923 Cal 650=37 C L J 399=27 C W not be granted where co sharer makes no 1923 Nag 197=19 N L R 24=73 Ind Cas 142 In a suit for recovery of money representing depreciation in the value of goods supplied, no interest can be claimed during pendency of suit 32 C L J 239=60 Ind Cas 288 The granting of interest, not specifically asked for in a suit for money cannot be regarded as inconsistent interest subsequent to suit A I R 1921 L 64 Ind Cas 896 34 Bom L R 129=136, Mere hardship would not justify a Court in

of his position 60 Ind not sufficient reason to give compound interest

under this section A I R 1934 Bom 86

n date of suit and decree being discre- rate A I R 1930 Lah 733=125 =53 M 475=32 L W 143=123 Ind Cas 7, A I R 1930 Lah 985=129 Ind Cas 281 Award of interest pending suit reasons A I R and interest at con Where indiv

date of the suit for some earlier date the Court may in a proper case apply s 34 and grant interest A I R 1974 Nag 348=78 Ind Cas 711 Court has discretion as to the rate of interest to be awarded after institution of the suit till judgment and where Court below awarded 8 per cent Privy Council refused to interfere A I R 1922

1-67 Ind Cas 423 refused in absence a suit for recovery of no interest can be Ind Cas 20 Section when discretions for C P Code A I R rise of its discretion ll not interfere with B 657 In a pure 33 Bom L R 703= er under s 34 of the e plaintiff or not 33

Bom L R 1220=A I R (1931) Bom 549=55 B 657 Interest is not to be granted in the case of damages 25 S L R 104=A I R (1931) Sind 121 Section 34 C P Code gives the Court no discretion to award interest for a period prior to the date

provisions of which the Cas 154 The award of discretionary with the delay in bringing the suit 833=33 P L R 19=

A I R 1932 Lah 312=A L R 1932 Lah 83 Usually the contract rate should prevail till the decree 143 Ind Cas 43=14 Pat L T 133=A I R 1933 Pat 207

Interest from date of decree—Auct on purchaser at Court sale paying off in good faith prior mortgage is entitled to claim interest on the amount paid A I R

**Scope** — The award of cost rests with the discretion of the Judge. Discretion means judicial discretion, which must be exercised with established legal principles and not to be exercised capriciously. 24 C W N 352=58 Ind Cas 421. This section does not give an absolute discretion but it can be interfered with if exercised wrongly and arbitrarily. 18 M L T 460=1915 M W N 1021=31 Ind Cas 312, see also 35 Ind Cas 529=156 P L R 1916, A I R 1925 Cal 108, 42 C L J 137=90 Ind Cas 486, A I R 1931 Oudh 9=7 O W N 1055, 145 Ind Cas 376=A. I. R. 1933 Rang 160, 29 N L R 8=141 Ind Cas 262=A. I. R. 1933 Nag 49.

144 Ind Cas 76, 142 Ind Cas 656=A I R 1933 Mad 224, A I R 1933 Oudh 455=10 O W N 981, 35 Bom L R 569=A I R 1933 Bom 304 Where the lower appellate Court acts in an arbitrary manner with the proper decision of the Court of first instance with regard to costs, the High Court would interfere with the order of the lower appellate Court A I R 1931 Oudh 9=129 Ind Cas 165 Costs should not be allowed in suits on immoral contract A I R 1928 Sind 173=113 Ind Cas 366 The rule that costs should follow event may be departed from in a proper case A I R 1926 Bom 189=78 Bom L R 176-98 Ind Cas 358 No interference in appeal unless discretion is based on wrong ground 22 C W N 372=44 Ind Cas 870 The provision of this section is supplementary to s 47 35 C L J 156=68 Ind Cas 600 Where defendant's conduct necessitates suit, he is disallowed cost even when successful 63 M L J 868=36 L W 833=1932 M W N 1017-A I R 1932 Mad 779 Award of proportionate cost is proper where party has succeeded only on one issue and has failed on other important issue 55 M 636=A I R 1932 Mad 470

Party failing to cite author costs A I R 1926 Mad , succeeds may be deprived of

the costs of the other side except in exceptional cases 40 Ind Cas 614 Where misconduct of defendant forces plaintiff into litigation defendant even if successful, is not entitled to costs 21 C W N 1137-7 L W 133 (P C)=(1917) M W N 236, see also 43 C 190=19 C W N 880 Where suit is overvalued, plaintiff is entitled to costs on proper valuation A I R 1925 Sind 275=87 Ind Cas 1002 Where the suit is not justifiable the plaintiff should bear the cost A I R 1923 Cal 691=50 C 419=77 Ind Cas 910 Plaintiff coming to enforce a legal right with no misconduct, omission or neglect on his part is entitled to costs A I R 1921 Lah 104=62 Ind Cas 812 Where the suit was rendered inevitable by the gross mis

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apparent 24 C W N 352 58 Ind Cas 421, A I R 1923 Mad 465=17 L W 358  
=24 Cr L J 585-7, Ind Cas 329 Where grounds of appeal was loosely drafted  
appellant though successful was ordered to pay respondent's cost A I R 1915  
Oudh 561=28 O C 203=85 Ind Cas 445 Where plaintiff claimed very high in  
terest, costs were disallowed A I R 1913 Oudh 8=9 O L J 41=69 Ind Cas  
657 Delay in disposal of suit due to laches of plaintiff can not be considered in  
deciding question of costs 65 Ind Cas 709 Where defendant raises all  
possible pleas unsuccessfully he was ordered to bear the cost personally  
A I R 1922 Lah 219=4 Lih L J 210=60 Ind Cas 362 Where Court  
holds that reference to arbitration is invalid it has jurisdiction to pass an

A I R 1928 M 30=34 M L J 580=(1928)  
39 Ind Cas 175 Where costs of interlocutory  
costs in cause party obtaining general costs is  
Judge hearing case has no jurisdiction to inter  
plication A I R 13 6 Bom 566=50 B 430=  
78 Bom L R 1283=97 Ind Cas 133, see also A I R 1924 Bom 398=26 Bom L  
R 282=80 Ind Cas 63 Court has power to award costs to a defendant out of the  
deceased plaintiff's estate even where suit abates by reason of the cause of action not  
surviving 37 M L J 556=10 L W 636-43 M 284=54 Ind Cas 118 Where  
decree has been appealed against unsuccessfully trial Court has jurisdiction to deal  
with taxation of costs under its decree A I R 19 6 Bom 567=78 Bom L R 550  
Where suit brought against two  
sets of costs can be awarded on the  
1933 A L J 796=144 Ind Cas 70  
costs, costs can be ordered against it  
All 1=1933 A L J 1593=55 A  
mortgagee decree holder in a mortgage suit or appeal in the absence of any express

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6=  
p13  
934



direction to the contrary would be part of the mortgage amount decreed and would be a charge on the mortgaged property. But where costs are awarded to the mortgagee in appeal by some defendants without any mention of other defendants, the defendants appellants are liable to pay costs of appeal personally. A I R 1934 All 87

**Cost should follow the result of the suit**—The ordinary rule is that a successful party is entitled to the cost of the suit. 18 B 474. But a successful party may be ordered to pay the cost of the suit because his conduct in the case does not appear to be creditable and straightforward. 124 Ind Cas 140=A I R 1930 M 154=58 M L J 29=1929 M W N 831=31 L W 97, 27 M 341, 12 C 18 (P C), 54 M L J 603=110 Ind Cas 5=A I R 1928 Mad 346. A party must produce all such material documents relating to the suit as may be in his possession, even though no application has been made for their production by the other party. Non production would entail deprivation of costs. A I R 1929 All 134=1929 A L J 262=112

fraud, discretion in awarding costs 707=123 Ind Cas 39. Where an appeal was successful, the costs in the trial Court was refused. A I R 1930 Mad 218=58 M L J 210=21 L W 65=53 M 480=122 Ind Cas 504, see also 104 Ind Cas 325=A I R 1927 Lah 723, 1930 Lah 240=115 Ind Cas 21,

or partition of land the defendant he Civil Courts but failed. The I R 1930 Lah 222=116 Ind Cas d in application for review, the

party was allowed to raise it but was ordered to pay the costs of that application. A I R 1928 P C 103=6 R 302=30 Bom L R 842=47 C L J 510=26 C L J 657=32 C W N 845=55 I A 161=28 L W 204=54 M L J 696 (P C). Costs generally abide result. A I R 1923 Lah 513=77 Ind Cas 416, A I R 1925 Cal 297=40 A L J 504=85 Ind Cas 127, A I R 1921 Bom 71=45 Bom 1177=23 Bom L R 189 61 Ind Cas 71, A I R 1923 B 265=25 Bom L R 323=47 B 637, obable expenses. In compli al 185=48 C 427=25 C, false or unnecessary

evidence justifies refusal of cost. A I R 1927 Mad 474=100 Ind Cas 224. Absent defendant need not be necessarily exempted from payment of costs. Antecedent conduct of defendant leading up to necessity for institution of suit should be looked into. A I R 1925 Cal 569=29 C W N 297=86 Ind Cas 321. Where trial Court decided case on generally accepted rulings which were subsequently explained or dissented from, the Appellate Court in reversing the decision should not saddle the respondent with costs. A I R 1930 All 167=124 Ind Cas 23

**Sub section (2)**—Successful party is generally entitled to cost. 122 Ind Cas 378, 54 M L J 603=27 L W 841=110 Ind Cas 5=A I R 1928 Mad 346. Sub-section (2) provides that where a Court directs that costs shall not follow the Court the Court shall state the reasons in writing. 16 R D 290=12 U D 336. A I R 1928 Oudh 224=5 O W N 35=107 Ind Cas 881, A I R 1925 Bom 527=27 Bom L R 422, A I R 1923 Lah 302=75 Ind Cas 64, 3 U P L R All 55=64 Ind Cas 962, 24 C W N 352=58 Ind Cas 421, 17 R D 164, A I R 1933 Nag 49=29 N L R 8. Such discretion may be interfered with when there has been violence of any established principle, misapprehension of facts and no real exercise of discretion. 3 U P L R All 55=64 Ind Cas 962, 24 C W N

n granting greater or less 1928 Nag 171=108 Ind even reasons need not be stated. 95 Ind Cas 446 (Nag). Where not only the reasons are not stated but there is no reason at all why any cost should not be allowed and the main expenditure in the case appears to have been due to the folly of the party against whom the decree has been passed, the full costs in the case should be allowed. 16 R D 290=12 U D 336

**Appeal**—der for costs while accepting de 1930 Bom 445=32 Bom L R t be interfered with unless the A I R 1925 Oudh 699=2 O W N 901=91 Ind Cas 111, 72 Ind Cas 993=A I R 1923 Bom 37, 47 C 67=56 Ind Cas 334, 20 C W N 979=23 C L J 606=36 Ind Cas 655

Appeal is entertainable against a decision on the question of costs where a question of principle is involved 21 C W N 339=39 Ind Cas 388, A I R 1934 Mad 73, 42 B 327=20 Bom L R 905=47 Ind Cas 762, 25 Bom L R 242=47 B 559=72 Ind Cas 324, 40 A 558=16 A L J 592=48 Ind Cas 478, A I R 1921 U B R 20=63 Ind Cas 811, 3 U P L R (A) 55=64 Ind Cas 262, A I R 1930 Lah 234, 30 Bom L R 1622=53 B 178 Some order as to costs must be made, so failure to do so is appealable A I R 1929 Oudh 155=25 O C 385=10 O L J 20=73 Ind Cas 222 Second appeal lies on question of costs if question of law or principle is involved or discretion is exercised arbitrarily 2 Lah 332=27 P L R 391=100 Ind Cas 598, 35 C L J 156=68 Ind Cas 60, 2 Lah L J 310, 52 Ind Cas 961 97 P W R 1918=45 Ind Cas 948, 56 Ind Cas 971, A I R 1921 Cal 156=34 C L J 475=66 Ind Cas 903

Question of costs can not be raised newly in second appeal A I R 1923 All 334=75 Ind Cas 527 Second appeal does not lie on question of costs concurrently decided A I R 1926 All 419=93 Ind Cas 1008 No appeal lies against direction how costs are to be taxed A I R 1925 Bom 432=27 Bom L R 692=89 Ind Cas 211 Where trial Court orders parties to bear their own costs and only one party appeals therefrom such party cannot be ordered to pay costs of non appealing party in trial Court A I R 1929 Lah 177=30 P L R 600=118 Ind Cas 464

**Interference by High Court**—High Court will not interfere unless question of principle is involved A I R 1931 All 126=(1931) A L J 16=129 Ind Cas 551, A I R 1929 Oudh 406=6 O W N 689=119 Ind Cas 449, A I R 1926 Oudh 35=90 Ind Cas 577, 46 Ind Cas 544, 27 C L J 78=45 Ind Cas 733 32 Ind Cas 579=3 L W 109=19 M L T 86 But the High Court can interfere w)

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cc  
C  
Cas 3, 3

is involved 41 A 254=17 A L J 169=49 Ind Cas 777  
no interference where reasonable discretion has been exercised 73 Ind Cas 307=A I R 1924 Oudh 110

**Appeal to Privy Council**—Where leave to appeal obtained but appeal not presented, appeal costs of application A I R 1925 Bom 471=27 Bom L R 699=89 Ind but did not appear at the hearing costs should be paid to the respondent do 37 Ind Cas 292=41 C L J 450=77 Bom L R 853 (P C)=49 M L J 230

**Costs against legal practitioners**—High Court cannot order a legal practitioner to pay the costs of an application or suit personally except where s 35 can be made applicable A I R 1930 All 225=(1930) A L J 402=52 A 619=125 1 C 177 (P R) Section 35 has a wider scope and authorizes a Court to party to the litigation but Cases of contempt

of Court are not

**Sub-section (3)**—There is no such thing as a Court rate of interest A rate of six per cent per annum which is the maximum awardable on costs may be appropriate rate of interest to allow for damages A I R 1926 Nag 363=94 Ind Cas 971 Interest should not be allowed until costs have been actually incurred 60 Ind Cas 345 Where judgment is silent as to costs it can be included in decree 35 Ind Cas 218

**Account suit**—Costs against unsuccessful party can be given in preliminary decree A I R 1930 All 72=121 Ind Cas 550 Where defendants are largely responsible for litigation and hampering investigation they must pay full costs 24 C W N 110=30 C L J 417=54 Ind Cas 636, see also 20 C W N 368=35 Ind Cas 383

**Costs in administration suit**—Where litigation is caused by act of deceased, estate should pay the cost A I R 1931 Sind 17=25 S L R 72=129 Ind Cas 900 Costs of intervenor voluntarily coming in for future personal benefit should not be saddled on claimant 24 C W N 888=48 C 352=59 Ind Cas 581

**Cost of Commission**—Party taking out commission succeeding to any extent is entitled to costs, A I R 1929 Cal 719=33 C W N 614=122 Ind Cas 220

such a decree imposes a joint and several liability on all the respondents A I R 1933 Pat 24=13 P L T 619=140 Ind Cas 874, see also A I R 1932 Lah 308=1932 P C L 308, 1932 A L J 411=A I R 1932 A 383=A L R 1932 All 641

**Divorce suit**—Wife's cost in a divorce suit should be paid by the husband irrespective of result 66 Ind Cas 494=A I R 1922 All 243

**Guardianship proceedings**—Philanthropic society unsuccessfully seeking to be made a guardian of a minor's property cannot claim costs as they are not expenses either on account of necessities or as having been incurred for the welfare of the minor or for the protection of his estate A I R 1930 Cal 397=51 C L J. 272=58 C 15=126 Ind Cas 707

**Income-tax reference**—Successful assessee is entitled to recover deposit A I R 1931 All 23=1930 A L J 1548=52 A 991=130 Ind Cas 634

**Insolvency proceeding**—Costs on petitioning creditor on setting aside adjudication order cannot be set off against debt due A I R 1930 B 516=32 Bom L R 1076=128 Ind Cas 24 Where simple order cost has been passed against to be reimbursed on obtaining  
J 873=28 L W 719=114 Ind  
may be ordered to pay costs  
A I R 1929 Mad 105=55 M L J 873=28 L W 719=52 M 263=114 Ind Cas 82,

**Judicial separation**—Section 35 does not empower Court to order costs in cases of judicial separation A I R 1930 Cal 558=57 C 1089=34 C W N. 319=127 Ind Cas 559

**Maintenance suits**—In awarding costs in maintenance suits Courts should see if claim was excessive or exaggerated A I R 1930 Mad 479=59 M L J 531=32 L W 729=126 Ind Cas 597 Costs in proportion to success should be awarded 10 L W 540=(1919) M W N 878=53 Ind Cas 796, A L R 1932 Mad 1203 Where widow claimed maintenance at a rate found to be excessive through being prevented from knowing the actual income of the family property and where the defendant put up vexatious pleas to defeat her claim, she is entitled her full costs A I R 1928 Mad 216=54 M L J 530=28 L W 328=108 Ind Cas 712

**Mortgage suit**—Personal decree for cost against party who is not mortgagor L W 263=131 Ind Cas 151  
suit But where question of  
even to deposit the mortgage  
17) M W N 275=38 Ind Cas  
655 In a redemption suit where the mortgagee alleges the transaction to be a sale he is not entitled to cost A I R 1924 Bom 172=25 Bom L R 1209 Claim for cost is not an independent claim, costs form part of entire decree amount to be  
it by  
y to  
ainst  
Bom  
L R 1199=122 Ind Cas 837 The transferee of the equity of redemption can be personally saddled with cost where he raises pleas for which there is no foundation

151, see also A I R 1931 Rang 153=133 Ind Cas 225=9 R 186

**Parties**—Guardian continuing as such after minor has attained majority, is liable for costs A I R 1929 Mad 782=1929 M W N 545=123 Ind Cas 80. The words by whom in s 35 include next friends and guardians of minor plaintiffs and defendants A I R 1929 Mad 782=(1929) M W N 545=123 Ind Cas 805 Third party claiming through a party to a suit, against whom costs are awarded is liable A I R 1930 Mad 577=(1930) M W N 153=58 M L J 310=31 L W 262=33 M. 708=123 Ind Cas 47 Where several defendants raised various defences,

separate costs can be awarded 18 M L T 460=(1915) M W N 1021=31 Ind Cas 312, A I R 1925 Bom 432=27 Bom L R 692=89 Ind Cas 211 In case of alternative relief against two sets of defendants unsuccessful defendant must bear costs of other defendant 11 S L R 1=42 Ind Cas 636 Defendant against whom suit fails is entitled to costs A I R 1926 Mad 1084=51 M L J 446=24 L W 378 *Guardian ad litem* of a party can be made to pay costs A I R 1928 Mad 590=1928 not appealing made respondent cannot 20 A L J 980=71 Ind Cas 424 A I

A I R 1930 Mad 913=59 M L J 524=23 L W 438 Costs cannot be granted against a party against whom no relief is sought A I R 1930 Mad 195=30 L W 949=58 M L J 118=124 Ind Cas 216

**Damage suit**—In a claim for moral damages, it is hardly right to order proportionate costs A I R 1929 Mad 493=29 L W 604=(1929) M W N 341=119 Ind Cas 149 In a libel case where claim for damage was much higher than allowed, the cost is at the discretion of the Court 117 Ind Cas 884=A I R 1929 Lah 129=10 Lah 816 see also 78 Ind Cas 573=46 M L J 366=A I R 1924 Mad 692=(1924) M W N 373=20 L W 60

**Partition suit**—In a suit for partition where the defendant pleaded but failed to pay costs of suit 35 C W N 115 Order would bear their own costs The institution fee by all A I R 1923 Bom 464=77 Ind Cas 914 In contested the costs up to preliminary decree 56=11 Pat L T 233=9 Pat of unfair contention, costs 11 L W 5=54 Ind Cas

382  
**Will**—Where litigation was caused by vagueness of will, costs should come out of estate 78 Ind Cas 249=A I R 1925 Sind 195=19 S L R 220

of witnesses can 401=109 Ind Cas expenses when his B 62=31 Bom L R 1020=122 Ind Cas 121

\* [35A.] (1) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation

(2) No Court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial

Amendment) Act,  
previous sanction of  
e by the Local

Small Cause Courts Act, 1887,\* and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees :

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him,

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence ]

Scope—Costs under s 35 A are compensatory and not penal A I R 1931 Lah 507=131 Ind Cas 577 In a suit against father and minor sons with identical interest in which the father alone has to bear the harassment and trouble it would be wrong to award costs under s 35 A to both separately *Id.* In case of harassment of the plaintiff by the defendant punitive costs can be awarded under this section 14 L R 15 (Rev)=17 R D 227 Compensation can be awarded only after objection by the opposite party A I R 1926 Lah 472=94 Ind Cas 78 An order under this section can be passed against next friend of a minor 52 A 907=(1950) A L J 1295=128 Ind Cas 225 A suit instituted in the Court of Small Cause was subsequently transferred to the regular side Judge trying has same powers as the Small Cause Court in awarding compensation under s 35 A A I R 1950 Nag 133 120 Ind Cas 417 Power of Small Cause Court to award costs under s 35 A is conditional upon its having express authority from High Court so to do or having jurisdiction up to Rs 250 A I R 1926 All 354 94 Ind Cas 790 Appeal against order of Small Cause Court awarding cost under s 35A lies to District Judge A I R 1927 All 554=94 Ind Cas 790

## PART II.

### EXECUTION.

#### GENERAL.

36. [New] The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Scope—A subsequent order of Court in regard to particular costs is executable even though those particular costs are not shown in the decree A I R 1931 Sind 13=15 S L R 11=62 Ind Cas 507 An order directing the payment of an amount to Commissioner for work done is executable as decree and order 47 applies to such execution A I R 1925 Cal 57=52 C 269=40 C L J 180=84 Ind Cas 724 An order under order XX rule 11 (2) is executable as if decree A I R 1925 Rang 189=4 Bur L J 32=2 Rang 673=85 Ind Cas 291 Judgment obtained on admission under order XII, rule 6 Plaintiff can enforce payment of amount awarded as an order in execution proceeding, without a decree being drawn up A I R 1926 Sind 119=20 S L R 216=92 Ind Cas 562

37. [S 649, 2nd para] The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Clause (a)—As a general rule decree of final Court can be executed A I R 1921 L B 37=11 L B R 163

Clause (b)—Court passing decree is proper Court to execute it though it has lost jurisdiction, at the time L J 284=26 M L T as 213 Court abolished A I R 1926 Pat 209=

s 37 (b) is to be applied in interpreting the phrase court of first instance A I R 1926 Mad 813=51 M L J 161=(1926) M W N 395=95 Ind Cas 587 Court passing decree can alone execute decree though losing territorial jurisdiction over property subsequently A I R 1928 M 746=28 M L W 885=114 Ind Cas 545, A I R 1921 Pat 152=6 P L J 304=(1921) Pat 186=2 P L T 374=62 Ind Cas 487 Territorial jurisdiction is a condition precedent to the execution of a decree 31 M L J 22=35 Ind Cas 296 Where territorial jurisdiction of the Court passing decree has been taken away between the date of the preliminary decree in mortgage suit and final order to transmit execution to Court to sell property A I R 1927 Mad 351=25 L W 671=(1927) M W N passing of money decree the area in

which the judgment debtor lived was transferred from the jurisdiction of one Court to another Court the latter Court can execute the decree A I R 1924 Mad 32=45 M L J 210=(1923) M W N 106=18 L W 17=73 Ind Cas 956, see also 49 Ind Cas 958, 49 Ind Cas 94 31 M L J 90=20 M L T 327=35 Ind Cas 237, A I R 1922 Mad 10=46 M L J 544=65 Ind Cas 727 Where a Court passing decree was abolished the decree provided it would

relates if instituted at time of T 333=92 Ind Cas 900 executed by Court having jurisdiction transfer 42 M 461=36 M L J 199=10 L W 370=51 Ind Cas 102 A preliminary decree for nearly Rs 2000 was made in a mortgage suit by Munsif having jurisdiction up to Rs 2000 his successor not having been vested with the same

Munsif in the meantime was the decree under s 150 but not s 879, see also 1931 M W N which arose within the present jurisdiction under the supervision of the Court

Where the notification does not purport to transfer business specifically or by general description from the Court which passed the decree to the Court to which jurisdiction over the mortgaged property is transferred the decree without transfer of the same M 801=62 M L J 687=

1 R 1932 Mad 418=A decree according to the Court

which originally passed the decree but the Court where it was instituted is obtained from the first Court and then the second Court is abolished and its whole decree, does of pecuniary jurisdiction

## COURTS BY WHICH DECREES MAY BE EXECUTED.

Court by which decree may be executed

38. [S. 223 1st para.] A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Scope—This section confers jurisdiction for execution on either the Court which passed the decree or the Court to which it is sent for execution 35 C W N 77=A. I R (1931) Cal 312=52 A L J 569=132 Ind Cas 149=, 8 C 832 Where mortgage property is situate outside the territorial jurisdiction of the executing court it can order the sale of the property so mortgaged 14 Lah 457=143 Ind Cas. 574=34 P. L. R. 815=A. I R 1933 Lah 687, see also 14 C 661, 15 C 667, 21 C (39, 45 M 746, 80 Ind Cas 901 Territorial jurisdiction is necessary to carry on execution 35 C W N 77=A. I R 1931 Cal 312=52 C L J 569=132 Ind Cas 149

Under this section a decree may be executed either by the court which passed it or by the court to which it is sent for execution and where the trial court is not the court to which the decree is sent for execution section 38 prevents it from proceeding with the suit to set aside a sale as a matter in execution and executing the decree 68 Ind Cas 693=A. I R. 1922 Nag 189 The code does not prohibit concurrent execution. A. I R 1921 L B 25=11 L B R 15=61 Ind Cas 809, 34 Ind Cas

101 as to executability irres-

W R 1915=32 Ind Cas 43

ordered by the court which alone

that court to another court,

other court will not derive any jurisdiction by the mere filing of the application in that court A. I R 1921 Pat 152=2 P L T 374=6 P L J 304=1921 Pat 166=62 Ind Cas 487 No court can execute a decree in which the subject matter of the suit or of the application of the suit is properly entirely outside the local limits of its jurisdiction except in cases of decrees for sale of mortgaged properties A. I R 1925 Pat 139=6 P L T 71 80 Ind Cas 901

This section is not exhaustive If a suit instituted in court A is transferred to court B and court B decided it, application for execution shall be presented to court B and not to court A. A. I R 1925 All 276=47A 57=85 Ind Cas 746 In all cases where original Court has lost jurisdiction over subject matter of suit between passing of decree and executing it, it should send its decree to the court which has territorial jurisdiction A. I R 1924 Mad 457=46 M L J 250=(1924) M W N 38=19 L W 16=79 Ind Cas 806, see also 74 Ind Cas 608 Court passing decree can entertain application for its execution and determine questions as to the executability but can not order sale of properties not within its territorial jurisdiction A. I R 1931

sending decree

for execu

L J 569=

in by the mere

R 1105=53B

Receiver by

original jurisdiction

in a proper case A. I R 1930 Cal 507=34 C W N 238=51 C L J 209=57 C 964=128 Ind Cas 97 Where a decree has been transferred to another court an application to the parent court to re-transfer it to a third court is proper A. I R 1928 Mad 493=110 Ind Cas 829 Jurisdiction to execute a decree can be exercised both by the court which passes it, as well as by the court to which the business of the former court has been transferred 107 Ind Cas 195 Issue of injunction to Court passing decree after transfer of decree for execution to collector is futile A. I R 1929 Oudh 735=4 Luck 635=6 O W N 226=117 Ind Cas 471 Application made by decree holder merely to issue notice to the judgement-debtor to pay the decretal amount to the court which passed the decree is not illegal or to an improper court, although the judgment debtor at the time was residing outside that court's jurisdiction A. I R 1929 Rang 95=116 Ind Cas 474

39. [S. 223, 2nd and 3rd paras.] (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of decree

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain,





670. A Court cannot in execution sell  
sdiction even though the decree under  
jurisdiction over that property. 38 M  
L J 750=23 M L T 24=(1918) M W N 132=43 Ind Cas 79

execute  
of that  
all satis-  
tion over

the executive proceedings, are merely suspended until the judgment creditor has  
obtained an order from the Court which passes the decree for inserting the name of  
the legal representative A I R 1930 Sind 16=118 Ind Cas 221 Transfer of a  
portion of a decree to another Court for execution is irregular and if made without

247=43  
cution  
isferred  
record  
made

to the court which passed the decree 55 Ind Cas 156 Where a court has power  
to execute an award as if it were decree of that court as under Bombay Co operative  
Societies Act, s 43 and rr 31 and 34 thereunder, it can also transfer it under s 39

8=64 Ind Cas 337 If a court  
original suit it is incompetent  
can not be transferred to it

for execution under s 39 A I R 1922 Pat 188=3 P L J 422=(1922) Pat 229=  
1 Pat. 651

Presidency Small Cause Court  
ree transferred by Small Cause  
Munif A I R 1927 All 740  
without the jurisdiction of the

original court whose decree is sought to be enforced and is in the hands of a third  
party who is not amenable to or permanently residing within the jurisdiction of the  
executing court it must be transferred to the court within the local limits of whose  
jurisdiction the property sought to be attached is for the time being 4 Pat L J 141  
=(1919) Pat 155=48 Ind Cas 943 A court can execute a decree for sale of the  
mortgaged property, which is wholly out of its jurisdiction A I R 1925 Pat 139=6  
P L T 71=80 Ind Cas 901 Court which passes mortgage decree may even if the  
property be outside its jurisdiction, bring it to sale A I R 1926 Mad 421=49 M 746  
=50 M L J 161 Transferring Court ceases to have jurisdiction till it receives a certi-  
ficate under s 41 and second transfer before such certificate is without jurisdiction  
A I R 1925 Oudh 428=12 O L J 287=2 O W N 313=29 O C 84 Where  
an application for execution has been made to the Court transferring the decree for  
execution, a second application to transferee Court is not necessary A I R 1924  
Pat 120=5 P L T 11=2 Pat 909=(1923) Pat 280 Decree transferred for execu-  
tion to another Court, an application to retransfer the same for execution to a third  
Court or to execute itself can be made to the Court passing the decree A I R  
1927 Nag 367=10 N L J 24=101 Ind Cas 279 Jurisdiction of a Court trans-  
ferring decree for execution to another Court is not confined to cases in which there  
is no property within the jurisdiction of the Court which passed the decree sufficient  
to satisfy decree A I R 1925 Oudh 481=28 O C 199 Sending of a certificate  
does not of itself put an end to it

and the sending of a certificate  
orders of High Court if any canr  
178=68 Ind Cas 657 Distr  
Court or withdrawing execution  
transfer it for execution to anot  
(H C) 405=18 L W 19=44 N  
been transmitted to Agent's C  
ably intended that it should be executed against those properties over which the  
Agent's Court has jurisdiction A I R 1924 Mad 144=18 L W 747=76 Ind Cas  
269 Even after transfer of a decree the transferring Court retains jurisdiction to  
deal with applications under Order 21 rules 16 and 22 60 C 1176=58 C L J  
192=37 C W N 1167=A I R 1933 Cal 906

Simultaneous execution of decree—A decree may be executed in more  
than one Court simultaneously whatever may be the case with regard to institu-

tion of suit A I R 1929 Bom 418=53 B 844=31 Bom L R 1105=123 Ind Cas 507 This Code does not prohibit the sending of a decree for execution of two Courts at the same time A I R 1927 Rang 258=5 Rang 397=104 Ind Cas 133 Where a decree is transferred to another Court for execution concurrent execution of it is permissible in the Court from which the decree has been transferred 15 A L J 532=39 Ind Cas 729 Where a Court transfers a decree for payment of money, on application of the decree holder to another Court by grant of a certificate of non-satisfaction and the property is attached by transferee Court, the former Court does not lose jurisdiction to execute the decree and is competent to proceed with the execution except where the value of the property is greater than the amount of decree and decree holder is likely to realize the whole amount of its sale, when a further order for arrest of the judgment debtor is not justified A I R 1930 Lah 199=121 Ind Cas 68

**Whether application for transfer is a step in aid of execution—**A mere application to have a decree transferred to another Court though not an application for execution is a step in aid of execution A I R 1931 Cal 312=52 C L J 569=35 C W N 77=132 Ind Cas 149, 14 A L J 415=33 Ind Cas 523 Where a decree is transferred for execution an application for execution in order to be a step in aid of execution has to be made to the Court to which the decree has been transferred and not to the Court which passed the 300=18 Bom L R 909=14 A L J 1129=20 M J W 558=(1916) 2 M W N 541=21 C W N Cas 682 An application for a certificate is a step in where the decree holder having obtained his order does not carry out the order which he has obtained and the decree is not in fact sent, the Court passing the decree does not lose jurisdiction A I R 1922 Pat 301=3 P L T 293=1 Pat 328=65 Ind Cas 332

**Clause (d)—Transferee Court cannot question transferor Court's power to transfer** A I R 1934 Mid 266

**40. [New.]** Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province

**Scope—**Where the decree pending in the 'transferor' Court has been completely withdrawn transferee Court has no further jurisdiction A I R 1930 Lah 503=126 Ind Cas 516

**41 [S 223, 4th para]** The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure

**Scope—**The Court to which a decree is sent for execution retains its jurisdiction, it or until it has completely failed to execute the decree or until it has awarded the decree or until it has completed execution of the decree

**Result of execution proceedings to be certified** The Court to which a decree is sent for execution should inform the Court which passed the decree what has happened in execution A I R 1923 Bom 371=76 Ind Cas 549 The sending of a certificate does not of itself put an end to the jurisdiction of the Court to execute the decree 68 Ind Cas 657=A I R 1922 Nag 210 but see A I R 1925 All 179=22 A L J 1039=L R 6 A 28 Civ Mere striking of application for execution does not terminate jurisdiction it is only after certifying that the transferee Court ceases to have jurisdiction to execute 5 Pat 598=7 P L T 461=(1926) Pat 86=94 Ind Cas 36, 85 Ind Cas 390=A I R 1955 All 176=22 A L J 1039=L R 6 A 28 It is only when the Court to which the Court the decree is sent has executed it or has failed to execute it and not merely on failure of an application that the Court is bound to send a certificate under s 41 25 Bom L R 453=74 Ind Cas 149 The original Court who has transferred its decree for execution to another Court can also bring the decree back A I R 1926 Bom 271=50 B 439=28 Bom L R 381=94 Ind Cas 146 Transferee Court has jurisdiction to decide objections relating

its proceedings even after issue of certificate A I R 553=4 Luck 209=115 Ind Cas 444 Certificate a decree has once been transferred to another cases to have jurisdiction to execute the decree 345=80 Ind Cas 752, A I R 1933 Lah 376 Where a Court has both Small Cause decree passed under the former is executed tion is made in the Small Cause Register there is sufficient compliance with s 41 76 Ind Cas 549=(1923) Bom 371

The certificate prescribed by s 41 from the Court of transfer is not a condition precedent to the jurisdiction of the Court which passed the decree to entertain the application. It is not also necessary that the Court which passed the decree its hand until it receives certificate 63 M L J 788=36 L 'V 750=140 that Court has until (1) the execution certifies that fact to the t is able to execute it sent the decree or (3) ~ art which forwarded the decree 11 P 513=A I R 1932 P 286=139 Ind Cas 843=13 P L T 613=A L R 1932 Pat 672

**42 [S. 228.]** The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

**Scope**—Court to which execution has been transferred will exercise all the powers of the Court of first instance and will retain its jurisdiction to execute the decree even though there has been an appeal from the decree after such transfer and it has been affirmed in appeal and the execution cannot be defeated merely by the fact that no fresh order of transfer was made by the Court which transferred the decree after such affirmation in appeal. A I R 1931 Pat 27=9 Pat 829=129 Ind Cas 138 This section is intended to remove all questions arising out of the decree, such as those dealt with by s 47 of the Code and the like from the cognizance of the Court which made the transfer. A I R 1924 All 700=46 A 560=22 A L J 439=L R 5 A 380 Civ -83 Ind Cas 848 When a decree is transferred to a Court for execution the Court to which it is transferred has the power of attachment under Order XXI rule 48 (1). A I R 1927 Oudh 112=1 Luck 46=13 O L J 174=91 Ind Cas 1043 A Court executing a transferred decree cannot question legality or propriety of the order directing execution. A I R 1930 Lah 143=123 Ind Cas 531 The executing Court can determine the question under order XXI rule 50 (2) whether a person is a partner. A I R 1929 Lah 278=115 Ind Cas 536, 134 Ind Cas 1026=33 P L R 598=A I R 1931 Lah 736 A Court to which a decree is transferred for execution cannot execute it in absence of regular application for execution. A I R 1924 Nag 413=80 I C 59 An appeal lies from an order passed in execution of a Small Cause decree which has been transferred to a Court where it is filed on original side. 14 A L J 415=33 Ind Cas 523 Court to which a decree is sent is competent to determine the question under s 41 whether a person is a member of a firm. A I R 1921 Lah 401 If order for the transfer of a decree is not actually sent to the Transferee Court, the Court retains jurisdiction to execute it. A I R 1922 Pat 301=1 Pat 328=3 Pat L T 798=65 Ind Cas 332 Order in execution of a Small Cause Court decree transferred for execution to the ordinary Court is appealable in the same way as order made in execution of decrees passed by that Court. A I R 1921 Ctl 242=34 C L J 477=67 Ind Cas 6 A revenue officer in

the parent Court of the jurisdiction which it alone enjoys of making an order of re transfer and the application for re transfer to a second Court lies to the Court which passed the decree A I R 1926 Lah 113=89 Ind Cas 958 Even an application for the transfer of the decree again to another Court must be made in the first instance to the Court to which the decree has already been transferred A I R 1922 Bom 359=24 Bom L R 798=47 B 56=68 Ind Cas 506 Although the Court to which a decree is transferred for execution has no power to entertain any objection regarding the legality or propriety of the order directing execution or the right of the person shown in the order as the person entitled to execute the decree yet it is the duty of the executing Court on being acquainted with facts showing that

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that the decree is transferred to a Court in Mofussil A I R 1925 Mad 1179=22 L W 455=(1925) M W N 713=49 M L J 104=90 Ind Cas 509 In 43 A 394 s 42 was construed in effect to mean that by going to the executing Court a litigant was entitled to obtain the same reliefs that he would be able to obtain if he had been to the Court which passed the decree that is to say he is entitled to obtain in fact the same sort of relief which might have been obtained but was not in fact obtained before the Court which passed the decree

1932 P 323=13 P L T  
for leave to execute under  
called upon to execute the  
name does not appear on the  
face of the decree is or is not liable under it s 42 C P Code has no application  
A I R 1931 Sind 82=131 Ind Cas 712 A Court to which a decree has been transferred for execution must take the decree as it stands and is not entitled to question the validity of the decree upon the ground that the decretal Court had no jurisdiction to pass it A I R 1931 Rang 252=9  
1931 Lah  
can stay  
846=57 C  
the decree

being nullity A I R 1934 Lah 217

43 [S 229] Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court

Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory  
be executed within the jurisdiction  
executed in manner herein provided  
British India

Scope—The Court of the Political Agent at Sikkim is a Court established or authorized by the authority of the Governor General in Council within the meaning of the Subordinate Courts Act, 1908 (W N 622=6) and is not a Civil Court established in a foreign state within the terms of s 284 of Act VIII of 1859 =s 43) and consequently the Moonsiff of Shahzadpoor has no jurisdiction to execute a decree of that Court 4 B L R A C 134=13 W R 154

44 [S 229B] The Governor General in Council may, by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor General in Council, or any class of such decrees, may be executed

cuted in British India as if they had been passed by the Courts of British India.

**Scope of the section**—Court to which a decree of a foreign Court is transferred for execution can enquire into jurisdiction of Court passing the decree A I R 1925 Cal 955=30 C W N 785=41 C L J 508=89 Ind Cas 347, 1931 A L J 653=A I R 1931 All 689 The words as if they had been passed by the Courts in British India have not the effect of giving a British Court 27 M L J 330=86 Ind Cas 492 A British Court executing a foreign decree has power to enquire whether the foreign Court had jurisdiction to pass the decree 36 Ind Cas 363=18 Bom L R 486=40 B 551, A I R 1925 Cal 955=30 C W N 785=41 C L J 508=89 Ind Cas 347 Unless a decree that is, produced for execution under provision of s 44 is conclusive as to the matter directly thereby adjudicated it cannot and ought not to be executed A I R 1925 Mad 788=21 I W 230=96 Ind Cas 407 A British

s 44 to British Indian Court can be attacked in the latter Court on grounds given in s 13 39 M 733=3 L W 90=19 M L T 68=30 M L J 148=(1911) 1 M W N 81=12 L C 100 can inquire into a personal action R 486=36 Ind Cas 492 British Indian Court law in force and not that which prevailed when the decree was passed 36 Ind Cas 369=40 B 504=18 Bom L R 481

**45 [S 229A]** So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply

**Scope**—This section contemplates Courts in alliance with the British Government A I R before Dutch territory is not consistent with the and therefore the mandate issued to the R 1929 Sind 45=23 S L R 205=114 Ind Cas 111 decree is not transfer of Travancore decree as J 130=6 L W 203=22 M

**46 [N.O.] (1)** Upon the application of the decree holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment debtor and specified in the precept  
(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree holder has applied for an order for the sale of such property

**Scope**—Under s 46 C P Code an attachment under precept is not invalidated by the fact that the order extending the statutory period of two months during which the attachment will remain in force is passed after the expiry of the said period, provided that the application for extension of time is put in before the expiry of the said two months. In such a case the order relates back to the date of the petition and has retrospective effect. 3 L W 336=34 Ind Cas 302. The Court to which the precept has issued has no jurisdiction to question the validity of the precept. The Court to which it is sent has only to carry it out. The issuing Court alone can vary it and not the Court to which it is sent. A I R 1927 Cal 581=31 C W N 653=102 Ind Cas 513. A Court to which precept is issued has no power to do anything not warranted thereby. But it has inherent powers to deal with matters incidentally arisen in connection with proceedings for attachment. The Court to which precept is sent has therefore jurisdiction to accept money or security. A I R 1926 Lah 433=8 Lah L J 164=27 P L R 757=94 Ind Cas 119. The Court which passed the decree and not the Court to which a decree is transferred for execution is competent to issue precept. An application for an attachment under s

made before the expiry. 3 L W 336=34 Ind Cas 302. Two applications for attachment of different properties can proceed simultaneously in the same Court in execution of the same decree because this concurrent execution by the same Court is not different in principle from that provided by the new section 46 relating to precepts by which the parent Court and the Transferee Court concurrently execute the same decree and because besides section 46 there are other sections which indicate that the present Code does not view with disfavor concurrent execution. A I R 1923 Pat 224=2 Pat 378. 4 P L T 99=(1923) Pat 61=71 Ind Cas 741. A Court has jurisdiction to order attachment before judgment of properties situate outside its jurisdiction and it has also powers to order the raising of the attachment effected in pursuance thereof. A I R 1931 Rang 279. A precept can be issued asking another Court to attach property within its jurisdiction. It cannot itself attach such property. 1933 A L J 902=A I R 1933 All 844.

#### QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

[47 S. 224] (1) All questions arising between the parties to the suit

Questions to be determined in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court fee.

(3) Where a question arises as to whether any person is or is not the representative of a party such question shall, for the purposes of this section, be determined by the Court.

**Explanation**—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

**Object of numbering section**—The object of numbering separately sub-sections is to make several sub-sections independent of each other. 20 C W N 679=32 Ind Cas 524.

and as cheaply as possible 19 A 613 (P C), see also 32 C 1032, 9 C W N  
 ure appears  
 the subject  
 before the  
 as speedily

at time of decree is within this section 1 Pat L W 282=2 Pat L J 192 Question between parties but in different capacities is not under this section A I R 1923 Nag 149=6 M L J 25=69 Ind Cas 500 Question between representatives of assignor and assignee of a decree while they are dead can be decided under this section A I R 1917 Mad 903=26 L W 308=39 M L T 176=53 M L J 568=105 Ind Cas 405, see A I R 1922 Lah 396=4 Lah L J 259=79 Ind Cas 546 Questions between defendants *inter se* are covered by s 47 A I R 1924 Mad 365=45 M L J 478=(1923) M W N 662=77 Ind Cas 148 An order in question arising between judgment debtor and representative of the decree holder is decree 30 M L J 566=19 M L T 235=(1916) M W N 155=3 L W 236=33 Ind Cas 739. Question forming basis for independent action cannot be introduced

Court has exclusive jurisdiction to determine such questions The fact that they are not raised in the execution proceedings will not give the party a right to raise them in a separate suit except in cases of fraud of the decree holder A I R 1931 Nag 27=130 Ind Cas 154 Where the judgment debtor fails to object the description of property sold at the time he cannot come in under s 47 to contest the description after the sale is complete (1931) A L J 49=A I R (1930) A 865 An order passed by the Court on an application for amending a scheme of management is not an order passed in execution proceedings under s 47 of the Civil Procedure Code and is not appealable as a decree 53 Bom L R 520=A I R 1931 Bom 391=133 Ind Cas 740=55 P 414 (1931) A L J 1071=A I R (1931) A 765=133 Ind Cas 401 The question whether the Court has a discretion to decide the order in which the mortgaged items should be sold or whether the decree holder can dictate in disregard of the rights of subsequent transferees involves a adjudication of rights of parties and is a decree appealable under s 47 read with section 2 (2) (1931) A L J 108

**Parties to suit**—This section is not necessarily confined to decree holders on one side and judgment debtors, or the other and is wide enough to cover a dispute between co defendants who may be parties in a partition suit 1931 A L J 1056=A L R 1933A 27 In order to attract the provisions of s 47, it is necessary that the dispute must be between parties who are opposed to each other in the suit If the legal representatives of the deceased decree holder are disputing as regards the shares to which they are entitled in the inheritance of the deceased decree holder, they ought to settle the point in a regular suit and they cannot do so by way of application for execution of the decree 13 P L T 557=A I R 1932 P 379=140 Ind Cas 97=A I R 1932 P 732 Parties to the suit means parties who are opposed to each other in the suit though not necessarily as plaintiff and defendant The lit to be considered, of s 47 59 C 117 =A L R 1932 Cal adverse hence any in 56 M 808=1933 Mad 598=65 M s not a party to the

decree 143 Ind Cas 843=10 O W N 52=A I R 1933 Oudh 146 All questions between the parties to the suit must be decided and not by a third person 1933 M W N 152=clearly outside the pur 35C W N 877 Person

Mad 850=(1929) M W N 718=120 Ind Cas 565 'Parties' in section 47 refers to parties ranged on opposite sides and not as co decree holders A I R 1925 Nag 186=21 N L R 34=82 Ind Cas 734, A I R 1924 Mad 518=32 M L T 118=70 Ind Cas 329 Decree holder purchaser cannot sue separately for possession A I R 1925 Sind 171=18 S I P 7-78 I d C

is party for all purposes

L W 775=106 Ind Cas 23

parties who are opposed to

side A I R 1927 Rang 41

same or opposite sides 20 L W 742=85 Ind Cas 209 Question between pur

chaser and attaching creditor of a decree is under s 47 20 C W N 679=32

Ind Cas 524 Parties include representatives in interest 5 Pat L W 141=

(1918) Pat 243=46 Ind Cas 465 see also 65 Ind Cas 467, A I R 1913 Bom 450=

=25 Bom L R 494=73 Ind Cas 402 A person is not party whose property is

wrongfully attached must bring suit 9 S L R 213=34 Ind Cas 492

The question whether or not a person is a legal representative must be decided

by executing Court and not by a separate suit 92 Ind Cas 575, 117 Ind Cas

122 Legal representative claiming property proceeded against in execution as his

own cannot bring suit 48 C L J 551=115 Ind Cas 353, A I R 1922 Pat 572-3

P L T 613=68 Ind Cas 369, 27 C L J 572=46 Ind Cas 458

In case of conflict between judgment debtors this section is not applicable A I R

1929 All 291=51A 752=(1920) A I R 747=119 Ind Cas 440, 31 M L J 44

1 to disputes between rival decree

288=6 Pat 386=103 Ind Cas 774

of property included in decree is

not one under s 47 A I R 1917 Mad 240-98 Ind Cas 856 Question between

rival decree holders in different suits is not under section 47 A I R 1926 Mad

1104=51 M L J 436-1926 M W N 683=47 Ind Cas 1020 Decree holder who

purchases property of the judgment debtor is still party to the suit in which the

decree was passed A I R 1928 Oudh 199-3 Luck 182 5 O W N 103=110 Ind

Cas 83 A I R 1927 Cal 57=97 Ind Cas 697

Defendant discharged as not liable is party to suit A I R 1929 Nag 179=123

Ind Cas 432, A I R 1919 Pat 472=10 P L T 563=115 Ind Cas 691, 1928

M W N 601=113 Ind Cas 547 A I R 1916 Mad 687=50 M L J 307-23 L W

533=1926 M W N 409=94 Ind Cas 123 see also 94 Ind Cas 265=50 M L J

205=1927 M W N 251=A I R 1916 Mad 484 A I R 1925 Pat 482=6 P L T

725=87 Ind Cas 743, A I R 1933 Nag 246, 91 Ind Cas 181, 37 Ind Cas 673-

1917 M W N 93, 34 C L J 477=67 Ind Cas 6, A I R 1933 Mad 435=143 Ind

Cas 476-37 L W 582 Where a suit has been dismissed against a person as having

no concern in suit such person does not remain a party to the suit for the purposes

of this section whether his name remains on record or not A I R 1930 Mad 817=54

M 81=59 M L J 932=127 Ind Cas 805, A I R 1927 Rang 137-5 Rang 110,

A I R 1926 Lah 202=27 P L R 194=93 Ind Cas 921 A I R 1921 Mad 559-

1921 M W N 698=66 Ind Cas 722 Whether a particular defendant against whom

suit has been dismissed is or is not party to suit should be determined by the Court

looking into decree judgment and pleadings A I R 1930 Mad 817=54 M 81=

59 M L J 932=127 Ind Cas 805 Exonerated defendant is a party 41 M 418=22

M L T 532=34 M L J 17=(1918) M W N 23=43 Ind Cas 935

This section has no application where question arises between judgment debtor

and his partner who was not a party 36 Ind Cas 681 Purchaser from decree holder

debtor is representative and cannot bring separate suit unless judgment

debtor is holding as licensee from decree holder A I R 1930 Cal 586=51 C L J

560=34 C W N 1059=128 Ind Cas 244 Vendee from judgment debtor before

attachment does not become his representative and is not bound by any proceedings

against the judgment debtor subsequent to date of sale A I R 1927 Mad 450=99

Ind Cas 989

Surety is a party and can raise plea of fraud in execution A I R 1925 Lah

618=7 Lah L J 457=26 P L R 561=92 Ind Cas 259, A I R 1925 All 344





a subsequent suit on same cause of action does not lie 41 M 641=7 L W 143=34 M L J 167=23 M L F 156=(1918) M W N 20=49 Ind Cas 110 Section 47 does not bar suit by a person against whom decree has been passed without proper representation 17 A L J 257=50 Ind Cas 109 Suit by stranger to decree not claiming as representative lies 1919 Pat 465=53 Ind Cas 20 Party purchaser can not bring a suit on grounds which he could not take in execution A I R 1923 All 115=79 Ind Cas 486 Where decree is fraudulent, injunction restraining execution of decree is not relating to execution 1921 Sind 159 (F B)=16 on mortgage, but not executed for more than 3 years Section 47 does not prevent mortgagor from suing for redemption A I R 1925 Mad 1191=86 Ind Cas 527 Subsequent suit is barred by s 47 if previous decree granted relief sought in subsequent suit A I R 1925 Mad 1260=22 L W 195=91 Ind Cas 338 Separate suit lies where double payment is received by decree holder A I R 1923 Bom 253=25 Bom L R 247=95 Ind Cas 410 Judgment debtor's suit to recover property not liable to be sold against stranger auction purchaser is not barred A I R 1926 All 730=96 Ind Cas 771 Suit for declaration that auction sale was null and void as auction purchaser, the liquidator of the decree holder Bank was not competent to purchase any property as liquidator is barred under s 47 A I R 1928 Lah 666=108 Ind Cas 606 Suit by legal representative for declaring that he holds a charge is barred A I R 1929 Lah 762=127 Ind Cas 12 Where a decree for partition did not include house not in possession but recorded agreement of parties to divide it when it should fall into possession it is open to parties either to effect partition by mutual agreement or enforce their rights by a separate suit A I R 1928 Bom 365=30 Bom L R 912=113 Ind Cas 173 Suit for declaration that decree has been satisfied and is incapable of execution is barred A I R 1922 Lah 478 (F B)=3 Lah 319=67 Ind Cas 593 Court passing decree has to ascertain mesne profits A I R 1931 Pat 1=12 P L T 127=130 Ind Cas 175

**Representatives** — Representatives include assignees or successors to the interest of party A I R 1926 Cal 798=53 C L J 345=30 C W N 649=95 Ind Cas 494 Representative when taken with reference to the judgment debtor does not mean only his legal representative but his heir executor or administrator but it means his representative interest and includes a purchaser of his interest who so far such interest is concerned is bound by the decree 26 A 447=A W N 1904 61=1 A L J 65 A receiver is a representative of both parties A I R 1923 Bom 270=31 Bom L R 320=118 Ind Cas 694 Transferee of interest of tenant against whom rent decree has been passed is not representative unless he is bound by decree A I R 1921 Pat 189=57 Ind Cas 289 Mortgagee holding prior to decree is not representative of judgment debtor 78 P W R 1917=122 P L R 1917=39 Ind Cas 772 Prior mortgagee party to subsequent mortgagee's suit remains party A I R 1924 All 752=82 Ind Cas 80 Purchaser of judgment debtor's attached property is his representative A I R 1926 Lah 134=6 Lah 544=93 Ind Cas 30 Purchaser of mortgage property covered by decree is properly a party in execution A I R 1924 Pat 367=1 Pat L R 139 Purchaser from decree holder purchaser is not representative of the decree holder A I R 1922 L B 18=11 L B R 17=64 Ind Cas 68, see also 80 Ind Cas 249=26 Bom L R 333=A I R 1924 Bom 426 Purchaser from judgment debtor who was ostensibly owner is not his representative A I R 1921 Bom 45=45 B 812=23 Bom L R 254=61 Ind Cas 809, see also 42 Ind Cas 1 The term representative is wider than legal representative Test of determining whether person is representative within s 47 of any party is whether any interest of any party has vested in him by act of party or operation of law and whether that person is bound by decree to the extent of interest devolved 142 Ind Cas 408=A I R 1933 Lah 352 Transferee *pendente lite* of mortgage or his representative 55 A 235=144 Ind Cas 70=(1933) A L J 113=A I R 1933 All 201

**Auction purchaser whether representative**—Representative when taken with reference to judgment debtor means not only his legal representative, but his representative interest and includes a purchaser of his interest, whether he has purchased the judgment debtor's interest at a private sale or at execution sale, and he can be made a party to the execution proceedings and he can have an opportunity to raise objections against the execution proceedings if any The real test to be applied in determining the question whether the auction purchaser is to be regarded as the representative of the judgment debtor of decree holder depends

upon the nature of the question raised and who the contesting party is. If the question is between the judgment debtor and the auction purchaser and the interests

decree is representative of

391=54 Ind Cas 209 (F B

Cas 931=9 L W 596, 42

552=(1917) M W N 861

M W N 88=37 Ind Cas 825 Auction purchaser is not a representative of judgment-debtor, in another suit against same judgment debtor when the latter decree is sought to be executed by attachment and sale of the same property 3 L W 377=34 Ind Cas 759 A decree holder purchaser does not lose the character of a party. Section 47 is a bar to his suit for possession 44 Ind Cas 563, but see 44 Ind Cas 169=8 P R 1918 Section 47 applies to a case where question raised concerns auction purchaser as well as parties to suit 41 M 403=23 M L T 198=27 C L J 367=34 M L J 463-22 C W N 553=16 A L J 352=20 Bom L R 560=8 L W 427 (P C)=44 Ind Cas 855, 24 Ind Cas 187=27 M L J 213 (P C) Auction purchaser not party to suit, is representative of judgment debtor 12 P R 1919=49 Ind Cas 140 Question between decree holder purchaser and judgment debtor relating to possession are not under s 47 5 O L J 551=48 Ind Cas 39, A I R 1913 Cal 345=84 Ind Cas 525, 47 A 64=84 Ind Cas 746 Auction purchaser in inferior Court can object to sale in superior Court as representative of judgment debtor A I R 1914 Mad 889=47 M L J 720=20 L W 864=84 Ind Cas 265 Dispute between judgment debtor and auction purchaser even if latter is representative of the former does not fall under s 47 A I R 1950 Rang 281 127 Ind Cas 849 see also 119 Ind Cas 6 A I R 1926 All 509-95 Ind Cas 46 81 Ind Cas 1-41 R 4 All 6 A I R 1921 Mad 81-13 L W 15=61 Ind Cas 361 1 case A I R 1914 Rang 526 6 O N L R 170=79 Ind Cas 656, 78 Ind Cas 65 A I R 1914 All 856 A I R 1913 All 470=45 A 56=74 Ind Cas 595 A I R 1913 B 14 75 Bom L R 147=72 Ind Cas 256

also A I R 1928 Cal 835=114 Ind Cas 495 But a *benamidar* is neither party nor representative of party under this section A I R 1926 Mad 1081=51 M L J 391=24 L W 634, see also 44 Bom L R 352=22 Bom L R 296=56 Ind Cas 349, 46 Ind Cas 748

**Court of Wards**—Manager of Court of Wards in possession of judgment-debtor's property is his legal representative A I R 1925 Pat 179=4 Pat 172=6 P L F 400=84 Ind Cas 620

**Mortgagee**—A person who claims as a mortgagee under the judgment debtor must be regarded as a representative of the judgment debtor for the purpose of this section 4 M L T 85 A person, to whom a transferable occupancy holding was mortgaged, before its sale in execution of a rent decree, is a representative of the judgment-debtor 11 C W N 312 A mortgagee from the judgment debtor of property attached in execution of a money decree, who takes his debt of the judgment- 195, 22 A 243= A V r A I R 1926 Cal. 646

**Lessee**—In a suit for possession against trespasser defendant, his lessee pending suit is not his representative A I R 1922 P C 304=31 M L T 131=49 I A 220=43 M L J 589=1 Pat 581=24 Bom L R 1251=27 C W N 29=36 C L J 542=20 A L J 988=4 P L T. 1=68 Ind Cas 973 (P C)

**Power of executing Court**—The executing Court can refuse to execute a decree passed without jurisdiction A I R 1930 Rang 537=8 Rang 514=129 Ind Cas 519 Executing Court must construe but can not question validity of decree,

even when it is voidable A I R 1950 Mad 688=59 M L J 160=32 L W 100=53 M 750=125 Ind Cas 539 A I R 1930 Pat 480=11 P L T 185=125 Ind. Cas 787, A I R 1950 All 8-6=1930 A L J 1135 Executing Court can question validity of decree within certain limits where question of jurisdiction is involved A I R 1919 Nag 35=2 N L R 60=120 Ind Cas 732 Nullity of decree for want of jurisdiction is a question within s 47 A I R 1929 Lah 449=11 Lah L J 305=120 Ind Cas 779 see also A I R 1917 Bom 53=28 Bom L R 1367=98 Ind Cas 927, see also A I R 1916 Mad 128=46 M L J 664=22 L W 567=91

77=53 C 166=42 C L J 1=29 C W N 948  
Lah 313=26 P L R 474=88 Ind Cas 865  
proceeding can be treated as suit and relief granted A I R 1926 All 387=48 A 562=24 A L J 379=93 Ind Cas 376 Judgment-debtor failing to object to attachment in execution cannot do so in suit for possession by auction purchaser as decide the point A I R 1931 Nag 27 *facie* legal objection regarding jurisdiction execution A I R 1929 Mad 383=119 Ind Cas 33, see also A I R 1921 Mad 85=13 L W 143=61 Ind Cas 759

Questions relating to execution etc.—Delivery of possession is not a question relating to execution A I R 1930 Pat 311=9 Pat 775=11 P L T 331=126 Ind Cas 849, A I R 1930 Rang 61=8 Rang 162=126 Ind Cas 209, A I R 1930, A I R 1930

he question arises to be delivered it is a question relating to execution A I R 1926 Cal 798=53 C 781=43 C L J 345=30 C W N 649 (F B)=9, Ind Cas 494 Proceeding for delivery of possession relate to execution A I R 1926 Cal 798=53 C 781=43 C L J 315=30 C W N 649=95 Ind Cas 494 (F B) Where possession for wrong property has been delivered rectification of mistake is not under s 47 A I R 1929 Pat 391=123 Ind Cas 400 Event subsequent to sale in execution are part of execution A I R 1929 Pat 559=119 Ind Cas 881 Proceedings for delivery of possession after sale are part of execution A I R 1929 Mad 757=57 M L J 381=30 L W 424=52 M 899=120 Ind Cas 567 Objection as to the defect or absence of

Mad 414= was held =106 Ind under s 47 A I R 1927 Cal 614=54 C 419=103 Ind Cas 233 Question relating to legality of sale is also one under s 47 A I R 1926 All 457=24 A L J 519=96 Ind Cas 137 An agreement before the passing of the decree not to execute it cannot be dealt with by the executing Court under this section A I R 1928 Rang 36=5 Rang 685=107 Ind Cas 860, A I R 1926 Rang 140=5 Bur L J 41=96 Ind. Cas 773 Order on question of notice under r 22, Order XXI is one in execution A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 Decision whether a decree holder is entitled to enforce default clause of an instalment decree, because he has accepted part payments after defaults adjudicated A I R 1929 Lah 390=113 Ind Cas 541 tion arising between decree holder and purchaser is also interested does not ma 8-6=111 Ind Cas 51 Application to holder induced Court to sell more property

✓ 738=123 Ind Cas 6 In case of s 47 is proper remedy and no Ind Cas 581, A I R 1925 Cal. Cas 744 Question with regard to decree for specific performance is question relating to execution and must be determined by executing Court and not by separate suit A I R 1925 Bom 385=27 B 687=89 Ind Cas 205

Order on petition under rule 101 deciding objections to sale of property between parties is under s 47 31 Ind Cas 102 Decision on question whether property attached in execution forms part of deceased judgment debtor's property, comes under s 47 22 C. L. J 304=31 Ind. Cas. 321. Inquiry of allegations of mis-

appropriation of attached moveables by the decree holder in collusion with Court Amin should be made under s 17 Pat L J 558=36 Ind Cas 280 Proceedings under s 47 (1916) 1 M W N 256=33 Ind Cas 101 The fact of receipt of decretal amount is not a bar to execution =37 Ind Cas 738 An order declining in execution is one relating to execution within s 47 26 C L J 42=42 Ind Cas 466 Order on application, impeaching satisfaction of decree, is one under s 47 26 C L J 317=40 Ind Cas 839 Agreement for stay of execution of decree before decree is passed is a matter to be inquired into and decided by the executing Court 40 M 233=5 L W 132=37 Ind. Cas 836 (F B)

A decree in execution of which immovable property was attached for sale was set aside, but upon further hearing another decree was passed and in execution of that decree the property under attachment was without a fresh attachment sold and purchased by the decree holder The decree itself though passed on a mortgage was not passed in accordance with the provisions of the T P Act Held that the sale should be taken, as at the time it was understood to be, a sale under the later decree, and any objection that the decree or the sale were not in compliance with the law was one to be raised under s 244 of C P Code of 1882 before executing Court and not by a fresh suit 22 C W N 553 (P C)=41 M 403=23 M L T 198=27 C L J 367=34 M L J 463=4 P L W 310=16 A L J 353=45 L J 54=20 Bom L R 530=44 Ind Cas 855, affirming 24 Ind Cas 187=27 M L J 213 An application to set aside an execution sale on the ground of fraudulent suppression of sale proceeds is governed by s 47 27 C L J 578=46 Ind Cas 221 Where properties not included in a sale certificate are delivered to purchaser proper remedy for re delivery is by application under section 47 and not by separate suit 45 Ind Cas 608

Executing Court should see whether cattle of agriculturist sought to be attached, are necessary for him to earn livelihood 13 S L R 210 56 Ind Cas 69 Question whether judgment debt or satisfied decree and was fraudulently kept out all means of exercising his right to apply in Court comes within s 47 40 C L J 248 55 Ind Cas 67 Questions relating to possession of property purchased by decree holder in executions are not questions relating to execution 4 Pat L J 716=52 1=48 Ind Cas 129, see also 47 Ind for the management of public Hindu scheme in suit and are not orders in

execution, A I R 1925 P C 155=41 C L J 628=30 C W N 49=23 A L J 555=27 Bom L R 872=49 M L J 25=87 Ind Cas 313

Dismissal of previous objection to attachment bars second objection A I R 1931 Lah 6=32 P L R 413=150 Ind Cas 406 Proceedings for restitution under s 151, can come under s 47 35 C W N 105=53 C L J 49 Order of restitution on setting aside of sale is not one under section 47 A I R 1930 Pat 280=11 P L T 156=9 Pat 685=122 Ind Cas 589 Court executing decree for jurisdiction to restore the property A I R 1928 Pat 502=113 Ind Cas 237 Applications for restitution also come under s 47 A I R 1922 Nag 198=67 Ind Cas 319, see also 40 M 780=5 L W 267=38 Ind Cas 806, 72 Ind Cas 875=A I R 1923 Oudh 16, A I R 1925 Sind 126=19 S L R 302=78 Ind Cas 1039, A I R 1923 All 394=21 A L J 228=45 A 369=74 Ind Cas 873 A I R 1925 Pat 577=4 Pat 294=7 P L T 415=92 Ind Cas 474 Proceeding relating to delivery of possession after confirmation of sale is not a proceeding in execution whoever may be purchaser A I R 1925 Cal 1250=89 Ind Cas 196, see also A I R 1924 Bom 429=26 Bom L R 601=48 B 550 (F B)=83 Ind Cas 932 An interim receiver making an application under s 52 of the Provincial Insolvency Act can not be said to be a representative of the judgment-debtor 56 M 453=141 Ind Cas 817=A I R 1933 Mad 152=64 M L J 119 When a decree has been discharged and one of the parties applies to Court on the ground that the order has been wrongly passed and as such should be reviewed or reconsidered, the case is one under s 47 144 Ind Cas 468=1933 A L J 738=A I R 1933 All 429 An independent suit for declaration that a decree has been fully satisfied and as such incapable of being executed is barred by S 47 A I R 1933 Lah 1031 An executing Court is competent to decide whether a decree is capable of execution 14 Lah 230=140 Ind Cas 533=34 P L R 546=A I R 1933 Lah 41 Where on the face of the decree it is valid, the executing Court is not competent to enquire into its validity 142 Ind Cas 643=1933 M W N 187=37 L W 358=A I R 1933 Mad 362,

142 Ind Cas 487=A I R 1933 Nag 211 Question whether property attached before judgment can be attached or not can be considered under s 47 58 C L J 289=37 C W N 978=A I R 1933 Cal 757 A puisnee mortgagee who was a party to the suit can not question the decree in execution proceeding 144 Ind Cas 472=1933 M W N 1371=58 L W 199=A I R. 1933 Mad 569 Compensation for waste committed by a tenant after decree can not be claimed under this section A I R 1933 Lah 168=145 Ind Cas 117 An order under s 73 of C P Code determining a question of rateable distribution is between rival decree holders in which judgment debtor is not interested does not fall under s 47 of the Code 33 Bom L R 537=A I R (1931) Bom 350=133 Ind Cas 817=55 B 473, see also A I R 1931 Bom 252=133 Ind Cas 737=33 Bom L R 503 The order refusing to execute the order granting rateable distribution is appealable under s 47 12 P L T 477=A I R 1931 Pat 359=133 Ind Cas 166

**Sub section (2)**—Under s 47 (2) a proceeding may be treated partly as a suit and partly as a petition The section is intended to obviate the injustice caused by a mistake in imitation of proceedings A I R 1931 Mad 588=133 Ind Cas 12 Intention of s 47 (2) is to correct *bona fide* mistake A I R 1931 Mad 270=50 M L J 171=11 L W 110=130 Ind Cas 475, see also A I R 1931 152 A plaint can be treated as application A I R 1930 Oudh 468=7 O W N

Application into Appellate can grant Cas 376 is made treat the petition as application in suit A I R 1930 Mad 30=57 M L J 728=30 L W 810=53 M 838=174 Ind Cas 290 Failure to convert suit as application is reversible, from an order merely permitted by s 47 (2) not one relating to the ere the lower Court was footing, held that the appellant's instance to correct the error 130 Ind Cas 475=60 M L J 471=A I R (1931) Mad 270 If proceeding is to be treated as suit, objector should pay court fee and not decree holder A I R 1934 Pat 9

**Subsection (3)**—It is doubtful whether this sub section is wide enough to cover a question between decree holder and his representative 146 Ind Cas 502=

**Limitation**—Application under s 47 falls within art 181 and not within art 166 although applicant asks for setting aside sale A I R 1928 Cal 865=116 Ind Cas 634, 145 Ind Cas 113=A I R 1933 Lah 370 132 Ind Cas 495=32 P L R 440=A I R 1931 Lah 586 A I R 1917 Cal 614=54 C 419=103 Ind Cas 57, A I R 1914 Mad 431 L W 179=34 M L J 37=1924 M W N judgment debtor to set aside the attachment is in possession on the ground that it is not so liable under s 60 falls under s 47 of the C P Code

Art 166 A I R  
not Art 181 appl

165 of the Limitation Act, and the notice of attachment is served I R 1931 Bom 446=133 Ind Cas of want of notices under order

ins to the execution proceedings under  
I R Cas 444

Appeal—Where an order under this section operates as a decree it is appealable

R 1933 Cal 680=60 Cal  
=144 Ind Cas 927, 56 C L  
933 Lah 383 The objection  
e suit is one under order 21,  
=1932 A L J 125=A I R 1932  
the objection of the judgment  
not appealable 1933 M W N  
M L J 735 Where an order  
under order 21, r 58 and debt  
eal is competent from such order  
137 Ind. Cas 258=33 P L R 496=A I R 1932 Lah 376=I R 1932 Lah 315  
Where section 47 is applicable a second appeal lay to the High Court 59 C 956=36 C  
W N 125=55 C L J 85=139 Ind Cas 186-A I R 1932 Cal 672=A I R  
1932 Cal 1003 An order refusing to accept a security bond given by a surety for  
the judgment debtor pursuant to an order for stay of execution made by the appellate  
Court, is not a decree and as such is not appealable 136 Ind Cas 793=A I R  
1932 Lah 120-I R 1932 Lah 278 Order refusing to execute a decree is appealable  
10 Bur L T 159=36 Ind Cas 10, 52 Ind Cas 401 Order authorizing tem  
porary alienation but refusing to sell agricultural land is appealable A I R 1931  
on as to the mode of execution  
appeal lies from an order merely  
suit A I R 1932 Mad 270=  
60 M L J 47 33 L W 349 130 Ind Cas 475 No appeal lies where no objection  
was taken to judgment or execution A I R 19 9 Rang 101 7 Rang 110-117 Ind  
Cas 245 Order refusing to alter valuation in sale proclamation is not appealable  
A I R  
lies from  
40 A I  
time in  
Rang 615=6 Bur L J 216=105 Ind Cas 467, see also A I R 1929 Cal 140-112  
Ind Cas 124 In order to be appealable an order under s 47 must be such as to come  
within s 2(2). A I R 1927 All 208=99 Ind Cas 208 Interlocutory order that  
defendants are liable to account is legal representatives of judgment debtor is  
not appealable when amount due is not determined A I R 1925 All 588=47  
A 543=23 A L J 458=87 Ind Cas 322 Where question is one under  
s 47, appeal lies from order passed under s 173 B T Act though no provision  
for appeal is made in the Act itself A I R 1925 Cal 1223-85 Ind Cas 750  
Where objection by judgment debtor was dismissed by default, no appeal lies  
A I R 1925 Oudh 485=28 O C 124=85 Ind Cas 393 Decision on question  
of right of applicant to be brought on record as legal representative of  
judgment debtor is decree A I R 1925 All 578-47 A 365=86 Ind Cas 1048  
An order for sale is a decree within s 47 A I R 1925 Oudh 397=12 O L J  
261-2 O W N 212=28 O C 327 No second appeal lies from an order under  
Order 21, rule 92 42 C L J 176=90 Ind Cas 228=A I R 1926 Cal 400 No  
appeal lies from an order staying execution A I R 1926 Cal 850=04 Ind Cas 352  
All orders under s 66 are not appealable, only such as come under s 47 are appeal  
23 L W 765=(1926) M W N 566  
er 21, rule 71 is appealable A I R  
691 Order rejecting application for  
A I R 1925 Mad 1168=51 M L  
J 577=90 Ind Cas 933 Orders in  
I R 1930 Mad 918=32 L W 605  
=54 M 315=60 M L J 514=128 Ind Cas 515 Order refusing execution is appeal  
able A I R 1930 Oudh 268=7 O W N 523=127 Ind Cas 865 No appeal  
lies from an order of Court declaring security satisfactory to Court after elaborate  
W 742=(1930) M W N

appeal is appealable as a  
R 617=124 Ind Cas 249  
, rule 90 is open to second

appeal A I R 1930 Nag 191=124 Ind Cas 250 An order directing Receiver's remuneration to be paid by one party is not appealable A I R 1930 Lah 352.  
 appealable A I R 1929 Rang 191=119 Ind Cas  
 order XXI, rule 99 passed on an application  
 reversing resistance to possession A I R  
 1930 Lah 363=120 Ind Cas 503 Order of arrest is not appealable A I R 1929  
 Mad 718=30 L W 230=1929 M W N 74=119 Ind Cas 43 An *ex parte* order  
 granting leave to apply for execution is not a decree nor has the force of a decree  
 A I R 1929 All 30=(1929) A L J 553=115 Ind Cas 865 Appeal lies from  
 order of Court refusing to decide executability of decree A I R 1928 Rang 40-5  
 Rang 775=6 Bur L J 225=106 Ind Cas 857 No second appeal lies against  
 order setting aside or refusing to set aside sale, although matter is one between  
 decree holder auction purchaser and judgment debtor A I R 1927 Cal 657=45  
 C L J 557=104 Ind Cas 188 Appeal lies against order determining whether  
 party applying for execution is or is not the representative of the decree holder 24  
 between parties  
 s. 644 Order in  
 A I R 1926 All  
 y appealable A  
 I R 1928 All 263=48A 260 Order made by Court exercising power given by  
 provision in the scheme of management of trust is not appealable A I R 1926  
 Mad 130=22 L W 796=92 Ind Cas 558 Order that mortgaged properties be sold  
 in particular order is final on question relating to execution A I R 1925 Pat 484  
 =6 P L T 393=1925 Pat 164 No second appeal lies from suit of Small Cause

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appealable A I R 1924 Mad 527=46 M L J 12=33 M L T 275=78 Ind Cas 829

#### LIMIT OF TIME FOR EXECUTION.

48. [S. 230, 3rd and 4th paras]. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(a) the date of the decree sought to be executed, or

(b) where the the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application, or

(b) to limit or otherwise affect the operation of article 180 of the second Schedule to the Indian Limitation Act, 1877.\*†

\* See now the Indian Limitation Act, 1908 (X of 1908), Sch I, Art, 183  
 † XV of 1877



12 years old and is not controlled by s 15(1) of the Limitation Act. The period mentioned in s 48 C P Code is not a period of limitation in the strict sense, and consequently s 15(1) of the Limitation Act is not applicable to it. 7 Loh 49=A I R 1931 Oudh. 351=132 Ind Cas 257=14 O L J 459=8 O W N 642, see also 131 Ind Cas 345, A I R 1928 Mtd 1154=113 Ind Cas 260, A I R 1922 Mtd 268=16 L W 68=(1922) M W N 424=31 M L T 140=43 M L J 168=45 M 785=70 Ind. Cas. 396. Section 7 of the Limitation Act does not exempt a minor decree holder from the operation of s 230 which is enacted absolutely for the benefit of the judgment-debtor that he might not be harassed for ever and for every execution proceedings 178 P R 1894, A I R 1928 Mtd 1154-1151

to execute a decree in the paragraph means that it should not be restricted to the last application

made after 12 years from the date of the decree sought to be enforced, on which W N 1893, 93. As the Code by an application presented after the Court cannot be got rid of on *It be the duty of the Court to ignore*

the private agreement and to give effect to the statute. The agreement may give rise to a separate suit, but cannot estop the judgment debtor from objecting to the further execution of the decree. 54 A 573 (590)-1932 A L J 565=138 Ind Cas 583(2)=13 L R 199 (Rev)=A I R 1932 All 273=A L R 1932 A 272 (FB). Section 48 does not prescribe a period of limitation in the strict sense, it imports a period after the expiry of years period in effect lays execution of the decree

within the meaning of s 48 of the Provincial Limitation Act. 8 O W N 1186. An application for execution of a decree stayed by a judgment of the Court filed after 12 years from the date of the decree cannot be saved from the bar under s 48 C P Code by excluding under s 15(1) of the Limitation Act the time during which execution was stayed. 8 O W N 642=A I R (1931) Oudh. 351=14 O L J 459=132 Ind. Cas 257. Section 48 is not controlled by s 15 Limitation Act, and the only exception to sub section (1) is that contained in sub section (2). A I R 1929 Pat 597=120 Ind Cas 315. Section 48 has retrospective effect. It governs an application for execution of a mortgage decree passed before the new Code came into force. A I R 1925 Bom 326=27 Bom L R 461=87 Ind Cas 769. The period of limitation prescribed by s 48 is a part of the substantive law of limitation as will appear from the wording of Arts 181 and 182 Limitation Act. It has nothing to do with the manner of executing the decree. A I R 1932 Sind 116-26 S L R 91=A L R 1932 Sind 82. A preliminary as well as final decree should be taken as date of decree means date of final decree. 33 Ind of mortgage decree made more than 12 years decree was passed under the old Code. 20 C W. J 314=34 Ind Cas 27. Where an execution is arrested without fault of decree holder and is made beyond limitation the latter application

holder has the of money by cute for the if there is

a default s 48 is a bar to the execution of the decree only in respect of instalments

payable more than 12 years before the date of the application is no bar to the execution in respect of instalments payable within 12 years of the date of application. A. I. R. 1932 Lah. 564—138 Ind Cas 255—1 R 1932 Lrh 436

**Section whether retrospective**—Section 48 is retrospective in effect in regard to decree passed prior to the coming into force of the new Code A. I. R. 1921 Bom 40—45 B 365—59 Ind Cas 790, see also A. I. R. 1926 All 93—48 A. 121—23 A. L. J 277—50 Ind. Cas 974

**Sub-section (1) Clause (a)**—Upon a decree the amount with interest was payable within 12 years and in default the mortgaged property was to be sold after 12 years but an option was given to the decree holder to recover the entire amount by sale of the property before the expiry of the 12 years in case interest for 2 years remained unpaid interest for 2 years being in default, the decree-holder exercised his option by applying to execute the decree, but did not do so again more than three years afterwards more than 12 years after the date of the decree

*Held* that the application was barred under (1931) B 263—132 Ind Cas 437 The date the decree becomes executable Till then time will not begin to run A. I. R. 1924 All 26—45 A 73—21 A. L. J 861—79 Ind Cas 605 In case of amendment of decree the date of amendment is the date of decree within s 48 60 Ind Cas 318 An order postponing execution of a decree or ordering payment by instalments is an order amending the decree and an application for execution made within 12 years of the order is not barred 34 Ind Cas 393 Where a mortgage decree is passed for sale of properties and for recovery of balance from mortgagors person the limitation for execution of latter part of decree runs

time will begin to run from the trial Court's decree. A. I. R. 1926 All 440—48 A. 121—23 A. L. J 277—50 Ind. Cas 974

in a personal mortgage decree runs from the date of such decree 31 C. L. J 167—66 Ind Cas 758 Where through mistake of Court decree was dated wrongly and application for execution was barred from correct date but within time from mistaken date, held that the execution was within time in as much as the act of Court should prejudice no man 141 Ind Cas 114—56 C. L. J 185—A. I. R. 1933 Cal. 239

**Clause (b) of Sub section (1)**—The wording of s 48(1) (b) is quite general and contains nothing to indicate that the subsequent order must be passed by the subsequent order must be passed rule 2 certifying an adjustment subsequent order within the meaning 19 50—132 Ind Cas 456 Where the Court passes a decree for maintenance but leave the amount of maintenance to be determined in execution of decree is not an executable decree for the purpose of s 48 of the C. P. Code until the amount of maintenance is determined by the Court, 33 Bom L. R. 1082—A. I. R. 1931 Bom 492 "Any subsequent order" mean any order made by a competent Court An order made by a Court executing a decree allowing a judgment debtor time to pay up the balance of the decretal money by instalments is a subsequent order within the meaning of s 48, and gives a fresh period to the decree holder to execute his decree A. I. R. 1925 Bom 503—27 Bom L. R. 961—49 B 695—88 Ind Cas. 949 Where on a compromise an order is passed to pay the decretal amount by instalments s. 48(b) applies and limitation is extended A. I. R. 1923 Lah 381—73 Ind Cas 671 Where the decree directs that *mesne profits* should be ascertained in execution limitation runs from the date of decree and not from the date when *mesne profits* are

ascertained A I R 1927 Mad 842=53 M L J 440 Where a decree directs recovery of money from A on failure to recover from B the execution against A is barred after 12 years from date of decree *Per Wallace J* in 91 Ind Cas 597 *Per*

and not by executing Court A I R 1921 Pat 340=2 P L T 80=58 Ind Cas 393 Where the Court passes a decree for maintenance to be determined in execution the decree is not executable for the purpose of s 48 of the Civil Procedure until the

33 Bom L R 1082=A I R

40A 211, 13 A 53 (P C)

ode whereas Order 28, Rule 11

can be altered by High Courts and other similar provisions can be also added in the rules Further more, Order 20, Rule 11 applies only to decrees for payment

A 43=12 Pat 195=14 Pat L T 167=37 L W 335=1933 A L J 359=37 C W N 548=3, Bom L R 526=141 Ind Cas 760=1933 M W N 112=10 O W N 226=57 C L J 276=A I R 1933 P C 52=64 M L J 599 (P C)

**Fresh application.**—Where an execution application is pending for a long time due to no fault of decree-holder another application is filed to supplement list of properties to be attached 12 years after date of decree the second application is in substance a fresh application for execution and is barred by time A I R 1918 Lah 808=120 Ind Cas 622, see also 120 Ind Cas 369—A I R 1929 Mad 745=(1929) M W N 633=120 Ind Cas 369 Where decree was passed for arrears of rent in 1896 and execution application was filed in 1908 to attach and sell *patni* and the sale was subsequently set aside and a subsequent application for execution was filed in 1915 to convert the decree into a money decree and in 1917 to attach the personal property of the judgment debtor and in 1918 also against the personal property of the purchaser of *patni* and where the last application to attach *patni* was made in 1922 *Held* that the last application was time barred as it could not be deemed to be a continuation of the 1908 application it being very different in character A I R 1929 P C 209=33 C W N 977=57 M L J 184=30 L W 407=31 Bom L R 1383=50 C L J 345=10 P L T 807=118 Ind Cas 268 Where subsequent to the appointment of a Receiver for the execution of a decree, execution applications are made they are valid for purposes of saving limitation A I R 1929 Bom 279=31 Bom L R 320=118 Ind Cas 694 Section 48 applies to a fresh application for execution after the expiration of 12 years from the date of the decree and does not apply where previous application for execution treated as rightly amended while it was pending though the amendment ordered after the expiry of the 12 years

rateable distribution but after 12 years from the decree wherein heir of the judgment-debtor asked to be brought on record and amount due asked to be realized by attachment and sale of judgment debtor's movables Such proceedings should be treated as application in continuation of the previous execution cases and prayer to bring the heir on the record and issuing notice to him would not make it a new application but the application in so far as it sought to attach the movables was a new applica



date of the decree fraud or force need not be proved within three years of the  
 was long  
 any action  
 decree at  
 once must be taken as fraud if it results thereof is to bar the execution of the decree  
 under the 12 years' rule is much too broadly stated 54 A 573=1932 A L J 365=  
 138 Ind Cas 53=A I R 1932 All 273 (F B)

Clause (b) of subsection (2)—*Vide* 20 C 551, 24 C 244, 36 C. 543

#### TRANSFEREES AND LEGAL REPRESENTATIVES

49. [S 233] Every transferee of a decree shall hold the same subject  
 Transferee to the equities (if any) which the judgment-  
 debtor might have enforced against the original  
 decree holder

Scope—Section 49 only applies to the stage of execution and not to a suit for  
 damages. A transferee from a decree holder executing a decree in spite of adjustment  
 is not inferentially a trustee for the judgment debtor for the decree amount 42 M  
 338=56 M L J 376=9 L W 443=(1919) M W N 248=50 Ind Cas 584. Decree  
 holder on record is entitled to execute decree. Transferee of a decree when brought  
 on record can execute it and will be entitled to benefits arising from execution only  
 when he takes out execution of the decree. A I R 1927 Rang 55, 4 Rang 426=  
 5 Bur L J 181=92 Ind Cas 309. Where consideration for assignment is  
 partly unpaid assignee's right to execute depends on parties' intention about  
 transfer of title. A I R 1925 Pat 449=4 Pat 120=86 Ind Cas 564. For purposes  
 of s 49 equities have to be enforced though assignee is assignee with  
 out notice only.  
 Mad 215=145  
 debtor against

*Ibid*. The right is not however available where there is no cross decree on the date  
 of the assignment of the decree. 37 C W N 738=A I R 1933 Cal 86. Where  
 on assignment of a decree a cross decree is obtained by the judgment debtor against  
 assignor the amount deposited under the assigned decree can be attached by  
 judgment debtor for his own decree. A I R 1924 Nag 46=1924 Nag 16=19  
 N L R 164=75 Ind Cas 752. Execution by assignee of a decree cannot be made  
 conditional upon equities which the mortgagor judgment debtors may have against  
 the mortgagee judgment debtor for whom he is said to be the *benamidar*. A I R  
 1925 Pat 449=4 Pat 120=86 Ind Cas 564

- 50 [S 234] (1) Where a judgment-debtor dies before the decree has  
 Legal representative been fully satisfied, the holder of the decree may  
 apply to the Court which passed it to execute  
 the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he  
 shall be liable only to the extent of the property of the deceased which has  
 come to his hands and has not been duly disposed of, and, for the purpose

19 An application by a decree holder for execution of a decree is not barred by the limitation period if the meaning of this section is that the execution of a decree is ordered, decree holder himself the order on the removal of the interruptive order for execution such an

continue  
B 492 .

to  
(1)  
of  
a  
N 932=2 Pat. L. W 370=1 Pat. L.  
decree has ceased to be so on default  
=27 Bom  
is a step  
has not  
A I R

1924 Oudh 177=74 Ind Cas 816 Where a complete execution application is filed within 12 years and application for execution against other properties is filed beyond 12 years it can not be allowed as one for amendment of the first A I R 1927 Mad 347=52 M L J 137=38 M L T 42=100 Ind Cas 20 Application for execution is different from application for the transfer of decree Therefore, the former can in no sense be treated as one in continuation of the latter application where a combined order for relief against time runs from the date of decree in order is passed that, for the balance, proceeded against an application filed within 12 years of that order would be in time A I R 1926 Mad 954=52 M L J 256=50 M 5=23 L W 26=(1926) M W N 140=92 Ind Cas 846

**Minority**—The fact of minority is wholly irrelevant to the decision of a question under s 48 A I R 1929 Mad 394=(1929) M W N 158=30 L W 361=1119 Ind Cas 39

this section should  
process of the Court  
to fraud If the  
execution it is not  
guilty of fraud had

the date of the decree It is sufficient to show that the judgment debtor on various occasions within the aforesaid period dishonestly prevented the execution of the decree against him by frivolous devices Such devices clearly constitute fraud within the meaning of s 48 of C P Code 14 O C 238 see also 9 A L J 17, A I R 1929 Pat 597 120 Ind Cas 315 The term fraud in s 48 is used in wider sense than in English Law Locking house evading arrest or payment or fictitious transfer is fraud A I R 1925 Nag 82=22 N I R 67=80 Ind Cas 90, A I R 1924 Mad 836=47 M L J 428=30 L W 47=80 Ind Cas 731 Keeping door closed is not fraudulent conduct on the part of a *pardanashin* lady unless she deliberately does so or attempts to do so against the executing officer 4 O L J 345=40 Ind Cas 399 Where there is no fraud or force pendency of appeal by judgment debtor does not cause suspension of execution 20 C W N 686=32 Ind Cas 931 Section 48 does not mean that the fraud on the part of one judgment debtor gives a new starting point against his co debtors One party should not suffer for the wrong doing of another (1930) M W N 729=32 L W 615=128 Ind Cas 455 Where there are more judgment debtors than one the fraud of any particular judgment-debtor would give the decree holder further time for execution only as against him under s 48(2) (1911) 2 M W N 434, see also 35 M 670, 125 Ind Cas 830=A I R 1930 Sind 218 Pleading a payment found not to have been made amounts to fraud (1930) M W N 729=32 L W 615=128 Ind Cas 455 Fraud includes not merely deceit but also circumvention A I R 1927 All 668=25 A L J 842=103 Ind Cas 277 The mere fact that there has been a prolongation of the

frivolous raised by the judgment-  
 Fraud must be of a nature which the  
 T T 82, The mere

fact that consequent  
 ceedings have been pr  
 sub section 2 Fraud n  
 at the time and which

All 134=129 Ind Cas  
 to avoid payment of decretal amount amounts to fraud and gives a fresh start to the  
 period of limitation 12 L W 710=(1920) M W N 758=60 Ind Cas 630 If a  
 force or fraud is proved it gives a fresh starting point of limitation under s 48 (2) (1)  
 The period during which execution proceedings have been stayed cannot be deducted  
 from the period of 12 years 54 Ind Cas 279 Execution after 12 years from the

138 Ind Cas 583=A I R 1932 All 273 (F B)

Clause (b) of subsection (2)—*Vide* 20 C 551, 24 C 244, 36 C. 543

#### TRANSFEREES AND LEGAL REPRESENTATIVES

49. [S 233] Every transferee of a decree shall hold the same subject  
 Transferee to the equities (if any) which the judgment-  
 debtor might have enforced against the original  
 decree holder

Scope—Section 49 only applies to the stage of execution and not to a suit for  
 damages A transferee from a decree holder executing a decree inspite of adjustment  
 ee amount 42 M  
 d Cas 584 Decree-  
 cree when brought  
 from execution only

when he takes out execution of the decree A I R 1927 Rang 55, 4 Rang 426=  
 5 Bur L J 181=92 Ind Cas 309 Where consideration for assignment is  
 partly unpaid assignee's right to execute depends on parties' intention about  
 transfer of title A I R 1925 Pat 449=4 Pat 120=86 Ind Cas 564 For purposes  
 of s 49 equities have to be enforced though assignee is assignee with-  
 out notice otherwise very object of s 49 would be frustrated A I R 1933

Mad  
 debtor

*Ibid*

of the assignment of the decree 37 C W N 758=A I R 1933 Cal 865 Where  
 on assignment of a decree a cross decree is obtained by the judgment debtor against  
 assignor the amount deposited under the assigned decree can be attached by  
 judgment debtor for his own decree A I R 1924 Nag 46=1924 Nag 16=19  
 N L R 164=75 Ind Cas 752 Execution by assignee of a decree cannot be made  
 conditional upon equities which the mortgagor judgment debtors may have against  
 the mortgagee judgment debtor for whom he is said to be the *benamidar* A I R  
 1925 Pat 449=4 Pat 120=86 Ind Cas 564

50 [S 234] (1) Where a judgment debtor dies before the decree has  
 Legal representative been fully satisfied, the holder of the decree may  
 apply to the Court which passed it to execute  
 the same against the legal representative of the deceased

(2) Where the decree is executed against such legal representative, he  
 shall be liable only to the extent of the property of the deceased which has  
 come to his hands and has not been duly disposed of, and, for the purposes  
 rec may, of its own  
 l such legal represen-

tion the decree holder applies to carry out the previous order for execution, such an application is not a fresh application for

or

(

-o C W N 952=2 Pat L W 370=1 Pat L

J 214=34 Ind Crs 27 Where an instalment decree has ceased to be so on default the Court cannot restore decree to original status A I R 1925 Bom 326=27 Bom L R 461=87 Ind Crs 769 An application to summon a necessary witness is a step in aid of execution and will start a fresh period of limitation when execution has not become time barred just as an application for execution would save limitation A I R 1924 Oudh 177=74 Ind Cas 816 Where a complete execution application is filed within 12 years and application for execution against other properties is filed beyond 12 years it can not be allowed as one for amendment of the first A I

property and person of the mortgagor is passed time runs from the date of decree in absence of fresh order in execution If an order is passed that, for the balance, other properties of the mortgagors should be proceeded against in application filed within 12 years of that order would be in time A I R 1926 Mad 954=52 M L J 256=50 M 5=23 L W 26=(1926) M W N 140=92 Ind Cas 846

**Minority**—The fact of minority is wholly irrelevant to the decision of a question under s 48 A I R 1929 Mad 394=(1929) M W N 158=30 L W 361=1119 Ind Cas 39

**Clause (a) of sub section (2)**—The expression 'fraud in this section should be construed in a broad sense and a deliberate evasion of the process of the Court with intention to defeat the execution of the decree would amount to fraud' If the judgment debtor is not necessary for means to pay diligence and force

(1911), 2 M W N 434 It is not necessary to show that the fraud or stratagem of the judgment debtor extended continuously for the whole period of 12 years following the date of the decree It is sufficient to show that the judgment debtor on various occasions within the aforesaid period, dishonestly prevented the execution of the decree against him by frivolous devices Such devices clearly constitute fraud within the meaning of s 48 of C P Code 14 O C 238, see also 9 A L J 17, A I R 1929 Pat 597=120 Ind Cas 31 The term fraud in s 48 is used in wider sense than in English Law Locking house, evading arrest or payment or fictitious transfer is fraud A I R 1925 Nag 82=22 N I R 67=80 Ind Cas 905, A I R 1924 Mad 836=47 M L J 428=20 L W 475=80 Ind Cas 731 keeping door closed is not fraudulent conduct on the part of a *pardanashin* lady unless she deliberately does so or attempts to do so against the executing officer 4 O L J 345=40 Ind Cas 397 Where there is no fraud or force pendency of appeal by judgment debtor does not cause suspension of execution 20 C W N 686=32 Ind Cas 931 Section 48 does not mean that the fraud on the part of one judgment debtor gives a new starting point against his co debtors One party should not suffer for the wrong doing of another (1930) M W N 729=32 L W 615=128 Ind Cas 455 Where there are more judgment debtors than one the fraud of any particular judgment debtor would give the decree holder further time for execution only as against him under s 48(2) (1911) 2 M W N 434, see also 35 M 670, 125 Ind Cas 830=A I R 1030 Snd 218 Pleading a payment found not to have been made amounts to fraud (1930) M W N 729=32 L W 615=128 Ind Cas 455 Fraud includes not merely deceit but also circumvention A I R 1927 All 668=25 A L J 842 =103 Ind Cas 277 The mere fact that there has been a prolongation of the



If a judgment-debtor dies before certificate under s 41 is issued the Court of transfer does not lose jurisdiction over the execution proceedings provided that before the execution proceeds the decree holder obtains an order from the Court passing decree for substitution of legal representative. Non compliance with this form of procedure is not fatal to execution and party acquiring is estopped from challenging legality of execution at last stage. A I R 1928 P C 162=3 Luck. 314=55 I A. 227=5 O W N 502=76 A L J 681=48 C L J 23=32 C W N

of that property after the death of the propositus. A I R 1974 Oudh 364=27 O C 262=11 O L J 441=81 Ind Cas 464

Section 50 uses the word dies apparently in its natural sense and there is nothing in the section or anywhere in the Code to indicate that it is intended to include civil death. A I R 1931 All 306=1931 A L J 263=131 Ind Cas 598. Where a decree for injunction is obtained against the father, the son not having been joined as a party, and the father dies during the pendency of the execution proceedings the decree can be enforced under section 50 of the C P Code against the son as his legal representative, by proceeding under Order 21 rule 32. 33 Bom L R 1118=A I R 1931 B 482, 33 Bom L R 1144=A I R 1931 Bom 484, 33 Bom L R 266=A I R 1931 Bom 280. The undivided interest of a coparcener does not after his death constitute his assets. 1931 A

26=(1931) P C 263=  
L J 572=8 O W N  
the decree against the  
necessarily be made by  
application in the pending

*darkhast* against the deceased judgment debtor. 33 Bom L R 1144=A I R (1931) Bom 425. Under s 47 the Court executing the decree sent for execution shall have the same powers as if the decree was passed by itself. Judgment substitution of legal representative. 1931 A L J 166=A I R 1931 All 320 133 Ind Cas 609. Section 50 does not exclude cases where the judgment debtor dies before the passing of the decree, but only refers to the death of the judgment debtor before the decree has been fully satisfied. 11 P 445=139 Ind Cas 397=A I R 1932 P 261=13 P L T 717=A L R 1932 Pat 360

#### PROCEDURE IN EXECUTION.

51. [New.] Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree holder, order execution of the decree—

- (a) by delivery of any property specifically decreed,
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison,
- (d) by appointing a receiver, or
- (e) in such other manner as the nature of the relief granted may require.

Scope—An application under s 51 may be inferred from an act of the Court. 52 Ind. Cas 356. Compromise decree granting allowances to parties to a suit and also to a stranger. Latter can not apply for execution, though he can sue separately for his claim. 3 O L J 570=37 Ind Cas 133

compromise does not  
there is no objec-  
Pat 570=2 P L T  
ess substantial injury  
attachment A I R

1923 Pat 45=3 P L T 765=2 Pat 207=(1922) Pat 321=68 Ind Cas 563. No attachment is necessary in mortgage decree directing sale of property. A I R 1929 Lah 90=10 Lah L J 491=30 P L R 6=10 Lah 543=113 Ind Cas 907

Clause (c)—A very personal decree does not carry with it a right to arrest the judgment-debtor in execution. Exceptions are females legal representatives and minors. A I R 1922 Nag 98=18 N L R 145=5 N L J 49=65 Ind Cas 53. Decree holder applying for arrest of judgment debtor in execution of decree cannot be compelled to accept payment in instalments instead. A I R 1930 Lah 220=30 P L R 736=125 Ind Cas 61. Order committing a judgment debtor to jail passed without jurisdiction. No objection made to committal and question of legality not then raised. Order is not under s 47 and therefore not appealable. A I R 1929 Rang 161=7 Rang 110=117 Ind Cas 245.

Clause (d)—A decree of decree by appointment of Receiver can be appointed only when ordinary execution cannot be effected with advantage and when such case made out and sole purpose of appointments is to have immovable property realized by sale. Application for such appointment is to be made as application in execution to Court within whose territorial jurisdiction property is situate. A I R 1910 Cal 502=34 C. W. N 238=51 C L J 207=57 C 964=128 Ind Cas 97. Section 51 does not give any right to the judgment debtor to apply for the appointment of a receiver but prescribes the mode in which the decree holder may seek an execution of his decree. A I R 1912 Pat 369=4 P L T 58=(1922) Ptt Sup.

State of the  
22 O C 194=  
of property out  
N 106-61 In l

may may fall within the review of order 40 rule 1 so as to be appealable under order 41 rule 1 (1). A I R 1917 Lah 190=100 Ind Cas 298. Receiver appointed under s 51(1) is not agent of decree holder nor do moneys received by him become his. A I R 1910 Pat 369=4 P L T 58.

appointed by the Court.

called, is parties to the

Receiver belongs to the

under the orders of the Court. A I R 1930 Mad 4. Receiver can be appointed by way of equitable execution in respect of agricultural land of judgment-debtor in South India. A I R 1920 Pat 200=101 L T 836=115 Ind Cas 721. Where a decree can be executed in the ordinary manner, an appointment of receiver is not proper. A I R 1913 Sind 31. A reasonable ground for the appointment of a receiver must be made out by the party applying for the same. *Id.* There must

the Court has no power to appoint  
of suit. *Id.* In a proper case  
R 1933 All 227. Section 51  
a mode of execution. It gives

R 1911 P C 160=(1931) A L J 425=35 C. W. N 191=55 Ind Cas 727 (P C)

Clause (e)—Where judgment-debtor is in possession of movable property and is unable to satisfy a decree but has a reasonable ground for about the property the executing Court can in respect of the land of the judgment-debtor for the property if amount. A I R 1910 Pat 200=101 L T 836=115 Ind Cas 721. Clause (e) does not give the Court to read into a decree a provision for alternative relief which is then. A I R 1912 Pat 369=4 P L T 58=101 L T 836=115 Ind Cas 727.

§ 252 (1) Where a decree is made against a party as the legal holder of a movable decree against a person, and the decree is for the payment of money out of the property of the judgment-debtor, it may be executed by the attachment and sale of a part of the property of the judgment-debtor. (2) Where no such property is available for the satisfaction of the judgment-debtor and he fails to satisfy the decree by his own property applied such property

of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

when no executor is appointed  
1 243=1927 M W N 894  
tainted with immorality,  
a suit brought against the father and sons of the deceased debtor who formed a joint Hindu family can be decreed under s 52 and it would be for the execution department to decide whether the joint family property was liable 26 A. L. J 799=116 Ind s 951 Rights are his assets  
897 Decree burden is then  
934 Lah 106,

see A L R 1934 Lah 101, A I R 1934 All 249

Sub section (2)—Sub section (2) applies only when no property of deceased is in possession of judgment debtor and he fails to satisfy that he has duly applied property proved to have come into his possession A I R 1930 Lah 354=31 P L R 29=121 Ind Crs 289, A I R 1930 Lah 204=31 P L R 298=125 Ind Cas 187, A I R 1930 Lah 332=124 Ind Cas 338 Right of creditor to follow assets in legatee's hands can be exercised only by suit and not by execution against assets in the hands of the legatee under a judgment against the legal representative 2 C L J 16=58 C 170=129 assets, not being executors' execution order of a Court may a debt due to themselves  
11 Cas 507 The questions between the parties to the

suit in which the decree was passed relating to the executor's charge or satisfaction of the decree to be decided by Court executing the decree and not by a separate suit A I R 1927 Rang 127=5 Rang 44=101 Ind Cas 431 Where a plaintiff without any fraud or collusion sues a person who would be the ordinary legal representative, under the law, and some other person turns out to be the real and actual legal representative the decree obtained against the former is binding in the same manner and to the same extent on the real legal representative A I R 1928 Mad 243=1927 M W N 894=103 Ind Cas 409 The fact that the plea of 'plea administravit' can be taken in execution proceedings when events justifying such a plea may have occurred subsequent to the decree is no reason why it cannot be taken in the suit as a reason for no decree being passed A I R 1927 All

case acquired  
er and the  
legitimate  
36 Ind Cas  
t a decree  
on proof that assets exist without proving extent of such assets 56 Ind Crs 962  
A decree obtained against the assets of a deceased person by joining only some of the legal representatives can only be executed against those not joined in the suit A I R 1927 Mad 197=98 Ind Cas 613 Personal decree for debts of the deceased can be passed against person in possession of the assets of the deceased and disposing of without right portion of it enough to discharge debts of the deceased A I R 1922 Oudh 200=77 Ind Crs 306 Suit against the legal representative of a deceased debtor should not be dismissed merely because defendant is not in possession of assets A I R 1929 Nag 170=89 Ind Cas 236 Mortgage decree against mortgagor's legal representative can be executed personally against him after exhausting the mortgage property to the extent of the property he has failed to duly account for 30 M L J 391=(1916) 2 M W N 97=35 Ind Cas 224 Income from impartible Ry passing from deceased *zamindar* to his representatives and that accruing since death of the zamindars are assets of deceased *zamindar* A I R 1924 Mad 530=47 M 411=46 M L J 61=24 M L T 17=(1924) M W N 346=80 Ind Crs 163 Where the executant of a *lund*, the father of a *Mistakshara* family is dead and his son is sued on the *hund* he is sued on the representative capacity and is liable only to the extent of the assets of the parcenary property held by him 2 P L T 396=6, Ind Cas 224, see also 92 I

Cas 787=A I R 1976 Oudh 301 A decree for payment of money out of the assets of deceased debtor, and passed against a heir as legal representative can be executed against any property in possession of the heir without waiting for any partition among heirs, and in the absence of any fraud or collusion purchaser in execution is not responsible for neglect on the part of heir in possession in allowing a larger portion to be sold than was necessary A I R 1925 Oudh 515=2 O W N 407=12 O L J 512=89 Ind Cas 534 Where son is proved to have received assets from father, onus is on son to prove amounts of assets received from father A I R 1933 Lah 447 In a suit on promissory note executed by deceased grand father decreed against estate of deceased, decree is against defendants as legal representatives and limited to joint family estate in their hands 34 Bom L R 1005=A I R 1932 Bom 522 Where the defendant is sued as the heir of her deceased mother and contends that she has no assets of the deceased in her hands the question as to assets should not be determined in the suit itself when no issue is framed on it Such a plea is confined to execution only A I R 1931 Nag 173=27 N L R 247 Rents and profits are legal incidents of immovable property and must be of the same character as the property itself 9 O W N 315=137 Ind Cas 632=A I R 1932 Oudh 261 An application for execution of a money decree obtained against his brother and, notwithstanding objections raised by the brother, a portion of the amount was realised from out of the assets of the deceased in his hands The brother did not then raise the plea that the payment of the decree debt, although he raised by him in bar of a subsequent appl the realization of the balance due to barred by *res judicata* 9 O W N 31 Though heir is legal representative of A I R 1934 Rang 93

53. [New] For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative

Scope—Decree against Hindu father can be executed against the entire joint property in the lands of his sons and ancestral property is to be deemed assets of deceased 32 Bom L R 919=127 Ind Cas 507, A I R 1925 All 471=23 A L J 467=88 Ind Cas 290, 81 Ind Cas 15=27 O C 111=11 O L J 202, A I R 1933 Pat 605 The ancestral property in the hands of the son is liable under Hindu Law for the payment of decree on debt due by father unless and until the son can prove that there was in fact no debt at all or that the debt was tainted with immorality A I R 1925 All 174=70 A I R 1960=1 R 4 A Civ 21=71 Ind Cas 417, A I R 1930 Mad 375, see also A I R 1933 All 110=1932 deceased employee ratuity to heirs of a A I R 1923 Oudh 21=9 O L J 401=4 U P L R Oudh 96=25 O C 53 Order for attachment of the property in execution of a mortgage decree against son as legal representative is not necessary A I R 1923 Pat 193=3 P L T 43=6 Pat L J 451 Nephew is not descendant for purposes of s 50 A I R 1923 All 539=21 A L J 353=45 A 455=73 Ind Cas 9,8 It is only in case of son or other descendant and not brother that a person taking property by survivorship can be joined as legal representative. A I R 1924 All 873=78 Ind Cas 637 A decree cannot be passed against son as legal representative and a separated Hindu brother for appropriating crops sown by the deceased father A I R 1927 All 683=103 Ind Cas 338 Collector has power to deliver possession of standing crops A I R 1927 Nag 300=103 Ind Cas 231 In order to determine whether a certain person is the legal representative of the deceased with regard to the property sought to be attached the crucial date is the death of the deceased and not the date of the attachment of that property A I R 1926 All 220=48 A 245=24 A I R 1927=21 Ind Cas 21

1930 Nag 134=121 Ind Cas 664 Section 53 is not confined to money decrees

A I R 1924 Mad 571=46 M L J 471=19 L W 484=34 M L T 209=83 Ind Cas 985 Although the land belonging to Hindu father is exempt from attachment in the hands of the agriculturist son under the Deccan Agriculturists Relief Act the rents thereof are liable to attachment to the extent of the property inherited A I R 1929 Bom 233 The legal representative of a deceased lambedar is, so far as the assets of the deceased in his hands are concerned liable to the same extent as the lambedar, that is to say, not only for the money actually collected by the lambedar, but also for money left uncollected owing to his negligence or misconduct 1932 A L J 873=13 L R 363 (Rev)=A L R 1932 A 1103 In execution of money decree against *watandar*, watan property in hands of son is not liable A I R 1934 Bom 116 Provident fund of deceased judgment debtor paid to dependant minor-son under Provident Funds Act s 4 (1) is not asset in hands of son liable to attachment for father's debt A I R 1934 Mad 173

54. [S. 265] Where the decree is for the partition for an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares of such estates

=50 M L W 914=64 M L J 63 A I R 1933 Mad 30 Partition of revenue also is not necessary for all purposes of the section. *Ibid* This section has no application where the partition is of revenues assessed for 146 Ind Cas 201=A I R 1933 Pcs 101(?) but see 34 C W N 893=A I R 1931 Cal 104=130 Ind Cas 287 where it has been held that it is not necessary that the plaintiff should ask for a

lates a suit for partition by a  
he whole estate 34 C W N

estate prayer for decision of  
4 C W N, 892=130

such an estate "con-  
n adequate portion or

1931 Cal 93=58 C

122=34 C W N 892=130 Ind Cas 129 This section is meant to apply only in case of estates assessed to revenue in one lump sum for the whole estate and not to estates assessed at acre rates A I R 1926 Rang 80=5 Rang 206=4 Bur L J 260=95 Ind Cas 39 Civil Court has no power to interfere with the Collector's proceedings 42 B 689=20 Bom L R 411=46 Ind Cas 129 Section 54 does not cover a decree of a Civil Court on an application to partition the lands of an estate under the Bengal Estates Partition Act 1 P L W 51=38 Ind Cas 593 Decree for partition of a revenue paying estate where separate allotment of the revenue is not asked for is permissible 1 P L W 335=2 Pat L J 221=39 Ind Cas 173 Section 54 only applies where the decree is for partition of land by metes and bounds, that is, to Government Revenue as a whole s to be between the sharers to be held by them separately decree in administration suit 8 L B R 338=10

Bur L T 206=36 Ind Cas 383

#### ARREST AND DETENTION

55. [S. 336] (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as

Arrest and detention

soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of s district to be detained.

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise :

Provided, secondly, that no outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment debtor is to be found

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer, authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

Provided, fourthly, that, where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he\* [may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force

he was arrested, the Court† [may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree

Sub section (1)—A money decree is executable by arrest of judgment debtor  
A I R 1922 Nag 98= 53 Warrant  
of arrest issued by Civil C to the person  
to be arrested A I R 1 is submission  
to the custody by word or touching the  
body of the person arrested A I R 1930 Rang 131=7 Rang 598=123 Ind Cas  
137. The provisions of this section are mandatory A I R 1928 Cal 62=54 C  
782=106 Ind Cas 66 Bar of arrest does not preclude decree holder from proceeding  
with execution by attachment and sale of movable or immovable property of the  
judgment debtor A I R 1924 All 707=L R 5 A 408 Civ =82 Ind Cas 1 No

Sub-section (3)—Mere absence of note in record and provisions of law under s 55 (3) have been complied with does not connote failure to comply nor does failure to comply with those provisions invalidate an arrest A I R 1930 Lah 736=31 P L R 188=128 Ind Cas 51

Sub-section (4)—Court cannot extend the period of one month allowed under s 55 (4) A I R 1926 Mad 689=50 M L J 477=1926 M W. N 390 The surety

\* These words were substituted for the words "will be discharged" by s. 2 of the Code of Civil Procedure (Amendment) Act, 1921 (3 of 1921)

† These words were substituted for the words "shall release," *Ibid*

factory  
I. R.  
person  
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insol-  
bond  
A I  
R 1930 Lah 375=125 Ind Cas 34 Surety producing the judgment debtor before the Court and requesting for being absolved from further liability under the bond, shall be discharged A I R 1929 Lah 262=30 P. L R 595=118 Ind Cas 438, see also A I R 1928 Lah 974=116 Ind Cas 554 Court cannot proceed both against the judgment deb or and the security under s 55 (4) A I R 1929 Lah 479=117 Ind Cas 910 Serious illness of the judgment debtor is a valid excuse for non production so as to absolve surety from liability under the Security can be realised on under s 55 (1) A I R 1929

executing Court and not the decree holder  
realise security A I R 1929 All 377=119 Ind Cas 500 Judgment debtor is immune from arrest and detention, on production of detention order from the Insolvency Court 128 Ind Cas 314=A I R 1930 Lah 1070 This section should be interpreted to mean to apply in the proper form and after the compliance with the formalities prescribed by law or the rules framed thereunder within the prescribed

1924 Bom 428=48 B 500=26 Bom I R 415-8, Ind Cas 257 Liability of surety of the execution case and such dismissal A I R 1924 Pat 487=5 P L T 336-4 should be directed to continue until declared insolvent A I R 1922 Bom 340=23 Bom L R 1263=46 B 702=64 Ind. Cas 648 Court can refuse to execute decree against deposit of security in first instance or realization of it under order of Court A I R 1922=Bom 340=46 Bom 702=23 Bom L R 1263=64 Ind Cas 648 Amount realised on forfeiture of security under s 55 (4) is to be credited or and above the is 778 Surety's by the judgment 273-34 Ind Cas 407, see also A I R 1921 Pat 72=1921 Pat 19=1 P L T 694=5 P L J 117=57 Ind Cas 303, A I R 1933 Mad 560=145 Ind Cas 531 A surety is bound by the terms of the bond executed by him 55 A 548=144 Ind Cas 731-A I R 1933 1 Cas 615 Simultaneous A L R 1933 Nag 193= see also A I R 1931 Bom s to be charged under art 6 chargeable under the Stamp Act 34 P L R 480=143 Ind Cas 12, 14 Lah 284=12 Lah L T 52=141 Ind Cas 30=34 P L R 132=A I R 1933 Lah 89 (S B)

By the absence of the decree holder on a particular date the liability of the surety does not come to an end and is matured when application for insolvency is not made within Ind C surety should Bom bond applica 751=A under Code,

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset and before sunrise.

Provided, secondly, that no outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment debtor is to be found.

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer, authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest.

Provided, fourthly, that, where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he\* [may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

he was arrested, the Court [may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Sub section (1)—A money decree is executable by arrest of judgment debtor A I R 1922 Nag 98=5 N L J 49=18 N L R 145=65 Ind Cas 53 Warrant of arrest issued by Civil Court need not be shown in the first instance to the person to be arrested A I R 1921 Cal 79=25 C W N 815 Unless there is submission

with the plaintiff 146 Ind Cas 543=A I R 1933 Lah 723

Sub-section (3)—Mere absence of note in record and provisions of law under s 55 (3) have been complied with does not connote failure to comply nor does failure to comply with those provisions invalidate an arrest A I R 1930 Lah 736=31 P L R 188=128 Ind Cas 51

Sub section (4)—Court cannot extend the period of one month allowed under s 55 (4) A I R 1926 Mad 689=50 M L J 477=1926 M W. N 390 The surety



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bond  
A I

R 1930 Lah 575=125 Ind Cas 34 Surety producing the judgment debtor before the Court and requesting for being absolved from further liability under the bond, shall be discharged A I R 1929 Lah 262=30 P L R 595=118 Ind Cas 438, see also A I R 1918 Lah 974=116 Ind Cas 554. Court cannot proceed both against the judgment debtor and the security under s 55 (4) A I R 1929 Lah 479=117 Ind Cas 910 Serious illness of the judgment debtor is a valid excuse for non production so as to absolve surety from liability under the bond A I R 1929 Lah 479=117 Ind Cas 910 Security can be realised on failure to comply with either of the two conditions under s 55 (4) A I R 1927

debtor

the

on or

realise security A I R 1929 All 377=119 Ind Cas 500 Judgment debtor is immune from arrest and detention, on production of detention order from the Insolvency Court 128 Ind Cas 314=A I R 1930 Lah 1070 This section should be interpreted to mean to apply in the proper form and after the compliance with the formalities prescribed by law or the rules framed thereunder within the prescribed

against the judgment debtor A I R 1926 Mad 286=86 Ind Cas 304 Surety is liable where judgment-debtor does not apply and dies after prescribed date A I R 1924 Bom 428=48 B 500 26 Bom L R 415=83 Ind Cas 237 Liability of surety under bond does not cease with the dismissal of the execution case and such dismissal Court failing, decree holder can enforce it A I R 1924 Pat 487=5 P L T 336=81 Ind Cas 702 The surety under s 54 (4) should be directed to continue until a final order is made on his petition to be declared an insolvent A I R 1923 Bom 340=23 Bom L R 1263=46 B 702=64 Ind Cas 648 Court can refuse to execute decree against deposit of security in first instance or realization of it under order of Court A I R 1922 Bom 340=46 Bom 702=23 Bom L R 1263=64 Ind Cas 648 Amount realised on forfeiture of security under s 55 (1) is to be credited against the decretal amount

decretal amount A I R 19

liability is not terminated

debtor or the dismissal of an execution petition (1916) 2 M W N 273=34 Ind Cas 407, see also A I R 1921 Pat 72=1921 Pat 19=1 P L T 694=5 P L J 417=

surety is bound by

as 731=A I R 1933

615 Simultaneous

R 1933 N 193=

so A I R 1931 Bom

charged under art 6

of the Second Schedule of the Court Fees Act, it is not chargeable under the Stamp Act 34 P L R 480=143 Ind Cas 12, 14 Lah 284=12 Lah L T 52=141 Ind Cas 30=34 P L R 132=A I R 1933 Lah 89 (S B)

doe

with

Ind

sure

should be taken under s 145 33 Bom L R 1593=135 Ind Cas 812=A I R 1932 Bom 77 An order under s 55(4) rejecting an application for forfeiture of security bond is appealable 34 Ind Cas 247=10 Bur L T 15 But an order passed on application to cancel surety bond is not appealable 55 A 548=144 Ind Cas 731=A I R 1933 All 382 Where a person stands surety for a judgment debtor under a money decree and the Court after giving notice to surety under s 145 of the Code, orders the security to be realised under s 55(4) the surety can appeal against

the order 33 Bom L R 1593 A surety is not liable when application of insolvency by the judgment debtor is dismissed for want of particulars required under s 13 of

stand surety 32 Bom L R 739

56 [S 245A] Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. [S 338] The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors

58 [Ss 341, 342] (r) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and

(b) in any other case for a period of six weeks

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained to pay subsistence-allowance

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court

(2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison

59. [S 653] (r) At any time after a warrant for the arrest of a judgment debtor has been issued the Court may cancel it on the ground of his serious illness

(2) Where a judgment debtor has been arrested, the Court may release him if, in its opinion he is not in a fit state of health to be detained in the civil prison

(3) Where a judgment debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness

(4) A judgment debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58

Scope —The Court has no authority to fix any term of imprisonment under this section when committing a debtor to jail 5 C W N 145 A judgment debtor arrested and released immediately without being imprisoned may be re-arrested U B R (1897 1900) Vol II 281 The fact that a judgment debtor arrested in execution of a decree was released owing to non payment of subsistence money by

the decree holder is no bar to his being arrested again in execution of the same decree. 26 A 117 2001 A 117 2002 Cal 261 A payment of subsistence time 22 Ind Cas 25 Cost of 1=9 Bur L T 159=6 L B R taken to civil jail, he cannot be deemed to be released from detention under s 38 as to exempt him from re-arrest. A 1 R 1929 Lah 361=118 Ind Cas 531

### ATTACHMENT.

60 [S. 266] (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely —

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman,
- (b) tools of artisans, and where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section,
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him,
- (d) books of account,
- (e) ,
- (f) ,
- (g) o pensioners of the Government, or payable out of any\* service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions,
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty,
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

\* For notification declaring stipends and gratuities payable by certain Family Pension Funds to be exempted from attachment or sale in execution of a decree, see Gazette of India 1909 Pt 1, 5

stand surety 32 Bom L R 739

**56. [S 245A]** Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

**57. [S. 338]** The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

**58 [Ss. 341, 342.]** (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and

(b) in any other case for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained to pay subsistence-allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

**59. [S 653]** (1) At any time after a warrant for the arrest of a judgment debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness

(4) A judgment debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

**Scope**—The Court has no authority to fix any term of imprisonment under this section when committing a debtor to jail. 5 C W N 145. A judgment debtor arrested and released immediately without being imprisoned may be re-arrested. U B R (1897-1900) Vol II 281. The fact that a judgment debtor arrested in execution of a decree was released owing to non payment of subsistence money by

the decree holder is no bar to his being arrested again in execution of the same decree 26 A. 317, see also A. I. R. 1929 Lah. 361. A payment of subsistence money is not valid unless it reaches the officer in time 22 Ind. Cas. 25. Cost of clothing is not subsistence allowance 17 Ind. Cas. 911=9 Bur. L. T. 159=6 L. B. R. 61. Where a judgment debtor is released while being taken to civil jail, he cannot be deemed to be released from detention under s. 58 as to exempt him from re-arrest A. I. R. 1929 Lah. 361=118 Ind. Cas. 531.

#### ATTACHMENT.

60. [S. 286.] (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf :  
Provided that the following particulars shall not be liable to such attachment or sale, namely :—

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as in accordance with religious usage, cannot be parted with by any woman,
- (b) tools of artisans and where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section,
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him,
- (d) books of account,
- (e) a mere right to sue for damages,
- (f) any right of personal service,
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any\* service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions,
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty,
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

\* For notification declaring stipends and gratuities payable by certain Family Pension Funds to be exempted from attachment or sale in execution of a decree, see Gazette of India 1909 Pt. I, 5.

- (i) the whole of the salary, where the salary does not exceed [forty]\* rupees monthly,
- (ii) \*[forty] rupees monthly, where the salary exceeds \*[forty] rupees and does not exceed \* (eighty] rupees monthly,
- (iii) one moiety of the salary in any other case,
- (j) the pay and allowances of persons to whom the Indian Articles of War † apply,
- (k) all compulsory deposits and other sums in or derived from any fund to which the ‡ Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment,
- (l) the wages of labourers and domestic servants whether payable in money or in kind,
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest,
- (n) a right to future maintenance,
- (o) any allowance declared by any law passed under the § Indian Councils Act, 1861 and 1892 || to be exempt from liability to attachment or sale in execution of a decree, and,
- (p) where the judgment debtor is a person liable for the payment of land revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue

*Explanation*—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable

[Provided that where the decree holder is a society registered or deemed to be registered under the Co operative Societies Act, 1912, and the judgment debtor is a member of the society, the provisions of sub clauses (i) and (ii) shall be construed as if the word 'twenty' were substituted for the word "forty" wherever it occurs and the word "forty" for the word "eighty."¶]

(2) Nothing in this section shall be deemed—

¶

**Scope**—Exemption under this section can be claimed only by the judgment debtor

of a decree nor can it vest in a receiver A I R 1930 Sind 75=121 Ind Cas 876  
When property is offered as security the proprietary interest of the surety is not an

accruing from immovable property not belonging to judgment debtor cannot be attached A I R 1929 Cal 152=33 C W N 782=121 Ind Cas 751 Exemption

\* The words forty and eighty were substituted for the words twenty and "forty" respectively by s 2 of the Code of Civil Procedure (Amendment) Act 1923 (26 of 1923)

† V of 1869

‡ IV of 1897

§ See now the Government of India Act 1915 (5 and 6 Geo 5 Ch 61)

|| 24 & 25 Vict c. 67, 55 & 56 Vict c. 14

¶ Added by Act 20 of 1925

\*\* The letter and brackets (a), the word 'or' and clause (d) were repealed by s 3 and Sch II, Rep and Amending Act 1914 (10 of 1914)

9  
a  
d

**Saleable property**—The equity of redemption is a substantial right capable of being attached and sold. A I R 1923 Rang 119=70 Ind Cas 530. It is clear that the Court can only sell in execution property which the judgment debtor can lawfully alienate. 70 Ind Cas 466=45 M L J 477. Interest of a saleable property within s 60 as it is

7 C 38=4 C W A 87, 9 C W  
A I R 1928 All 193=0 A

C C, H Vol. I—26

though not immediately payable 56 Ind Cas 948=12 Bur L T 247 Debt that has not yet fallen due cannot be attached A I R 1925 Rang 318=89 Ind Cas 794 Existing debt when payment is deferred is attachable while where both the debt and its payment is in future, such debt is unattachable A I R 1925 Cal 561=78 Ind Cas 881

Clause (a)—Necessary wearing apparel is not liable to attachment 9 B H C R 272 A mangala sutra of a Hindu lady is such an apparel 9 B 106 Cooking vessels come under clauses (a) and (b) A I R 1932 All 344=54 A 399=136 Ind Cas 280

Clause (b)—A sewing machine is a tool 65 Ind Cas 416 Artisan is one engaged in a mechanical 5 L W 596=38 Ind B R 133 The word 399=A I R 1932 All 344=136 Ind Cas 280 Agriculturists include not only tenants or proprietors cultivating land but also persons engaged in cultivation of land 41 B 475=19 Bom L R 281=39 Ind Cas 639 Cattle necessary for agricultural purpose cannot be attached 13 S L R 201, 61 Ind Cas 777 When judgment debtor is in a position to replace them they can be attached 25 Ind Cas 117 Where a judgment debtor's only source of living is not by cultivation of land, he is not an agriculturist 63 Ind Cas 681, see also 130 Ind Cas 81=26 N L R 295, A I R 1931 All 20=14 R D 716, A I R 1928 All 211=116 Ind Cas 20, A I R 1917 All 601=106 Ind Cas 49, 106 Ind Cas 45=A I R 1928 Lah 132, A I R 1928 Nag 23=105 Ind Cas 129 A person tilling his land for years does not lose his has temporarily let out the land A I R 106 Ind Cas 225 The term "artisan" does not 848=34 P L R 809=A I R 1933 Lah 936 if preparing *gur* from sugarcane is an imple-

Clause (c)—The fact that a person cultivates his own land and thereby maintain himself and his family will not necessarily make him any the less an agri-

All 20 The term "agriculturists" is used living by tilling the soil In other words ned by cultivating the land and does not necessarily mean a person who works with his own hands The property of an agriculturist to be exempt under clause (c) must be shown to have been occupied by him is such for purposes of agriculture i.e. in order to enable the owner or occupier to cultivate the land 8 O W N 1353 see also 26 N L R 295=A I R (1931) N 8=130 Ind Cas 81 A I R 1932 Rang 227 (F R)=145 Ind Cas 326=11 Rang V L R 106=A I R 1933 Nag d from attachment even if not -2 A W R 580 A judgment of land is not his sole means of sources others than agriculture

at a house occupied P L R s on the agriculturist and other Ind Cas agriculturist at he is an agriculturist and occupies the building in that capacity 1932 A L J 499=138 All 865 It is doubtful whether a person making his living by s a Government servant cannot be

D 589. The mere fact that these persons have obtained permission to build houses on a portion of the land which was formerly their occupancy tenancy does not necessarily imply that they have themselves ceased to be agriculturists or that they no longer occupy the house in the capacity of agriculturists 1932 A L J 499=138 Ind Cas A 361=A L R 1932 865 Where house to be attached is occupied by sons of deceased debtors as agriculturists it need not be proved that their deceased father also occupied as agriculturist A I R 1928 All 211=116 Ind Cas 20



Objector having properties more than sufficient for his agricultural requirements can not claim exemption in respect of all A I R 1929 Lah 181=30 P L R 29=10 Lah L J 543=115 Ind Cis 478 The word occupation does not necessarily mean 'residence' only A I R 1927 All 244=99 Ind Cas 376 It is only house occupied by agriculturist as such that is exempted A I R 1927 Lah 66=98 Ind Cas 857, see also A I R 1927 Lah 230=92 Ind Cas 759 'Occupied by' means 'lived in by' or 'used for agricultural purposes by' A I R 1926 Lah 230=92 Ind Cis 759 The word agriculturist must be strictly construed A large landed proprietor e.g. owning 500 acres of land even though his sole income is from land, is not an agriculturist 92 Ind Cis 398=A I R 1926 Mad 950=49 M 227=50 M I J 50=92 Ind Cas 396 Agriculturist does not cease to be so merely because he becomes *Akalt* A I R 1925 Lah 331=7 Lah L J 95=29 P L R 463=88 Ind Cis 543 Burden of proving exemption lies on person objecting to attachment A I R 1925 All 432=87 Ind Cis 564, A I R 1930 Lah 1034=31 P L R 842=130 Ind Cas 419 Agriculturist whose house is exempt from attachment is one who tills field and gets livelihood mainly from cultivation 20 C W N 874=35 Ind Cas 343, 14 A L J 240=33 Ind Cis 727, 39 A 120=14 A L J 1031=38 Ind Cas 171 House of an agriculturist appertaining to his holding not liable to sale in execution of decree obtained upon mortgage of the house 51 Ind Cis 546 Vacant site in houses and other 75 House of insolvent was *zemindari* is not

from attachment A I R 1930 Lah 129=7 R 16 706 121 Ind Cis 777 A female occupier can not cultivate field herself an agriculturist and her house is exempt from attachment A I R 1927 Nag 574=10 N L J 159=10 Ind Cis 712 If even without objection Court otherwise becomes cognisant of the fact that the property attached was the house of an agriculturist it would be his duty to withdraw the attachment A I R 1930 All 727=(1930) A L J 1244=127 Ind 447 Where there is no proof of a house being used for purposes of agriculture, it is not exempted from attachment A L R 1934 Lah 76

Clause (d) —Books of account are exempt from attachment 3 B H C R 43 But Court can require the judgment debtor to produce his books in Court 3 N W P H C R 334 *Jatubahi v Gayawal* is not liable to attachment A I R 1922 Pat 556=1 Pat 619=3 P L T 603=68 Ind Cas 944

Clause (e) —A right to bring suit is exempt from attachment 3 W R Mis 18, 14 W R 152, 6 N W P H C 95, 78 Ind Cis 409, 76 Ind Cis 657, (1918) M W N 887

Clause (f) —*Birt* of *Mahabrahman* being right to personal service cannot be sold in execution of money decree 41 A 656=17 L J 842=51 Ind Cas 539 *Birt jymani* is a right to personal service, although Hindu Law regards this right as immovable property 43 Ind Cis 650 Offerings at temple being personal property cannot be attached in execution 126 P L R 1917=159 P W R 1917=

o receive offerings is right of occupation of particular spot attachment A I R 1919 Oudh turn of worship of Goddess Kali A I R 1933 Cal 757 The

interest of an *utpat* or priest's share in the net balance of the offerings to the deity is attachable A I R 1927 Bom 143=29 Bom L R 102=100 Ind Cas 1008

11 Pat 584=140

173 Pension implies

76 A 617, 24 Ind

C 160=1931 L J

43=35 C W N 791=53 C L J 493=61 M L J 208=132 Ind Cis 727 (P C)

There is no presumption that *pension* is political pension Judgment debtor must prove that it is so 111 Ind Cis 838, see also A I R 1929 Nag 73=116 Ind Cis 661

Compensation by the Government for forest dues in respect of *jagir* land taken over by the Government for forest purposes is not exempt from attachment A I R 1930 Bom 134=121 Ind Cas 664 Where the grant to K was of land rather than of revenue charged on land it is not a

632 (P C) affirming 36 A 311=25,

is attachable A I R 1922 Cal 19

holder must prove that a particular pension is attachable A I R 1922 All 429=44 A 697=20 A L J 679=63 Ind Cas 854 Gratuity granted to the heirs of the deceased employees by a Railway administration is not assets of the employee in the

1923 Oudh 21=26 O C 53=9 O L J 401=69 Ind University to its servants not being in the nature exempt from attachment A I R 1924 Lah 688=75

Ind Cas 945 Where trial Court directs sale of pension by decree execution Court cannot re open the question of saleability A I R 1925 All 652=47 A 900=23 A L J 841=89 Ind Cas 364

Clause (h)—This clause is new It makes obsolete the decision in 6 M 179

Clause (i)—Where the judgment debtor is a public officer as defined in s 2 (17) C P Code his salary is exempt from attachment to the extent mentioned in cl (i) of proviso to s 60 (i) C P Code and if he is not such a public officer it is not exempt from attachment to any extent A I R 1933 All 859=1933 A L J 1468=A. I R 1933 All 597, see also 55 A 648=

Ind Cas 897=35 Bom L R

18 W R 124, 40 A 213=43 Ind C 304, 21

be attached 11 Bur I T 130=42 Ind Cas 90 A British Officer in Indian Army is liable to have half his salary attached under s 60 (i) 21 Bom L R 143=50 Ind Cas 683 Insolvency Court can order a reasonable allowance to the insolvent from out of his half salary vesting in Receiver A I R 1923 All 466=45 A 364=21 A L J 216=73 Ind Cas 413 The combined operation of s 28 (5) of Provincial Insolvency Act and s 60 (i) (iii) is to make only half his salary divisible amongst the creditors A I R 1923 A 466=45 A 364=21 A L J 216=73 Ind Cas 413, see also A I R 1922 Mad 439=(1922) M W N 717=70 Ind Cas 572

Clause (j)—Vide A I R 19

122=48 A 73=23 A L J 979

by Commander in Chief under s

137=50 Ind Cas 427 A I R

122=A I R 1926 A 122 The pay or a

1934 Bom 31 A I R 1933 Bom 185

326 All

r made

L R

48 A

A I R

Clause (k)—Compulsory deposit made in the General Provident Fund is not liable to attachment even after the retirement or death of the contributor from service A I R 1929 All 417=(1929) A L J 670=51 A 845=117 Ind Cas 622, see also 11 Rang 116=142 Ind Cas 360=A I R 1933 Rang 23 (F B), 33 Bom L R 720=134 Ind Cas 558=A I R 1931 B 300, 35 C 641=12 C W N 633, 29 B 259, 45 A 554=74 Ind Cas 746 46 C 962=54 Ind Cas 439 44 B 673=56 Ind Cas 450, 80 Ind Cas 424=7 Pat 74-A I R 1924 Pat 524 17 C W N 472=50 C 347, 45 A 554=21 A L J 454=74 Ind Cas 746 So long as it remains in the hands of the company it is exempt from attachment But after payment it can be attached 29 B 259, 50 C 347, A I R 1927 Oudh 22=13 O L J 425=1 Luck. 313=29 O C 278=92 Ind Cas 673 Compulsory deposit in Railway Provident Fund cannot be attached A I R 1923 C 585=50 C 347=27 C W N 472=77 Ind Cas 1025

Clause (l)—As to who are labourers Vide 5 B 132

n completion of ad-  
I R 1931 Pat 76=  
interest is generally  
decree against the  
rest of heir in the  
Ind Cas 76

Clause (n)—A right to receive future maintenance cannot be attached 14 L R 371 (Rev)=17 R D 505, see also 16 C L J 354=17 C W N 652, 6 W R 115 64 27 C 38 9 C W N 703, 40 M 302 38 C 13, 57 B 507=146 Ind Cas 340 =35 Bom L R 615=A I R 1933 Bom 350 A *jagir* for maintenance is unattachable but a receiver can be appointed to manage the *jagir* for the decree holder A I

R 1933 Nag 266 A mere right of maintenance cannot be attached and sold 40 M  
 302-30 M L J 361=34 Ind Cas 381, see also 21 O C 329=6 O L J 137=49  
 Ind Cas 511 Heritable annuity conferred by will is liable to attachment as it is  
 essentially different from right of maintenance A I R 1921 Oudh 164=24 O C

le, Receiver  
 out of the  
 and apply  
 3 Pat L R

142=47A 385=52 I A 263=49 M L J. 244=(1925) M W N 630=30 C W N  
 818-41 C L J 383=23 A L J 634=27 Bom L R 849 87 Ind Cas 295 (P C)

Clause (p)—Vide 82 P R 1907

61 [N<sup>o</sup> 1] The Local Government,\* may by general or special order  
 published in the local official Gazette, declare  
 Partial exemption of agri that such portion of agricultural produce, or of  
 cultural produce any class of agricultural produce, as may appear  
 to the Local Government to be necessary for the purpose of providing until  
 the next harvest for the due cultivation of the land and for the  
 support of the judgment debtor and his family, shall, in the case of all agri  
 culturists or of any class of agriculturists, be exempted from liability to  
 attachment or sale in execution of a decree

62 [S 271] (1) No person executing any process under this Code  
 directing or authorizing seizure of moveable  
 Seizure of property in dwell property shall enter any dwelling house after  
 ing houses sunset and before sunrise

(2) No outer door of a dwelling house shall be broken open unless such  
 dwelling house is in the occupancy of the judgment debtor and he refuses or  
 in any way prevents access thereto but when the person executing any such  
 process has gained access to any dwelling house he may break open  
 the door of any room in which he has reason to believe any such property  
 to be

(3) Where a room in a dwelling house is in the actual occupancy of a  
 woman who, according to the customs of the country, does not appear in  
 public, the person executing the process  
 that she is at liberty to withdraw,  
 her to withdraw and giving her reason  
 enter such room for the purpose of seizing the property, using at the same  
 time every precaution, consistent with these provisions, to prevent its  
 clandestine removal

Scope—A shop or a godown is not a dwelling house 3 B 99

Clause (3)—145 Ind Cas 239=34 Cr L J 963

63 [S 285] (1) Where property not in the custody of any Court is  
 under attachment in execution of decrees of  
 Property attached in execu more Courts than one, the Court which shall  
 tion of decrees of several receive or realize such property and shall deter  
 Courts mine any claim thereto any objection to the  
 attachment thereof shall be the Court of highest grade, or where there is no  
 difference in grade between such Courts, the Court under whose decree the  
 property was first attached

(2) Nothing in this section shall be deemed to invalidate any proceeding  
 taken by a Court executing one of such decrees

1 see 7 C 410  
 e each of them  
 f such Courts  
 by two Courts  
 Court of lower

\* The words "with the previous sanction of the Governor General in Council"  
 were omitted by s 2 and sch I, Part I, of the Devolution Act, 1920 (38 of 1920)

grade 27 A 56=A 1 \*

Court of immovable pro  
superior Court is not

505=33 M L J 217=22 M L T 119=41 Ind Cas 612, 32 Ind Cas 927, 32 Ind  
Cas 41, 38 C L J 266=A I R 1974 Cal 168-75 Ind Cas 325 After attachment

Judge there was attachment and sale by  
class subordinate Judge is entitled to call for  
distribution A I R 1925 Bom 420=49 B

655=27 Bom I R 917=89 Ind Cas 980, see also 98 Ind Cas 628=A I R 1927

Mad 67=51 M L J 661,  
84 Ind Cas 6, Holde

stopped by the superior Cou

any further application A I R 1925 Cal 966=29 C W N 575=87 Ind Cas 783,

A I R 1928 Rang 157=6 R 131=110 Ind Cas 744, see also 46 C 64=27 C L

J 14, Object of this section is to prevent confusion in the execution of decree

A I R 1921 Pat 140=2 P L T 19=6 Pat L J 332=62 Ind Cas 33 Property

attached in execution of prior decree of different Court cannot be sold by Court

executing a subsequent decree Sub section (2) profits such sale when it has taken

321 Pat 140=2 P L T 719=6 Pat

een Civil Courts or where it extended to

A I R 1971 All 142=43 A 612=19

attachment by inferior Court is prior to

o superior Court, claiming rateable

distribution is necessary, but where inferior Courts' attachment is subsequent

rateable distribution cannot be claimed without application 25 C W N

740=A I R 1922

J 332

921 C

all claims thereto A L R 1933 M 569=A I R 1933 M 342=6, M L J 34

## 64 [S 276] Where an attachment has been made, any private trans

fer or delivery of the property attached or of

ty after attachment to be void any interest therein and any payment to the

monies contrary to such attachment, shall be void as against all claims

enforceable under the attachment

*Explanation*—For the purposes of this section, claims enforceable under

an attachment include claims for the rateable distribution of assets

*Scope*—Section 64 relates to private alienation of property after it has

been attached by order of a Court A I R 1930 Lah 858=128 Ind Cas

304 It has no application to a case in which the alienation has been

made after the issue of *ad interim* injunction restraining alienation of house

A I R 1930 Lah 858=128 Ind Cas 304 Attachment begins to be binding

from when all processes of attachment necessary under the law to effect

valid attachment have been served and not from the date of order of attachment

A I R 1931 Pat 58=9 Pat 860=12 P L T 398=129 Ind Cas 142, see also 14,

Ind Cas 813

198=146 Ind

alienations

question and

524=57 C 122=123 Ind Cas 737, see also A I R 1929 B 395=53 B 851=31

Bom L R 1111=123 Ind Cas 510, A I R 1930 Bom 16=31 Bom L R 1209=

122 Ind Cas 836, A I R 1923 Lah 261=3 Lah 414=69 Ind Cas 720, A I R

1921 Oudh 170=8 O L J 358=16 Ind Cas 642, A I R 1921 Mad 30=44 M

232=40 M L J 65=62 Ind Cas 121

For

it is orde

207=42

A L R 1934 All 12

Attachment before judgment is not a process in execution of a decree Attachment

in s 64 covers attachment before judgment A I R 1971 Nag 258=68 Ind Cas

188, see also A I R 1972 Cal 494=53 C W N 505=57 C 74=122 Ind Cas

637, 113 Ind Cas 333=A I R 1928 Bom 444=30 Bom L R 1136 An attachment is not effectual till the prohibitory order is posted in the Court house 59 C 1176=36 C W N 733-A L R 1913 Cal 33, A L R 1934 All 12=1934 A L J 1501

The attachment under s 64 must be made in the manner and published as prescribed in order 21, rule 54 39 Ind Cas 857, 36 Ind Cas 732=3 O L J 422, see also A I R 1922 Nag 238=68 Ind Cas 188, 12 P L T 398=A I R (1931) P 58=129 Ind Cas 142=9 P 860

Section 64 protects a creditor only from those transactions which are subsequent to attachment 21 C W 158=34 Ind Cas 953=23 C L J 115 A private transfer of property under attachment is not absolutely void but is only voidable 63 Ind Cas 108, see also A I R 192

Mortgage during attachment is not

443=44 A 714=20 A L J 722=30 Bom L R 1488=115 Ind attachment before judgment A I R 1928 Bom 545=30 Bom L R 1488=115 Ind Cas 414, A I R 1921 Cal 801=33 C L J 7=62 Ind Cas 167 Section 64 is intended for the benefit of the decree holder He can however agree to forego the , L W 988=44 M L J 80=72 Ind Cas 839 promissory note from receiving money under I R 1923 Mad 317=44 M L J 205=(1923)

M W N 91=72 Ind Cas 189

Agreement to sale entered into before attachment does not create any interest or charge on the property and so it cannot prevail against attachment A I R 1929 Cal 494=33 C W N 805=57 C 274=122 Ind Cas 637 The moment attachment comes to an end by reason of satisfaction of the decree, all claims under the attachment ceases to be enforceable A I R 1928 Bom 545=30 Bom L R 1488=115

A I R 1929 Rang 229=7 Rang 201 execution sale is held and not attachment Cas 414 Attachment does not continue after dismissal of execution application A I R 1922 Nag 81=66 Ind Cas 850 Where claim suit is decreed and attachment is raised but the decree is reversed on appeal the attachment revives and renders transfer during interval invalid A I R 1922 Nag 138=4 N, L J 213=65 Ind Cas 220

an interest

d Cas 615

sale Subse

In the cir

circumstances the transfer is not contrary to attachment A I R 1928 Bom 545=30 Bom L R 1488=115 Ind Cas 414 It is only those persons who have claims enforceable under attachment that can take objection that the transfer was void A I R 1929 Pat 1=7 Pat 726=9 P L T 822=113 Ind Cas 673 A person who has merely obtained an attachment before judgment cannot put up a claim for rateable distribution A I R 1928 Bom 545=30 Bom L R 1488=115 Ind Cas 414 No title passes by virtue of attachment A I R 1929 Lah 90=10 Lah 491=30 P L R 6=113 Ind Cas 907

Where attachment is wrongly released subsequent attachment will relate back to the time when attachment was first made A I R 1924 Cal 744=51 C 548=39 C L J 418=83 Ind Cas 233 but see A I R 1919 Rang 229=7 Rang 201=118 Ind Cas 715, 62 Ind Cas 121=40 M L J 65=44 M 232=A I R 1921 Mad 30 Decree embodying *bona fide* transfer is not private transfer 68 Ind Cas 673=41 M L J 557=45 M 103 A purchaser under a private sale void under s 64 has no lien of his purchase money on the property 34 Ind Cas 34

but by order XXI, rule 53 A I J Cas 673 Vesting order by Assignee has no analogy with 35-51 M 417=(1928) M W N, d Cas 541 Mortgage executed aser under decree A I R

1928 Mad 703=28 L W 213=55 M L J 369=111 Ind Cas 266 Mortgage exe

execute r

f the same

execution of

the mortgage by Court 34 Bom L R 117=139 Ind Cas 610=A I R 1932 Bom

301=A L R 1932 Bom 166, see also 63 M L J 664=1932 A L J 509=1932 M W N 1063=56 C L J 324=36 C W N 1129=A I R 1932 P C 235 (P C), 35 Bom L R 1=56 C L J 324 (P C)

Where the amount due under the writ of execution is paid and the attachment comes to an end, there are no further claims enforceable under the attachment in respect of which the alienation can be said to be void, and *ex post facto* the alienation is rehabilitated in law 10 R 199=138 Ind Cas 201=A I R 1932 Rang 103=A L R 1932 Rang 234, but see A I R 1933 Nag 82=A I R 1933 Nag 249. Though a plaintiff has obtained his decree there is nothing to prevent the judgment debtor disposing of his property before it has been attached in execution of the decree A I R 1932 Sind 164=26 S L R 158=A L R 1932 Sind 192. A decree is entitled to the ground of material Cas 600

In case of attachment is the 1933 A L J 1501

of the attaching creditor A I R 1933 All 953. A claim to be effective as questioning the private alienation must be one enforceable under the attachment within the meaning of s 64 C P Code the attachment therein referred to being the attachment under which the execution sale is made and no other A L R 1933 Nag 239=A I R 1933 Nag 230=144 Ind Cas 631=1 R 6 N 5. The operation of a registered deed from the date of execution is not in any way affected by attachment of property between date of execution and registration A L R 1933 Cal 33=59 C 1176=36 C W N 733=A I R 1933 Cal 212=142 Ind Cas 452

There is a distinction between an attachment made before judgment and one made after judgment. If passed it is not necessary for the sale, but he can immediately apply for sale. The attachment will be void against the plaintiff's interest if annulled on review or when it ceases to be in force after dismissal of suit or A L R 1934 All 12

### SALE

65. [S 316] Where immovable property is sold in execution of a decree and such sale has become absolute, the purchaser's title to the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute

Scope—Under s 65 purchaser's title is not altered if afterwards he passes to a third party. Between the Court sale and its confirmation, the purchaser acquires in equity a good title while the judgment debtor has the bare right to his property. The former sale is not set aside only if the sale set aside otherwise the purchaser acquires whatever right title and interest of the judgment debtor there may be in the property. 12=1909. 10 rent due. 151. At the debtor's request the land sold and the Court is not responsible for breach of warranty. A I R 1928 Rang 67=5 Rang 203=109 Ind Cas 151, see also A I R 1921 Pat 409=7 P L T 240=61 Ind Cas 92. 45 Ind Cas 248=5 O L J 31. Property sold vests from the date of sale in the purchaser who is entitled to profits and responsible for loss from that date. A I R 1926 Nag 17=88 Ind, Cas 623

90 Ind Cas 901 Decree holder's fail permitted to bid does not invalidate the s

only widow's interest A I R  
if sale certificate is not necessary  
date of sale 95 Ind Cas 965

Rang 332=6 Bur L J 230=106 Ind Cas 861 A bill authorizing the donee to take possession by auction purchaser made before confirmation of sale passes title though the donor is not actually in possession A I R 1927 Oudh 261=2 Luck 496=102 Ind Cas 72 Purchaser in execution of mortgage decree can claim a right in the charge in favour of the mortgagor, if that was all the right, title and interest of the judgment debtor A I R 1927 Cal 359=45 C I J 151 Where property over which maintenance charge in pauper suit is decreed directing realization of Government costs from arrears of maintenance is sold through Court for those costs the sale is one of equity of redemption subject to the charge of maintenance A I R 1926 Cal 859=94 Ind Cas 391 Under the provisions of s 65 the title to the mortgaged property vests in the purchaser from the time when the property is sold in execution of the decree on the mortgage A L R 1933 Oudh 619 The title of the auction purchaser is derived from the sale and not from the sale certificate It accrues on the sale becoming absolute but takes effect from the date of sale itself The sale certificate is merely evidence of title of the auction purchaser and not the title deed in the sense that the title is conveyed or created by it The word 'sale certificate' itself denotes that it is only a certificate by the Court but the auction purchaser had purchased the property 156 Ind Cas 49-A I R 1932 Pat 80, 9 O W N 948=140 Ind Cas 560=16 R D 567

**66 [S. 317] (1)** No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

**(2)** Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

**Scope**—Under this section the suit of a plaintiff who bases it on the ground that he was the real purchaser of a Court sale and that the certified purchaser was not really so, must fail But if the real owner is in possession of the property and the certified purchaser want to take advantage of his name being in the sale certificate and brings the suit on that basis, the real owner can successively defend it on the ground of his being the real purchaser A I R 1933 Pat 230=12 P 616=14 P L T 208=A I R 1933 Pat 264, see also 118 Ind Cas 713, 108 Ind Cas 130=A I R 1928 All 619=50 A 512=76 A L J 245=108 Ind Cas 130, 30 C W N 160=53 C 297=A I R 1926 Cal 547, A I R 1925 Nag 41=82 Ind Cas 541, 27 C W N 208=37 C L J 413=A I R 1923 Cal 302=75 Ind Cas 156, 4, M 856=A I R 1922 Mad 481=43 M L J 563=73 Ind Cas 478, 47 A 711=19 A L J 787=63 Ind Cas 676, 43 A 416=19 A L J 277=67 Ind Cas 725, 62 Ind Cas 720=A I R 1921 Pat 39=(1921) Pat 21, 58 Ind Cas 745=24 C W N 659 The rule this section has no retrospective operation A I R 1923 Cal 228=36 C L J 396=27 C W N 305=70 Ind Cas 556, but see 43 A 416=19 A L J 227=62 Ind

Cas 725 Section 66 has to be strictly construed 33 Bom L R 1296=A. I R. 1931

of joint fund enures for benefit of all the joint owners A I R 1933 All 854 A suit bound on dispossession after an adverse possession of 12 years is clearly not a suit profited by s 66 and does not become so by proof of *benami* on an alternative cause of action A I R 1929 P C 228=33 C W N 1061=50 C L J 357-56 I A. 330=31 Bom L R 1393=120 Ind Cas 651 The plea of prohibition under s 66 can be put forward and give effect to at any stage of the suit even in appeal for the first time 3 O L J 508=37 Ind Cas 111

In a suit by an heir of the certified purchaser to eject the defendant it is open to defendant to set up his own title to show that the certified purchaser was a *benamidar* for him 31 Ind Cas 58=11 N L R 130 A suit for confirmation of possession of immovable property against a private transferee of the certified purchaser as *benamidar* of the plaintiff is not barred 32 Ind Cas 963 Suit against auction purchaser by a person alleging that it was so purchased in trust for him is not barred 3 L W 233=(1916) 1 M W N 184=33 Ind Cas 1000 The words "certified purchaser" in s 66 include persons claiming under court purchaser 22 O C. 222=6 O L J 563=53 Ind Cas 961 A suit for declaration that the purchase by certified purchaser is *benami* for plaintiff is barred by this section 2 O L J 584=32 Ind Cas 365, see also 32 Ind Cas 434=(1916) 1 M W N 220=3 L W 86 Where certified *benami* purchaser sues for ejectment, this section has no application 4 L W 609=

acquisitions 4 A. 159=21 C W N 1065=76 C L J 267-44 I A 201 P C =40 Ind. Cas 988 Suit by a judgment debtor against an auction purchaser to enforce an agreement to re-convey the properties to him entered into before the sale is bar principal against the agent for rec in his own name but with the pri a court auction though with the kno I W N 695=9 L W 276=49 Ind Cas 734 Agreement to buy property jointly in name of one but out of joint funds can be enforced specifically if payment made out of joint fund 24 C W N 27=54 Ind Cas 726 Section 66 applies to successor in title of the certified purchaser 16 N L R 87=55 Ind Cas 499, A I R 1928 Cal 448=55 C 1070=32 C W N 759 An agreement to convey subsequent to a purchase is not affected by section 66 and is specifically enforceable A I R 1920 P C 30=43 M 643=47 I A. 108=18 A L J 584=24 C W N 699=56 Ind Cas 395 see also 42 M 615=37 M L J 98=51 Ind Cas 111, 136 Ind Cas 538=A I R 1932 Cal 170 This section applies to *benami* purchase at court of even fraction of property 57 Ind Cas 684 This section does not apply to a sale by a Receiver A I R 1926 All

Ind Cas 98 If two persons enter into a joint venture to buy a property at a Court sale, the funds being provided jointly but the sale certificate is issued in the name of one of them a suit by the other claiming half of the property is not barred under s 66 A I R. 1926 Bom 525=50 B 600=28 Bom L R 947=97 Ind Cas 688 Objection under this section can be taken at any stage and the court is bound to give effect to the plea 136 Ind Cas. 558=A I R 1932 Cal 170

Sub section (2)—Ostensible purchaser can not plead his own fraud as defence to suit for possession by *benami* purchaser A I R 1925 Mad. 1016=22 L W 313=91 Ind Cas 776, see also 4 B L R. App 32



\*67. [S 327] (1) The Local Government, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value

[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the Local Government may, by notification in the local official Gazette, declare such rules to be in force, or may, by a like notification, modify the same

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified,]

Scope—Publication of sale at the collector's office is necessary both in the case of mortgaged land and enfranchised *shoortum* village A I R 1974 Mad 217=46 M 736=45 M L J 263=75 Ind Cas 369

#### DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY

68 [S 320 1st para] The Local Government may declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold or the execution of any particular kind of such decrees or the execution of decrees ordering the sale of any particular kind of, or interest in immoveable property shall be transferred to the Collector.

Power to prescribe rules for transferring to collector the execution of certain decrees

Section to transfer to the Court has already been confirmed only to the Collector in order for sale has

been passed A I R 1934 Oudh 143 After transfer under s 68 the Civil Court cannot interfere with the orders passed by the Collector or rectify mistakes committed by him A I R 1928 All 558=50 A 827=26 A L J 769=115 Ind Cas 125, 109 Ind Cas 381=A I R 1928 Nag 297 46 A 56=83 Ind Cas 766 Simple money decree cannot be transferred to the collector if no immoveable property is directed to be sold A I R 1926 Oudh 318=97 Ind Cas 906 see also A I R 1926 All 339=48 A 392=24 A L J 397=93 Ind Cas 1070 A suit to set aside sale by a person against whom order of confirmation of sale is made by the Collector is not maintainable A I R 1923 All 186=21 A L J 186=21 A L J 53=45 A 205=79 Ind Cas 82 Section 68 has no application in the Punjab A I R 1923 Lah 475 Temporary alienation of the land of an agricultural tribe in satisfaction of a money decree is permissible 4 A L J 476=74 Ind Cas 194 After transfer of decree for execution passed the decree originally

✓ N 226-4 Luck 635=117

the collector for execution the collector does not become the court executing the decree and the court which sent the decree to the collector remains the court executing the decree for the purpose of

\* Section 67 was re numbered 67 (1) by s 3 of the Code of Civil Procedure (Amend

sanction of the Governor General in Council  
I of the Devolution Act, 1900 (38 of 1900)  
c 67 by s 3 of the Code of Civil Procedure

§ The words 'with the previous sanction of the Governor General in Council' are omitted by s 2 and Sch I, Part I of the Devolution Act 1900 (38 of 1900)

¶ Certain words after this repealed by Act 38 of 1900 have been omitted

substitution of legal representative (1931) A. L. J. 165=A. I. R. (1931) All 320 =133 Ind. Cas. 609 Collector alone has jurisdiction to hold sale even though the order for sale was passed prior to notification by Government that execution of decrees by sale of agricultural land should be transferred to collector, notification being a matter of procedure affects also pending proceedings A. L. R. 1933 W. N. 517=145 Ind. Cat. 363=8 Lah. 504  
 ancestral the collector and collector alone property by the civil court Amin is entirely

69 [New] The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section

Scope—Where decree is transferred for execution under s. 68 collector may execute it under para 1 or para 2 of Schedule III 61 Ind. Cas. 579 The Civil Court has no jurisdiction to interfere with an order passed by the Collector under Schedule III of C. P. Code in respect of decrees transferred to the collector for execution under s. 68 of the C. P. Code A. L. R. 1933 Bom. 403=35 B. L. R. 761=A. I. R. 1932 Bom. 369

70. [S 320, 3rd and 4th paras] (1) The Local Government may make rules consistent with the aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court,
- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector,
- (c) providing for orders made by the subordinate of the Collector, or to such orders, being subject to the orders of superior revenue authorities made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector

(2) A power conferred by rules made under sub-section (1) upon the Jurisdiction of Civil Courts barred

or by any Court in exercise of it has with respect to decrees or orders of the Court

declared to be in the ordinary jurisdiction in the collector 46 Ind. Cas. 88, A collector acting under s. 70 can pass order under s. 476 Cr. P. Code 14 A. L. J. 1077=18 Cr. L. J. 307, A Collector has no jurisdiction to set aside the transmitted the decree to the Civil Court and a A. I. R. 19 6 All 572=48 A. 568=21 A. L. R. 1933 Cal. 100  
 no authority in the matter of Luck. 538=13 O. L. J. 897=3 O. L. J. 100  
 has neither appealable nor revisionary jurisdiction

in discharge of his powers under s. 68 A I R 1926 Oudh 288=92 Ind Cas 549  
 If the Local Government make rules which giving finality to an order of Revenue  
 Court and the Revenue Court confirms the sale of an ancestral property sold in the  
 execution of decree a suit to set aside the sale is not maintainable 18 A L J 124=  
 2 U P L R (H C) 35= 54 Ind Cas 801

**71. [S 320, 5th para]** In executing a decree transferred to the  
 Collector under section 68 the Collector and  
 Collector deemed to be acting his subordinates shall be deemed to be acting  
 judicially judicially

**72. [S 326] (1)** Where in any local area in which no declaration  
 under section 68 is in force the property  
 Where Court may authorize attached consists of land or of a share in land,  
 Collector to stay public sale and the Collector represents to the Court that  
 of land the public sale of the land or share is objection  
 able and that satisfaction of the decree may be made within a reasonable  
 period by a temporary alienation of the land or share, the Court may autho  
 rize the Collector to provide for such satisfaction in the manner recom  
 mended by him instead of proceeding to a sale of the land or share

(2) In every such case the provisions of sections 69 to 71 and of any rules  
 made in pursuance thereof shall apply so far as they are applicable

**Scope**—All objections relating to the proceedings before collector must be  
 disposed of by him A I R 1928 Lah 475=110 Ind Cas 173 see also 1 Lah  
 192= Lah L J 333 (F B)=58 Ind Cas 603 In case of sale of revenue paying  
 land in execution of decree sanction of revenue authorities is not necessary 69 P  
 L R 1918=143 P W L 1918=4 Ind Cas 854 66 Ind Cas 895—A I R 1921  
 Lah 223 Where Collector reports his inability to execute a decree sent to him  
 for execution the Court shall file a  
 in accordance with law A I R  
 has under s 72 jurisdiction to make  
 judgment debtor who is member  
 s 16 (1) of the Punjab Alienation of Land Act 1 P R 1916 (Rev)=51 Ind Cas 399

#### DISTRIBUTION OF ASSETS

**73. [S 295] (1)** Where assets are held by a Court and more persons  
 than one have, before the receipt of such assets,  
 Proceeds of execution sale to made application to the Court for the execution  
 be rateably distributed among decrees for the payment of money passed  
 decree holders against the same judgment debtor and have not  
 obtained satisfaction thereof, the assets, after deducting the costs of realiza  
 tion, shall be rateably distributed among all such persons

Provided as follows —

- where any property is sold subject to a mortgage or charge, the  
 mortgagee or incumbrancer shall not be entitled to share in any  
 surplus arising from such sale,
- where any property liable to be sold in execution of a decree is  
 subject to a mortgage or charge, the Court may, with the consent  
 of the mortgagee or incumbrancer, order that the property be  
 sold free from the mortgage or charge, giving to the mortgagee  
 or incumbrancer the same interest in the proceeds of the sale as  
 he had in the property sold,
- where any immovable property is sold in execution of a decree  
 incumbrance thereon, the

for

due under the decree, and  
 and principal monies due on  
 - ), and

fourthly, rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets

(3) Nothing in this section affects any right of the Government

**Scope**—Section 73 does not say that before the receipt of such assets an application must be made to the Court. The first step necessary in these cases is that there must be assets held by the court. The next step is that there must be a decree holder who has a decree for the payment of money passed against the debtor who has not obtained satisfaction for the execution of his decree.

before the receipt of the aforesaid assets

106=A. I. R. 1932 All 411=A. L. R.

expression which is wide enough

the Court otherwise than by coercive process 28 N. L. R. 179=A. I. R. 1932 Nag 156=140 Ind. Cas. 293=A. L. R. 1932 Nag 217, 54 A. 516=1932 A. L. J. 359=138 Ind. Cas. 106=A. I. R. 1932 A. 411, see also A. I. R. 1931 Pat. 405, A. I. R. 1930 Cal 623=57 C. 736, A. I. R. 1930 Sind 300=128 Ind. Cas. 686, A. I. R. 1927 Bom 403=29 Bom L. R. 689=106 Ind. Cas. 184, A. I. R. 1927 B. 403, A. I. R. 1926 Nag 380=35 Ind. Cas. 203, 46 M. 506 (F. B.)=72 Ind. Cas. 870, A. I. R. 1925 Nag 157=51 Ind. Cas. 7 (contra), A. I. R. 1923 Mad 503 (F. B.)=46 M. 506=44 M. L. J. 413=32 M. L. T. 198=72 Ind. Cas. 820, A. I. R. 1921 Cal 749=35 C. L. J. 327=70 Ind. Cas. 541, 26 C. W. N. 169=70 Ind. Cas. 539, 14 L. W. 582=70 Ind. Cas. 20. Assets do not include money paid by judgment debtor on arrest to get released and is not subject to rateable distribution 19 Bom L. R. 274=39 Ind. Cas. 623, 21 Bom L. R. 97=53 Ind. Cas. 599. Assets held by Court includes money

application A. I. R. 1928 Mad 703=52 M. 760=37 M. L. J. 97=118 Ind. Cas. 72, see

for n of ad

587=48 M. L. J. 439=21 L. W. 518=87 Ind. Cas. 390. Where money is deposited by sureties for release of an attachment before judgment rateable distribution of such money can be made under s 73 70 Ind. Cas. 539=A. I. R. 1922 Cal 19=26 C. W. N. 169. Where the mortgagee holds a money decree against the judgment debtor apart from the mortgage he can get relief under s 73 A. I. R. 1924 Pat 434=74 Ind. Cas. 140. Though one may effect attachment before judgment yet decree must be passed before realisation of money in order to entitle one to share in rateable distribution A. I. R. 1924 Lah 70=40 P. L. R. 1924=69 Ind. Cas. 718. see also A. I. R. 1922 Mad 236=15 L. W. 831=68 Ind. Cas. 714, A. I. R. 1921 Mad 481=14 L. W. 582=70 Ind. Cas. 20 A. I. R. 1921 Oudh. 176=80 O. I. J. 338=66 Ind. Cas. 642 A. I. R. 1921 Nag 5=17 N. L. R. 143=64 Ind. Cas. 3. For rateable distribution, application must be made to the Court which holds the assets, before the receipt of such assets A. I. R. 1921 Cal 801=33 C. L. J. 7=62 Ind. Cas. 167, 62 Ind. Cas. 837 (cal), A. I. R. 1921 Pat 401=1921 Pat 204=, Pat. L. J. 415=57 Ind. Cas. 421, 3 P. W. R. 1920=11 P. L. R. 1920=54 Ind. Cas. 41, 42 Ind. Cas. 897=(1917) M. W. N. 839

able distribution and there  
1931 All 92=(1930) A. L. J.  
I. J. 336=145 Ind. Cas.  
in the two decrees in 1st line

passed against same judgment debtor, and a judgment debtor legal representative is not same as judgment debtor in personal capacity. A I R 1930 Cal 454=34 C W N 294=130 Ind Cas 227. Provisions of Order XXI rule 72 must be taken to be subject to provisions of s 73. A I R 1931 Mad 103=(1930) M W N 568=130 Ind Cas 458, see also A I R 1931 Bom 252=33 Bom L R 503, A I R 1930 Cal 761=52 C L J 19=129 Ind Cas 776. Decree raised against same judgment-debtor and another or others is covered by the section. A I R 1930 Sind 300=128 Ind Cas 686. Court has no jurisdiction to order for rateable distribution when another Court has attached the moneys in deposit. 37 C W N 821=1933 Cal 792. Where there are decrees of several courts against the same judgment debtor and assets have been realised by the highest court decree holders of the inferior court is entitled to rateable distribution without transferring the decree to or applying for execution in higher court. A L R 1933 All 795, see also A L R 1933 Mad 569=A I R 1933 Mad 342=144 Ind Cas 252=37 L W 366=65

decree

money

st him

145 Ind Cas 362=14 Pat L R  
cable where the Collector realises a  
is declared to be the purchaser

decretal amount. 1933 A L J 1102=A I R 1933 All 666. The Court should be deemed to be holding the assets of the judgment debtor where the purchase money is set-off against the decretal amount. *Ibid*, see also A L R 1933 Mad 1003=A I R 1933 M 804=145 Ind Cas 975=38 L W 579=65 M L J 569=1933 M W N 579. 1933 A L J 1102=A I R 1933 All 666, A I R 1933 Mad 804. The custody court which is not attaching court has no power to order rateable distribution. 37 C W N 80=A I R 1933 Cal 814. Any amount received from judgment-debtor under pressure of sale is assets under this section. A I R 1933 Nag 347, 10 Fa 72=14 Ind Cas 30. 14 Pat L T 357. A I R 1933 Pat 103. Where a decree holder is allowed to set off the purchase money against his decree instead of paying the money into court the noticed receipt of the purchase money by the Court amounts to holding of the assets within the meaning of the section. 33 Bom L R 503=A I R 1931 Bom 252=132 Ind Cas 737, see also 12 Pat L T 639=A I R 1931 Pat 405=134 Ind Cas 616, 12 P L T 477-A I R (1931) P 359=133 Ind Cas 166.

Where a property is already in attachment, a person need not apply for a fresh attachment in order to have the benefit of this section. 53 A 125-1930 A L J 1552=131 Ind Cas 244=A I R 1931 All 92. Where the same property of the same judgment debtor is attached in execution of decrees of different Court, the decree holder in the inferior Court is entitled to rateable distribution when he applies for it before the sale takes place and it is not necessary for that purpose that his decree should be transferred to the superior Court for execution. A I R 1931 Rang 111=132 Ind Cas 832, see also 133 Ind Cas 426=1931 A L J 880. If a property is sold in execution of decree subject to mortgage and the mortgagee is satisfied out of sale proceeds first and surplus paid to attaching decree holder who is left short of his decretal amount he can sue for recovery of his balance on basis of money had and received. A I R 1931 Rang

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mentioned in order XXI, rule 11 before receipt of assets by Court. A I R 1929

J 64=116 Ind Cas 655. Mere attachment  
application for execution of the decree cannot

A I R 1928 Bom 545=30 Bom L R

1448=115 Ind Cas 414. An actual transfer of the decree to the Court granting rateable distribution is not necessary provided application for rateable distribution is supplemented with transfer certificate subsequently received. A I R 1928 Nag 332=110 Ind Cas 524, see also 110 Ind Cas 744=1928 Rang 157, A I R 1928 Mad 496=27 L W 423=55 M L J 120=109 Ind Cas 404, A I R 1928 Rang 96=5 Rang 737=107 Ind Cas 169.

Section 73 requires that an application for execution should be made before the assets have been received and that the decree holder at the time the assets are distributed has not obtained satisfaction. The word "made" in section 73 does not mean it is only used with reference to a

1933 Pes 2

no longer regular application for execution has been made and prayer is only for rateable distribution. A I R 1925 Nag 382=87 Ind Crs 1025. Order under s 73 cannot be made in anticipation. A I R 1925 Cal 102=28 C W N 988=84 Ind Cas 747.

The mere deposit of the earnest money is not assets realised by the sale. A I R 1925 Cal 966=29 C W N 575=87 Ind Cas 783. 25 P C deposit made by auction purchaser under order XXI rule 4 becomes assets under s 73 on default in payment of full amount. A I R 1926 Mad 872=49 M 570=97 Ind Cas 86. Compensation money awarded under Land Acquisition Act is assets held by the Court after date of receipt of final award. A I R 1926 Mad 307=49 M 38=97 Ind Cas 496. Money paid by a judgment debtor under order XXI rule 43 is assets held by the Court. A I R 1926 Bom 242=28 Bom L R 237=93 Ind Cas 852.

**Subsection (2)**—In a case of contests as to the disposal of the surplus of assets not determined in suit or in execution proceedings conflicting claims can only be determined by separate suit. A I R 1927 All 467=49 A 636=25 A L J 390=101 Ind Crs 505, A I R 1926 Pat 497=5 Pat 445=93 Ind Cas 759. The court distributing assets cannot go behind the decree. The remedy of the opponent raising the plea of fraud lies under s 73 (2). A I R 1922 Bom 31=46 Bom 635=24 Bom L R 1=65 Ind Cas 600, A I R 1924 Nag 39=19 N

M L T 155, 43 M 381=

s 452, 39 A 322=15 A.

definitely alleged on sub-

n execution of decrees of

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a suit to have the decree of his rival declared void on the ground that it was fraudulently obtained and to ask the court to grant an injunction permanently restraining the defendant from executing his decree against the common judgment debtor or his property. 145 Ind Cas 206=A I R 1933 Nag 214. This sub-section is applicable where assets liable to be distributed under s 73 are paid to persons not entitled to receive the same. 145 Ind Cas 362=14 Pat L T 287=A I R 1933 Pat 277. A court cannot enquire into the validity of the decree sought to be executed under s 73. A I R 1927 Mad 944=39 M L T 609=104 Ind Cas 735.

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to attaching creditors and of the  
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d attachments before the Crown had  
to the creditors. Held that where the  
at one and the same time that of the  
plying the principle, the claim of the  
other claim. A L R 1933 Sind 357=

CIVIL PROCEDURE, 1908  
A I R 1933 Sind 368

**Appeal**—An order under s 73 is an order in execution proceedings and not a decree and is not appealable. A I R 1929 Rang 198=120 Ind Crs 693, see also 19 C W N 1502=42 C 1, 55 B 473=A I R 1931 Bom 350, 42 M L J 473=67 Ind Cas 546, A I R 1929 Lah 645, A I R 1931 Bom 252=33 Bom L R 503, A L R 1933 Sind 181=A I R 1933 Sind 329=27 S L R 190, A I R 1921 Pat 401=5 Pat L J 415=57 Ind Crs 421, A I R 1927 Lah 100=98 Ind Crs 884, 42 M L J 473=67 Ind Cas 546. 134 Ind Crs 195.

In order to be appealable the order under s 73 must decide a question arising between the decree holder on the one hand and the judgment debtors on the other. A I R 192 Bom 350= refusing to file 12 P L T 477=A I R 1931 Pat 359=133 Ind Cas 166.

**Revision**—An obviously wrong order under s 73 is revisable. A I R 1927 Mad 1030=106 Ind Crs 208, 87 Ind Cas 390=A I R 1925 Mad 587=48 M L J 459.

= 21 L W 518=87 Ind Cas 380, A I R, 1926  
 Mad 179, 32 M 334, 15 8 C W N 704, 26  
 C W N 169, 51 C 761 A does not interfere  
 in revision with orders disall. distribution except  
 in very exceptional circumstances 60 Ind Cas 371 An order under this section is  
 not open to revision where the party has another remedy by way of suit 27 S L R  
 190-A I R 1933 Sind 329, but see A I R 1928 Mad 362=54 M L J 278 The  
 Lahore High Court does not allow revision of an order under this section 134 Ind  
 Cas 195 Court will only interfere in revision against orders under s 73 if there is  
 any obvious mistake and the result of regular suit is certain A I R 1927 Mad 244  
 =39 M L T 609-104 Ind Cas 725

### RESISTANCE TO EXECUTION.

74 [S 330] Where the Court is satisfied that the holder of a decree  
 Resistance to execution for the possession of immoveable property or  
 that the purchaser of immoveable property sold  
 in execution of a decree has been resisted or obstructed in obtaining posses-  
 sion of the property by the judgment debtor or some person on his behalf and  
 that such resistance or obstruction was without any just cause, the Court  
 may, at the instance of the decree holder or purchaser, order the judgment-  
 debtor or such other person to be detained in the civil prison for a term  
 which may extend to thirty days and may further direct that the decree holder  
 or purchaser be put into possession of the property

6 Bom L R 254

## PART III

### INCIDENTAL PROCEEDINGS

#### COMMISSIONS

Power of Court to issue com-  
 missions

75. [New] Subject to such conditions and  
 limitations as may be prescribed, the Court may  
 issue a commission—

- (a) to examine any person ;
- (b) to make a local investigation ;
- (c) to examine or adjust accounts ; or
- (d) to make a partition.

must be qualified by the rules in the First Schedule subject to such further rules as  
 may be found in the High Court Rules A I R 1922 Bom 444=24 Bom L R  
 853=47 B 250 75 Ind Cas 221 Judge cannot make over the whole case to the

145=30 Bom L R 131=109 Ind Cas 133 Civil Procedure Code does not contain-

taken to the finding was not sufficient for the Court to adopt it A I R 1930 Cal.  
 764=53 C. L J 299=129 Ind Cas 416 Issue of commission is discretionary with  
 C. C. H. Vol. I—28

the Court In case of wrongful exercise of discretion it cannot be questioned in the second appeal for the first time A I R 1933 Pat 277 In the case of appointment of successive commissioners it is the duty of the Court to consider the objections to a commissioner's report and to accept or reject it before it appoints a fresh commissioner A L R 1933 A. 475=A I R 1933 A. 65=139 Ind Cas 708 An appellate court is competent to issue a commission for local investigation 135 Ind Cas 243=A I R 1932 All 270 A commission cannot be issued to hear a person singing and then to report her talents. 1932 A L J 117=A I R 1932 All 264

**76. [S. 386]** (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides

(2) Every Court receiving a commission for the examination of any person under sub section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

**77. [New]** In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India

**78. [S 391]** "Subject to such conditions and limitations as may be prescribed" the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by "or at the instance of"

(a) Courts situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country †

## PART IV

### SUITS IN PARTICULAR CASES

#### SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

**79. [S 416]** (1) Suits by or against the Government shall be instituted by or against the Secretary of State for India in Council

(2) Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate General in exercise of the power declared by section 111 of the East India Company Act, 1813 ‡§

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107 Ind Cas  
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\* The words with quotations have been inserted by Act X of 1932

† Certain words after this repealed by Act X of 1932 have been omitted

‡ 33 Geo 3, c. 135.

§ See now the Government of India Act, 1915 (5 and 6 Geo 5, Ch 61)



of official in the Department unless it can be shown that the act complained of was substantiated Bom 521  
 = 28 Bo a public  
 servant - 29 Bom  
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 against I R 1924  
 Bom 504 1933 Pat  
 543, 10 d and the  
 District owners of  
 the plot *Heli* the appeals by the District Board were incompetent as the appeal should have been filed by the Secretary of State for India in Council A I R 1929  
 Lah 10 = 9 Lah 667 = 10 Lah L J 330 = 29 P. L. R 268 = 111 Ind Cas 477

80 [S 424] No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left

Scope—The object of not requiring by this section to inform Government or the public officers concerned generally of the nature of the suit which is intended to be filed against them. The notice must not be too strict or too narrowly construed. It must not be construed as if it were pleadings and need not set out all the details and facts of the case which the plaintiff intends to prove. It must be considered sufficient if it substantially fulfils its object of informing the parties concerned generally of the nature of the suit intended to be filed. Bom L R 30 = 27 B 189, 24 M 279, 13 C L R 195. The object of this section is to afford opportunity to the Secretary of State or public servant time and opportunity to reconsider his legal alleged cause of action and of making out litigation 40 B 392 = 18 Bom L J 148 25 C 244, 24 M 279.

Only this distinction is left between the two classes of suits that whereas in the absence of a notice under s 80 the Secretary of State for India in Council cannot be made a defendant in a suit, no matter what its character may be a public officer may without such a notice be a defendant in a suit in which no act of his is in question but he is made a party for some reason or other. The restrictive words in the section were unnecessary and would be inappropriate in the case of Secretary of State for India in Council firstly because the Secretary of State for India in Council is a statutory body which has no capacity but an official one and secondly because he is often responsible for the acts of other public bodies and officers 59 C 961 = 55 C L J 8 = 138 Ind Cas 4 = A I R 1932 Cal 275 = A L R 19 2 Cal 1037. Although the cause of action in s 80 should not be taken in a narrow sense, yet the section requires the cause of action to be stated with some precision A I R 1928 Cal 74 = 54 C 969 = 107 Ind Cas 360. Where defendant's interests devolve upon Government during suit, no notice as prescribed by s 80 need be given. The matter is governed by order 27 rule 10 A I R 1976 All 585 = 24 A I J 726 = 96 Ind Cas 351. Where suit is alleged to be barred under a special law of limitation the party is not entitled to deduct the period of two months for service of notice under s 80 A I R 1971 Cal 66 = 34 C L J 287 46 Ind Cas 397. But a subsection (2) of section 15 of the Limitation Act and 38 Ind Cas 600 = 57 P R 1917 72 O C 34 = 34 Ind Cas 535, A I R 1928 All 62, A I R 1928 All 343, A I R 1930 All 42. Where facts mentioned in the notice comprised all the facts mentioned in the plaint the variance between the notice and the plaint will not justify dismissal of the suit 20 C W N 636 = 32 Ind Cas 752. A notice under s 80 is defective if the case is

set up in the plaint is different from the case stated in the notice. A suit instituted upon such a notice cannot be maintained. 32 Ind Cas 235. Objection as to want of notice under this section may be waived. 38 L W 891. A suit brought pursuant to an undertaking given under s 14, Bombay Land Revenue Act within 30 days from the Collectors' decision is not a suit which falls within s 80, C P Code, it is a suit on account of land revenue brought under special provisions of the Special Act, and the general provisions of s 80 do not apply to such a suit. A I R 1934 Bom 162=36 Bom L R 297.

**Notice**—The notice prescribed by s 80 is essential in all suits against the Secretary of State or against a public officer with regard to any act purported to be done by the said public officer in his official capacity. 39 M L J 151=28 M L T 163=12 L W 193=(1920) M W N 495=58 Ind Cas 885, see also 12 M L T 224, 18 C W N 1340=27 Ind Cas 232. Such notice is required even in case of an injunction and of likely irreparable injury or in case of a threat to do a future injury provided the threat is conveyed through an act, such as speech, writing etc., 39 M L J 151=(1920) M W N 445=58 Ind Cas 885, 5 Bom L R 431; but see 28 A 600=(1906) A V N 107=3 A L J 341. A public officer is entitled to notice under this section before suit, though acting mala fide in the discharge of his duties. The word "purporting" covers a profession by acts by words or by appearance of what is true as well as of what is untrue. 7 I W 186=34 M L J 494=the section is implicit in s 80 is to be strictly construed. A I R

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of place of residence is not valid. A I R 1931 Cal 61=57 C 1127=130 Ind Cas 903. Person or persons giving notice should be the same as from the suit is

under this section must be specifically pleaded. When stage the defendant must 1931 Cal 175=53 C L. tions or qualifications considerations of hardship the Government. A 416=129 Ind Cas 416 is to reject the suit.

W. N 161. Notice by a pleader on behalf of his client under s 80 is not a private letter. A I R 1928 Bom 338=30 Bom L R 934=113 Ind Cas 519. A notice under this section can be waived. 146 Ind Cas 600=18 L W 917, 34 C 257, 40 C 503. suit against official Assignee. A I R 1928 Bom 338=30 Bom L R 934=113 Ind Cas 519. A notice under s 80. 136 Ind Cas 445=13 to sue is no substitute for service of notice under s 80. 35 C W N 161. The

not controlled by impletes a notice name description and simply because these matters for

himself by other means. A I R 1931 Cal 61=57 C 1127. A notice under this section is necessary in a case where the suit is originally instituted against a person

to whom notice under the section is necessary and a person to whom notice should not

has not arisen at the time of the notice A I R 1928 Cal 74=54 C 969=107 Ind Cas 360

**Notice in suits for injunction**—This section is applicable to all forms of action to all kinds of relief without exception A I R 1927 Bom 649=29 Bom L R 1427=105 Ind Cas 756, 32 C W N 61 (P C)=51 B 725 A suit in which *inter alia* an injunction is prayed is still a suit The section applies to a suit for injunction even where the delay of two months contemplated by the section is likely to result in immediate injury to the plaintiff A I R 1928 Sind 76=22 S L R 63, A I R 1927 Mad 166=50 M 239, 41 M 792, 50 C 972, 58 C 1288, 14 Lah 310=34 P L R 975=A I R 1933 Lah 202, A L R 1933 Sind 216=A I R 1933 Sind 4=140 Ind Cas 265, A I R 1931 Lah 703=132 Ind Cas 1

**Secretary of State for India**—Necessity for notice under s 80 exists in a suit

under the respective sections A I R 1928 Mad 599=(1928) M W N 218=107 Ind Cas 406, see also A I R 1930 All 476=(1930) A L J 1125 A I R 1928 Bom 421=52 B 548=30 Bom L R 970=113 Ind Cas 511, A I R 1928 Mad 599=(1928) M W N 218=107 Ind Cas 406, A I R 1931 P 313, A I R 1931 Pat 145=10 P 153, 14 Lah 330=34 P L R 975=A I R 1933 Lah 203, A L R 1933 A 510=A I R 1933 A 53=193 A L J 1033 The Secretary of State for India in Council can be sued as a corporation sole A L R 1933 Lah 890=34 P I R 975, A I R 1933 Lah 203

Where in a plaint the cause of action was actually stated to arise on a certain date and subsequently the plaintiff applied for amendment of the plaint and introduced another date as the date on which the cause of action arose *Held* that the notice given before the accrual of the cause of action subsequently mentioned, was in no way defective or irregular because the defendant (Secretary of State in Council) in the written statement gave the same date as was mentioned by the plaintiff in the amended plaint as being the date on which the cause of action arose A L R 1933 B 329=35 Bom L R 583-A I R 1933 Bom 314=145 Ind Cas 408

appointed by court cannot be sustained without the requisite notice under this section 34 C W N 671=A I R 1930 Cal 737=128 Ind Cas 108, see also A I R 1930 Lah 708=125 Ind Cas 625, 31 P L R 865=12 Lah 260=132 Ind Cas 4, A I R 1933 M 105=1932 M W N 1240, A I R 1927 Mad 166=50 M 239, A I R 1925 All 241=47 A 291=22 A L J 1116=84 Ind Cas 739, 77 Ind Cas 57=A I R 1924 All 40=21 A L J 737=46 A 16=77 Ind Cas 57 The words in respect of any act purporting to be done cover only a past act and do not include a future act A I R 1927 Mad 166=50 M 239=51 M L J 671=24 L W 730=97 Ind Cas 284, see also A I R 1924 Bom 1=26 Bom L R 1=48 B 87, 21 Bom L R 980=

Cas 857, 10  
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The motives with which the act was done do not enter into the question at all A I R 1930 All 704=(1930) A L J 1080=124 Ind Cas 705 An official Assignee purporting to act legally though his act not strictly legal is acting as an Official Assignee and in a suit against him for damages notice under s 80 is necessary A I R 1930 Mad 453=59 M L J 501=124 Ind Cas 144, A I R 1923 Bom 392=25 Bom L R 378=73 Ind Cas 240 A Municipal Council not being an officer of the Government within the meaning of s 80 a suit instituted against the Municipality is not bad for two months' notice A I R 1930 Mad 84=59 M L J 670=(1930) M W N 821=32 L W 794=128 Ind Cas 161

Where a Police officer has acted in his official capacity in charging a person a notice under s 80 is necessary for malicious prosecution A I R 1930 All 742=

(1930) A L J 1443=132 Ind Cas 17 But in suit for damage for assault and battery by Police officer while investigating cognizable offence a Police officer is not entitled C P Code s 80

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to notice

But no notice is necessary for the recovery of money extorted from the plaintiff by the officer as a consideration for his release A I R 1924 Cal 145=50 C 992=

28 C L J 104=28 C W N 10=75 Ind Cas 173, see also 80 Ind Cas 72=46 A

884=22 A L J 812, 13 A L J 788, 79 Ind Cas 818=A I R 1923 Rang 250

Where manager of an encumbered estate is a formal party, no notice under this

section is necessary A L R 1933 Sind 202=A I R 1933 Sind 1=142 Ind Cas

501 It is enough that the act is done and that it is purported to have been done in an

official capacity, and it is not necessary to go further and inquire whether it was done

in execution or intended execution of any statute or public duty or authority The

non performance or the breach of a contract is equally an act as a tort is within the

meaning of this section

Sanitation Panchayat

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104 Ind Cas 762 W

a charge over moveable and immoveable property of a debtor and where plaintiff

does not allege any act or omission on the part of the Receiver, no notice under s 80

is necessary A I R 1927 All 132=48 A 821=24 A L J 1067 A suit for

accounts against a common manager appointed under s 95 of the B T Act cannot be

instituted without service of the notice under s 80 and without leave obtained from

purport to act as a public officer To hold otherwise will imply the importation of

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dant the present manager and imposed no personal liability, and the non payment

by him or the mere omission to pay either interest or principal cannot be deemed

to be such an act A L R 1934 P C 150=11 O W N 463=38 C W N 517=39

L W 504

81 [SS 425, 428] In a suit instituted

Exemption from arrest and against a public officer in respect of any act

personal appearance purporting to be done by him in his official

capacity—

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person

82 [S. 429] (1) Where the decree is against the Secretary of State

for India in Council or against a public officer

Execution of decree

in respect of any such act as aforesaid, a time

shall be specified in the decree within which it shall be satisfied, and if the

decree is not satisfied within the time so specified, the Court shall report the

case for the orders of the Local Government

(2) Execution shall not be issued on any such decree unless it remains

unsatisfied for the period of three months computed from the date of

such report

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

83 [S 430] (1) Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts

*Explanation*—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub section (2), be deemed to be an alien enemy residing in a foreign country

*Scope*—An alien enemy licensed to trade in British India can sue in Indian Courts 9 Bur L T 51=31 Ind Cas 888, see also 8 S L R 329, 39 A 377 Where cause of action arose before or after war, an alien enemy can be sued in British Indian Courts 40 C 1140=20 C W N 691=23 C L J 493=35 Ind Cas 951 Under s 83 an alien enemy residing in British India may sue in British Courts with the permission of the Governor General in Council 39 A 377=39 Ind Cas 862 Not all contracts but only dealings of a commercial nature between hostile aliens are tainted with illegality A contract whose tendency is to increase the enemy's resources is prohibited but not an agreement for payment of money from funds accruing there 31 M L J 360=(1917) M W N 73=57 Ind Cas 957 A British subject voluntarily residing or carrying on business in enemy country will be treated as an alien enemy 55 Ind Cas 324=1 Lab 276=2 Lab L J 275

84 [S 431] (1) A foreign State may sue in any Court of British India

Provided that such State has been recognized by His Majesty or by the Governor General in Council

Provided, also that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council

*Scope*—Any State which has preserved any degree of sovereignty must have at least three characteristics First allegiance to the Ruler Secondly the law enforced must be the Ruler's laws And thirdly those laws must be enforced by his Courts A I R 1930 Mad 1004=59 M L J 548=32 M L W 673=53 M 968=128 Ind Cas 870 The private rights spoken of in this section do not mean individual rights as opposed to those of the body politic or state but those private rights of the State, which must be enforced in a court of justice as distinguished from its

cal capacity 11 C 17, see also *Emperor of Austria v Day, Giff* 628, *United States of America v Wagner* L R 2 Ch App 58

85 [S 432] (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief whether in subordinate alliance with the British Government or otherwise and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief

(1930) A L J 1443=132 Ind Cas 17 But in suit for damage for assault and battery  
entitled  
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a suit  
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But no notice is necessary for the recovery of m  
the officer is a consideration for his release A I R 1924 Cal 145=50 C 992=  
28 C L J 104=28 C W N 10=75 Ind Cas 173, see also 80 Ind Cas 72-46 A  
884=22 A L J 812, 13 A L J 788, 79 Ind Cas 818=A I R 1923 Rang 230  
Where manager of an encumbered estate is a formal party, no notice under this  
section is necessary A L R 1933 Sind 202-A I R 1933 Sind 1=142 Ind Cas  
501 It is enough that the act is done and that it is purported to have been done in an  
official capacity, and it is not necessary to go further and inquire whether it was done  
in execution or intended execution of any statute or public duty or authority The  
non performance or the breach of a contract is equally an act as a tort is within the  
meaning of this section 59 C 961=55 C L J 8=A I R 1932 Cal 275 Village  
Sanitation *Panchayat* is not a Public officer within the meaning of s 80 and a suit is  
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does not allege any act or omission on the part of the Receiver, no notice under s 80  
is necessary A I R 1927 All 132=48 A 821=24 A L J 1067 A suit for  
accounts against a common manager appointed under s 95 of the B T Act cannot be  
instituted without service of the notice under s 80 and without leave obtained from  
the Court appointing him  
suit against a Bench  
negligence cannot be brought  
40 Ind Cas 677 It is not necessary that a public officer should  
purport to act as a public officer To hold otherwise will imply the importation of  
words into the section which cannot be found there A I R 1934 Pat 14 In a  
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by him in his official capacity and as the mortgage was not executed by the defen-  
dant the present manager and imposed no personal liability, and the non payment  
by him or the mere omission to pay either interest or principal cannot be deemed  
to be such an act A L R 1934 P C 150=11 O W N 463=38 C W N 517=39  
L W 504

81 [SS 425, 428] In a suit instituted  
Exemption from arrest and against a public officer in respect of any act  
personal appearance purporting to be done by him in his official  
capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person

82 [S. 429] (1) Where the decree is against the Secretary of State  
for India in Council or against a public officer  
Execution of decree in respect of any such act as aforesaid, a time  
shall be specified in the decree within which it shall be satisfied, and if the  
decree is not satisfied within the time so specified, the Court shall report the  
case for the orders of the Local Government

(2) Execution shall not be issued on any such decree unless it remains  
unsatisfied for the period of three months computed from the date of  
such report

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

83 [S 430] (1) Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub section (2), be deemed to be an alien enemy residing in a foreign country.

*Scope.*—An alien enemy licensed to trade in British India can sue in Indian Courts 9 Bur L T 51=31 Ind Cas 888, see also 8 S L R 329, 39 A 377 Where cause of action arose before or after war, an alien enemy can be sued in British Indian Courts 40 C 1140=20 C W N 691=23 C L J 493=35 Ind Cas 951 Under s 83 an alien enemy residing in British India may sue in British Courts with the permission of the Governor General in Council 39 A 377=39 Ind Cas 862 Not all contracts but only dealings of a commercial nature between hostile aliens are tainted with illegality A contract whose tendency is to increase the enemy's resources is prohibited, but not an agreement for payment of money from funds accruing there 31 M L J 360=(1917) M W N 73=37 Ind Cas 957 A British subject voluntarily residing or carrying on business in enemy country will be treated as an alien enemy 5, Ind Cas 324=1 Lah 276=2 Lah L J 275

84 [S 431] (1) A foreign State may sue in any Court of British India

When foreign States may sue

Provided that such State has been recognized by His Majesty or by the Governor General in Council

Provided, also that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council

*Scope.*—Any State which has preserved any degree of sovereignty must have at least three characteristics First allegiance to the Ruler Secondly the law enforced by laws must be enforced by his Courts M L W 673=53 M 968=128 Ind in this section do not mean individual or state, but those private rights of the State, which must be enforced in a court of Justice, as distinguished from its political or territorial right, which must from their very nature be made the subject of a suit. It may be its rights its political capacity 11 C 17, see also *Emperor of Austria v Day*, 2 Giff 628, *United States of America v Wagner* L R 2 Ch App 582

85 [S. 432] (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto

**Scope.**—This section does not prevent the institution by an independent Prince of a suit in a court in British India in his own name, and through a recognised agent other than one appointed under the section 10 C 136, 29 C W N 287=80 Ind Cas 100, A W N 1886, 133, 19 A 510=A W N 1897, 135

**86 [S 433.]** (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of the Governor General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor in Council certified as aforesaid no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy

(4) The Governor General in Council may by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification the functions assigned by the foregoing sub section to the Governor General in Council and a Secretary to the Government of India, respectively

nt of immoveable property, sue, without such section, a Prince, Chief, ambassador or envoy to hold the property

**Scope.**—Under this section a suit against a Ruling chief filed without the consent of the Governor General in Council cannot be tried by a Civil Court But this privilege may be waived by the defendant 60 P L R 1903=40 P R 1903, 2 C L J 163, 9 C 535=12 C L R 465 A W N 1907 9,=4 A L J 358=29 A 379, 21 C 228 46 Ind Cas 558, 58 Ind Cas 912, A Cas 989=2 P L T 180 This section off 62 Ind Cas 778 A suit against a in respect of the property in British India 924 All 422=46 A 355=22 A I 1 317=

the foreign state A I R 19-8 Sind 189=113 Ind. Cas 345



### Style of Princes and Chiefs as parties to suits

87. [S. 434] A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State.

Provided that in giving the consent referred to in the foregoing section the Governor General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name

Notes—7 B H C R 150

INTERPLEADER

88 [S. 470.] Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted

**Scope**—An interpleader suit is a suit in which several claimants are to be deemed to be claiming adversely to each other. A I R 1978 Oudh 155-108 Ind Cas 817. This section corresponds to rules 1 and 2 of Rules of Supreme Court 1883. Where a person holds property or has money goods or chattels claimed adversely by B or C or more for the said person or claims to be sued he desires protection as a defendant in a civil suit, he may file a motion to some court must be admitted and there must be no real or substantial interest in the property for charges or costs and no collusion. There must be a real and substantial interest which cannot decide without risk. Chitty's Yearly Practice p 942. An interpleader is not an action either in the strict or any conventional sense of the word. *per Lord Selborne in Hamlyn v Bettley* (1881) 6 Q B D 41 p 65. In an interpleader suit in which each of the contending defendants attacks the title of the other each is virtually a plaintiff. A I R 1975 Mad 407=48 M L J 103 Ind Cas 705. In a suit from one of the claimants to one of the defendants.

in suit from  
to one of

into Court for payment to the person to whom the Court should decide that it was payable, *held* that was a valid discharge for him, and if the Court paid it to the wrong person, he was not responsible. — C P L R 9

PART V  
SPECIAL PROCEEDINGS

## ARBITRATION.

89 [New.] (1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899,\* or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule

\*IX of 1899

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code

**Scope of the section**—Where parties to a suit engage in arbitration without an order of the Court, the award in that arbitration can be confirmed in the terms of the decree A I R 1931 Rang 58=9 Rag 39=131 Ind Cas 57 The words 'any other law' in s 89 mean any law other than the Arbitration Act and other than the provisions contained in Schedule II, C P Code These words include the provisions of Order 23, rule 3 which is not one of the provisions of Schedule II A I R 1931 Oudh 127=8 O W N 71=138 Ind Cas 443, see also A I R 1930 Bom 98=31 Bom L R 1403=54 Bom 197=124 Ind Cas 119, A I R 1927 Bom 565=51 B 908=2, Bom L R 1254=105 Ind Cas 516, A I R 1925 Mad 50=76 Ind Cas 502 The words "any other law" in s 89 do not exclude the law as laid down in other parts of C P Code A I R 1928 Mad 1025=51 M 800=55 M L J 429=113 Ind. Cas 632 An award passed in suit which is pending without the intervention of the Court may be regarded as adjustment under Order XXIII, r 3 A I R 1927 Mad 1126=53 M L J 444=39 M L T 593=26 L W 231=104 Ind Cas 674 Any other law' in section 89 does not include Order XXIII rule 3 A I R 1921 Sind 65=16 S L R 174=81 Ind Cas 653, *contra* A I R 1925 All 503=47 A 637=23 A L J 561 (F B) without the consent of the Court award cannot XXIII rule 3, C P Code or under the provisions Arbitrations in the course of litigation should conf. stipulations of the second schedule and sh Court The Indian Arbitration Act does litigation A I R 1921 Cal 404=49 C 60 any other law for the time being in force law extraneous to the Code of C P Code and do not cover order XXIII rule 3 A I R 1921 Lah 332=3 Lah L J 162=67 Ind Cas 123, see also A I R 1921 Cal 238=25 C W N 127=61 Ind 1931 Rang 58 The concluding be found to be inapplicable to all Schedule II by reading s 89 (1) =29 C L J 399=23 C W N 716=51 Ind Cas 500 500 500 500 Change in the jurisdiction to link up the schedule and the body of the code Change in the law is not intended unless stated in express terms or unless followed by necessary implication A I R 1927 Bom 565=51 B 908=29 Bom L R 1254=105 Ind Cas 516

### SPECIAL CASE

**90 [Vc v]** Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed

**Scope**—A Court should not interfere by giving a partial decision which it cannot make effective to end the dispute when legislature had provided special tribunal A I R 1930 Bom 332=32 Bom L R 416=54 B 825=125 Ind Cas 897

### SUITS RELATING TO PUBLIC MATTERS

**91 [N. v].** (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the

deemed to limit or otherwise affect independently of its provisions

**Notes**—Vide The Public Suits Validation Act (XI of 1932)

**Scope**—This section does not create a right which did not exist before nor it deprives any body of a right derived from the general law of the land It is not a

prohibitive section which prevents

cular way A I R 1924 All 599

Section 91 does not contest or

take away the plaintiff's right to si

A I R 1925 Cal 1233=88 In

injury Private nuisance is actionable by the person injured by it The general obstruction of a public thoroughfare, unless authorized by law, custom or contract, is a public nuisance for which a private suit is not allowed but to obstruct, annoy or endanger a particular person or body of persons only in his or their use of a public thoroughfare may be a private nuisance, for which a private action may lie Every class or community has a right to use the public streets for religious or musical

ances and any wrongful attack on that

N L R 130=36 Ind Cas 534, see also

L R 97-117 Ind Cas 513, 48 Ind

of rights in respect of a village pathway

s 91 46 Ind Cas 970, see also 73 Ind

Cas 616=A I R 1923 Lih 540 Plaintiff relying on special damages in suit to establish public right, special damages must be specifically alleged The mere general allegation is not sufficient A I R 1926 Cal 549=91 Ind Cas 728 see also

s 934 Where the plea of

n the trial court but was

that Court refused to enter

doing so A I R 1928

Mag 39=105 Ind Cas 113

92. [S 539] (1) In the case of any alleged breach of any express or

Public char es constructive trust created for public purposes

of a charitable or religious nature, or where

the direction of the Court is deemed necessary for the administration of any

such trust, the Advocate General or two or more persons having an interest

in the trust and having obtained the consent in writing of the Advocate

General, may institute a suit, whether contentious or not, in the principal

Civil Court of original jurisdiction or in any other Court empowered in that

behalf by the Local Government within the local limits of whose jurisdiction

the whole or any part of the subject matter of the trust is situate to obtain

a decree—

(a) removing any trustee,

(b) appointing a new trustee,

(c) vesting any property in a trustee,

(d) directing accounts and inquiries,

(e) declaring what proportion of the trust property or of the interest

therein shall be allocated to any particular object of the trust

(f) authorizing the whole or any part of the trust property to be let,

sold, mortgaged or exchanged,

(g) settling a scheme,

(h) granting such further or other relief as the nature of the case

may require

(2) Save as provided by the Religious Endowments Act, 1863,\* no suit

claiming any of the reliefs specified in sub-section (1) shall be instituted

in respect of any such trust as is therein referred to except in conformity

with the provisions of that sub-section

N B—Vide the Public Suits Validation Act (XI of 1932), see also A. L. R 1933

Oudh 606

Scope of the section—Where defendant is neither constructive trustee nor

trustee *de son tort*, a suit under this section is not maintainable A I R 1923 All

247=21 A L J 310 This section is inapplicable to trusts not yet completed Suit

for administration of trusts of a will containing disposition for charitable purposes

is maintainable though it is not brought under s 92 70 Ind Cas 903=31 M I T

(H C) 63=16 L W 922 Two essential conditions are necessary in order that a suit should fall under express or nature or ne trust la ing any of the reliefs mentioned the reliefs mentioned in respect of any such trust in conformity with the provisions of s 92 The section is inapplicable to a suit in which there is no allegation in the plaint of an alleged, instituted in

funds for recovering a portion of that fund A I R 1929 Bom 153=31 Bom L 1192=119 Ind Cas 775 Where a society to whom property is bequeathed desires to convert it into a money, proper cause is not under s 307, Succession Act, but a suit under s 92 C P Code A I R 1931 All 212=(1931) A L J 36=130 Ind Cas 498 A suit to establish the existence of the trust itself where the whole question not within the purview of section 97 679=(1926) Pat 145=94 Ind Cas 433 covered by s 92 2 Lah L J 457, A I R 1930 Cal 787=34 C W N 1129=53 C L J 91=58 C 474=130 Ind Cas 369, but see A I R 1925 All 683, 47 A 770=23 A L J 601=89 Ind Cas 40

There must be suit alleging breach of express or constructive trust for public purposes of a charitable or religious nature in order to bring suit under s 92 and directions of Courts is necessary for administration of trust A I R 1931 Bom 33=32 Bom L R 1435=128 Ind Cas 891, 30 Bom L R 774 (P C), 26 Bom L R 950, A I R 1927 All 526=49 A 191=25 A L J 281=99 Ind Cas 568, 11 P 288=12 P L T 817=136 Ind Cas 417=A I R 1932 Pat 33=A L R 1932 Pat 373, 33 Bom L R 1575, 32 B L R 1435=A I R 1931 B 33

ex w C High Court under matter of the trust the meaning of s 92 C P Code 59 C 357=137 Ind Cas 808=A I R 1932 Cal 445=A L R 1932 Cal 572

The section was intended to apply only to questions relating to what may be called the indoor management of the trust, and issues relating to the right of strangers to the trust are outside the scope of a suit under that section 10 Rang 342=A I R 1932 Rang 132=140 Ind Cas 317, see also 55 M 549=62 M L J 180=1932 M W N 9=35 L W 156=138 Ind Cas 74=A I R 1932 Mad 234 A L R 1932 Mad 767 Sanction is not necessary in a case in which the relief for the settlement of a scheme for management is based upon an agreement arrived at between the co-trustees or on the terms of a will executed by the founder of the trust or any other descendant of his when he was the sole trustee 63 M L J 703=36 L W 633=1932 M W N 1340=140 Ind Cas 197 Difficulty in granting some of the relief claimed in the absence of the consent in writing of the Advocate General does not disentitle the plaintiff to the other reliefs A I R 1933 Pat 263=145 Ind Cas 294 It is not necessary that the suit under s 6 of Act XIV of 1920 which may be instituted without the sanction of the Advocate General on the trustee's failure to comply with the Court's order to produce accounts should be presented only by the person who made the applications under ss 3 and 4 of the Act A L R 1933 Mad 1031=38 L W 750=65 M L J 620=A I R 1933 M 854=1933 M W N 1266 Where a suit under s 92 C P Code, has been properly instituted and one of the plaintiffs dies, the suit can be continued by the survivor or survivors and even though there is only one survivor A L R 1934 All 21=1933 A L J 1593 Where no relief is claimed which falls under cls (a) to (f), a sanction under this section is not necessary A L

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 blic to  
 ession  
 The  
 their personal  
 Ind Cas 177  
 it not consti  
 tuted by s 92 A I R 1927 All 526=49 A 91=25 A L J 381=99 Ind Cas 568  
 Appellate Court cannot give directions on matters left undecided by trial court  
 A I R 1930 Lah 1036=12 Lah L J 199=31 P L R 1018 Suit against tres-  
 passers for recovery of trust properties does not fall under s 92 4 Lah 295=73 Ind  
 Cas 643, A I R 1928 All 33=50 A 165=25 A L J 902=106 Ind Cas 389  
 Where trespasser claims trust property, suit for settling scheme and appointment of  
 of trustee lies against him A I R 1927 Mad 710=53 M L J 183=39 M L T  
 66-102 Ind Cas 74, see also A I R 1928 All 33=50 A 165=25 A L J 902,  
 A I R 1925 All 759=47 A 867=23 A L J 795=89 Ind Cas 639 35 Ind Cas  
 593=10 S L R 12 Provision of this section is mandatory 49 Ind Cas 530,  
 41 A 1-16 A L J 841=48 Ind Cas 94

This section has no application where worshippers at mosque sue to set aside  
 alienation of *wakf* property by trustee 51 Ind Cas 799, 47 Ind Cas 111=78  
 C L J 4, 41 M 124=33 M L J 357=6 L W 666=22 M L T 218=42 Ind  
 Cas 366, 40 M 212=31 M L J 777=20 M L T 400-5 L W 625=(1919)  
 M W N 400=38 Ind Cas 73 23 C W N 115 49 Ind Cas 355 It is only  
 where the suit is for one or more of the reliefs in s 92 (1) that it must be  
 brought under that section A suit by the worshippers of temple for declaration  
 that certain land is temple land and for an injunction restraining defendant's  
 alienation is not within s 92 47 Ind Cas 260 A su praying for removal of trustee  
 and for a declaration is made by trustee is void comes under this  
 section A I R 1915 All 65, 47 A 770=73 A L J 601=89 Ind Cas 40, see  
 also A I R 1915 Mad 65, 1 L W 5, 88 Ind Cas 33

A suit under this section is maintainable for removal of trustee and for  
 appointment of new trustee and for vesting trust property in him 97 P R 1918=173  
 P W R 1918=47 Ind Cas 683, see also 89 Ind Cas 40=23 A L J 601=A I R  
 1925 All 683=47 A 770 Court has power to appoint a *mutwalli* in certain  
 section A L R 1913 Lah 570=34 P L R  
 Cas 169 Head of *mutt* though not trustee,  
 he is interested in the performance of those obli  
 A I R 1927 Mad 614=52 M L J 415=  
 25 L W 461=(1927) M W N 233=50 M 567=39 M L T 37=101 Ind Cas  
 420 Where suit is not for vindication of public right but of a private right of being  
 480 Test,  
 c rights or  
 40 Clauses

(a) and (b) are distinct A I R 1930 Mad 229=1929 M W N 744=122 Ind Cas  
 455 Section 92 is mandatory It is not necessary to obtain sanction under the  
 Religious Endowment Act and without such sanction a removal could be ordered  
 (1916) 2 M W N 351-4 L W 444=37 Ind Cas 688 Where individuals sue a  
 citizens for rights of worship or performing festivals, no sanction is necessary 3 L  
 W 512=35 Ind Cas 88 Suit for declaration that plaintiff is *mahant* is not barred  
 34 Ind Cas 502 Suit under s 92 is a representative one 40 Mad 110=3 L W 303=  
 (1916) 1 M W N 402=31 M L J 229=34 Ind Cas 384 In order to make s 92  
 applicable it is not necessary that the existence of trust should be admitted by the  
 defendant A I R 1924 Pat 657=5 P L R 30=80 Ind Cas 980 Section 92  
 will not apply where claim is based on plaintiffs personal right of possession mingled  
 with a claim based on breach of trust A I R 1925 Pat 309=67 Ind Cas 464,  
 see also A I R 1924 Lah 131=4 Lah 295=5 Lah L J 480=73 Ind Cas 645,  
 A I R 1923 A 319=21 A L J 191=45 A 335=71 Ind Cas 767, 75 Ind Cas 670  
 =(1921) Pat 6, 76 Ind Cas 89-A I R 1924 Pat 502=5 P L T 231, A I R  
 1923 All 120=70 A L J 977=45 A 215=71 Ind Cas 420

**Express Trust**—The expression express or constructive trust is not limited  
 to trust as in English law constructive trustee includes person holding  
 fiduciary position such as head of a *mutt* whose duties can be enforced in a court of  
 law A I R 1927 Mad 614=50 M 567=52 M L J 418=25 L W 461=(1927)  
 M W N 233=39 M L T 37=108 Ind Cas 427 Under s 92 a suit against

express trustees is maintainable A I R 1924 All 884=22 A L J 866=47 A 17=84 Ind Cas 631, see also 86 Ind Cas 799=A I R 1925 Cal 1106

**Constructive**  
that the management  
who were receiving  
using them and con

ars of a temple  
the defendant  
temple were not  
upon the defen  
of the income and profits *Held* that

92 and the suit was not consequently m  
sanction 32 Bom L R 1435=A I R 1931 Bom 33=128 Ind Cas 891 Construc  
tive trustees include persons holding particular fiduciary position A I R 1924  
Bom 193=25 Bom L R 747=84 Ind Cas 808

**Charitable Trust**—All charitable corporations exist solely for the accomplishment  
of charitable purposes Like other trustees they also are subject to the jurisdiction  
of the Court A I R 1931 Mad 12=59 M L J 770=129 Ind Cas 235=53 M  
737 Charitable corporations are subject to Court's jurisdiction as they are trustees  
of the corporate properties A I R 1931 Mad 12=53 M 737=59 M L J 770=  
also A I R 1930 All 582=(1930) A L J  
Collector's sanction is necessary for a suit  
defendants from preventing plaintiffs from  
enjoying the uses and objects for which property was dedicated A I R 1930  
Sind 204=126 Ind Cas 49

**Religious Trust**—Where a person builds temple either out of his own funds  
or funds collected by subscription direction by him regarding manner of manage  
ment and persons by whom it is to be managed is not illegal A I R 1926 Mad  
ment is partly secular and  
s governed by section 92  
attached to religious and  
I R. 1929 Lah 740=120  
Ind Cas 161, see also 99 Ind Cas 755=2 I R 1457 A I R 1930 Mad 226=  
1929 M W N 744=122 In  
Cas 1035, 23 C W N 138  
of religious Muhammadan  
succession s constructive trust of a religious nature for public purposes 4 O L J

Under s 92 trust  
R 1923 Mad 376  
=73 Ind Cas 991,  
management of  
> sue but original  
purposes of trust that must be looked to A I R 1926 Lah 100=7 Lah 275=27  
205=59  
inter-  
trustees  
J 747  
not  
R 1923

All 247=21 A L J 310=L R 4 A 190

**Private Trust**—The Advocate General is not concerned with private trusts  
Persons claiming to be as heir of founder  
private trust A I R 1931 Bom 170=32  
beneficial interest in private trusts vests in  
is vested in fluctuating body A useful  
test for a judge to apply to see whether the evidence satisfies the conditions of the  
private trust is to ask him self whether any of the acts testified to by the witnesses  
could have been prevented or penalised by proceedings for trespass A I R 1922  
All 519=20 A L J 789=77 Ind Cas 97, *Wooltrisse and Anceer Ali s C P Code*  
s. 92, see also A I R 1922 P C. 252=74 Bom L R 937=47 I A 100=36 C. L J  
57=49 C 459=27 C W N 174=67 Ind Cas 561 Persons having no interest in  
trust property cannot impeach acts of private trustee 56 Ind Cas 707

**Public Trust**—Whether purpose is public or not is to be found out from  
circumstances of each case A I R 1911 Lah 511=75 Ind Cas 670, 8 A I J

1120 Comparative evidence of other temples being public or private even when admitted by parties or held by court to be proved should be excluded in considering the question whether temple in question is public or private A I R 1928 Mad 879=113 Ind Cas 635 In deciding question as to whether a temple is public or private, *nam* proceedings are of great importance *Ibid* Where Hindu public freely uses temple for centuries without permission, strong evidence is required to

Cas 42=10 L W 135, 34 A 468=9 A I J 809=11 Ind Cas 166, 20 C L J 312, 45 Ind Cas 213=5 O L J 97, 38 Ind Cas 800=20 O C 49, 34 Ind, Cas 551=4 L W 228, 36 Ind Cas 270=31 M L J 202, 51 Ind Cas 42=10 L W 135 Public means a section of the public Wakf for maintenance of *Khan-i-Khos* and for distribution of alms and charities is a public trust 11 P 288=12 P L T 817=136 Ind Cas 417=A I R 1932 Pat 33=A L R 1032 P 272 Where there is no direct evidence of dedication circumstances raise a presumption of dedication to the public by the public and offerings by the public are some there should be a presumption of dedication 32 Bom L R 1435=A I R 1931 B 33=128 Ind Cas 891

**Direction of the Court**—The words 'where the direction of the Court is deemed necessary for the administration of any such trust' mean that where the Court has to give direction in nature of framing a scheme or otherwise for the administration of the trust. A declaration of *mutwill* is of such direction A I R 1928 Cal 368=55 Cal 174, 57 C W N 835=110 Ind Cas 41 Where persons interested in trust desire to solely settle a trust by fresh suit under this section A I R 192 Sind 171=1 L R 20=11 Ind Cas 398 Where temple built from funds collected by subscription founder can make management hereditary where subscribers do not object to it A I R 1926 Mad 1150=51 M L J 457=98 Ind Cas 208 Court can remove trustee if necessary for continuance of institution Interest of the institution and not of individuals is to be seen A I R 1926 Mad 1150=51 M L J 457=98 Ind Cas 208

r s 92 is to  
uses for which  
has a wide  
be taken into  
ral interests  
Court might

be impracticable or unsuited to the  
6 P C 132=43 C 108=14 A L J  
C L J 198=35 Ind Cas 30 Courts

by existence of a temple committee  
39 M 700=30 M L J 29=32 Ind Cas 211 Court sanctioning scheme for administration of charitable trust is competent to vary from time to time on an application without fresh suit 43 Ind Cas 772 Where liberty to apply is reserved in favour of certain persons under scheme others cannot apply A I R 1930 Mad 226=1929 M W N 774=122 Ind Cas 455 A scheme which goes beyond what is decided in scheme suit, and decides matters which come within the purview of s 92 is so far *ultra vires* A I R 1930 Mad 226=1929 M W N 744=122 Ind Cas 455 Where a scheme is settled a direction for applying for modification is *ultra vires* A I R 1928 Mad 268=108 Ind Cas 199 True test of legal propriety of clause in a scheme is whether relief granted by that Court is such relief that if it was sought before scheme was R 1930 Mad 226= the Court has no even where trustee omits to comply with scheme terms A I R 1919 Mad 56=1929 M W N 300=120 Ind Cas 874, see also A I R 1919 Mad 625=119 Ind Cas 469

**Persons having interest in the trust**—Persons who are in the habit of

worshipping at a temple and of making offerings and of giving subscriptions are persons having an interest in the temple and are entitled to maintain a suit under this section with necessary sanction A I R 1932 All 708=1932 A L J 886, 9 O W N 966, A L R 1933 Lah 583=A I R 1933 Lah 920=146 Ind Cas 136 In a suit for declaration that certain property and income therefrom is *wakf* certain person is its trustee and alienations thereof are void heirs of the founder of the trust have *locus standi* A L R 1933 Lah 721=A I R 1933 Lah 670 Suit by constant visitors of temple who are close relatives of founder is maintainable A I R 1929 All 133=1929 A L J 438=117 Ind Cas 838, see also A I R 1929 Lah 428=116 Ind Cas 451 Collaterals of founder have sufficient interest to entitle them to sue A I R 1929 Lah 428=116 Ind Cas 451 Descendants in female line from founder of charity have an interest therein although not directly obtaining benefit A I R 1924 P C 221=51 I A 282=47 M L J 361=47 M 884=22 A L J 983=26 Bom L R 1121=40 C L J 454=29 C W N 154=82 Ind Cas 804 Persons not having interest in trust will not be entitled to sue even with Advocate General's written consent A I R 1924 P C 221=51 I A 282 Where founder lays down persons in whom the right of control is vested, they are not the only persons who can sue A I R 1929 Lah 428=116 Ind Cas 451 A suit under this section can be maintained by Hindus of neighbouring villages attending the temple on important occasions A I R 1926 Mad 267=49 M L J 746=196 M W N 40=91 Ind Cas 924, see also A I R 1925 Lah 189=5 Lah 455=85 Ind Cas 111, 35 M L J 661=9 L W 1=25 M L T 86 Mere worshippers as such cannot sue for possession of trust properties A I R 1925 Rang 294=3 Rang 213=89 Ind Cas persons entitled to receive the persons are interested in the trust it ally affected A I R 1927 Mad 462=50 M 726=25 L W 594=(1927) M W N 197=53 M L J 545=102 Ind Cas 270, see also 44 C L J 359=A I R 1927 Cal 130=31 C W N 184=99 Ind Cas 205, see also A I R 1929 Bom 193=31 Bom L R 349=117 Ind Cas 523 Interest must be clear present and substantial A I R 1926 Mad 466=23 L W 210=92 Ind Cas 950, A I R 1926 Lah 100=7 Lah 275=27 P L R 115=94 Ind Cas 195, A I R 1930 Lah 1=11 Lah 142=31 P L R 424=124 Ind Cas 305, A I R 1925 Mad 1018=86 Ind Cas 371, A I R 1926 All 518=101 Ind Cas 744 73 Ind Cas 302 58 Ind Cas 174=(1920) M W N 478, 43 M 720=30 M L J 504=56 Ind Cas 450 Mere right to worship in a temple is not interest sufficient to sue for a scheme 42 M 360=36 M L J 396=50 Ind Cas 693 The question whether there are sufficient grounds for the removal of a *shebait* is within discretion of the Court and the Court will be guided by the consideration W N 478=54 Ind Cas 5 M 1056=30 M L J 423=3 habit of going to the *Thikur* have sufficient interest in the trust to entitle to institute a suit under s 9- A L R 1933 Oudh 606=A I R

is used in s 92 have not English law or in the median law The words enlarged sense in which be one equitable right on the legal ownership property under an ex from it to the use and for the benefit of another person Under the English conception of the term trust trust been used in section would have to *debutters* of the in this section does is no conception of uses of section 92 is burdened with obligations for public It will apply in all cases whether *wakf* there is an obligation annexed to the objects of a public nature 11 P 288=12 P L T 817=136 Ind Cas 417=A I R 1932 Pat 33=A L R 1932 Pat 373



**Parties**—In a suit under s 92 only the trustee is a necessary party and not those who may be in possession of trust properties even adversely to the trust 12 P L T 817 In a suit under s 92 the defendants must be alleged to be either *de jure* or *defacto* managers of the trust and not mere servants of the trust 1031 M W N

trust 1931 M W N 898. Suit by only some of the persons obtaining sanction is  
id 129=30 L W 954=1929 M W N 911=58  
" " " " 220, A I R 1927 Lrh 382=100 Ind Cas

in the trust A I R  
with Advocate Gen

added as parties  
or public purposes  
ch suit A I R  
d Cas 991 A  
820=48 M L J  
given liberty to

apply to the court for directions, the Board as a whole must apply A I R 1929  
Mad 625=119 Ind Cas 469 Any decree passed, in suit under s 92 is binding not  
only on the trustees, but also on all the worshippers A I R 1925 Mad 1070=  
(1925) M W N 505 In a suit instituted for settlement of scheme for *Dargah*,  
*Muttawalli* in possession is necessary party A I R 1929 Mad 635=122 Ind Cas 644  
Transferees of trust property can be impleaded A I R 1925 All 683=47 A 770=  
23 A L J 601=89 Ind Cas 40, see also A I R 1925 Cal 187=80 Ind Cas 44,

trustees thereto should be made parties 50 Ind Cas 58 A trustee is not prevented  
from being plaintiff A I R 1925 Mad 80=48 M L J 535=87 Ind Cas 194  
Question of interest must be determined on the facts of each case A I R 1921  
Mad 563=41 M L J 20=63 Ind Cas 631 Suit to recover trust property from  
trespasser or trustee transferee cannot be brought under s 92 by virtue of either r  
3 or r 10 (2) of Order 1 28 C L J 4=47 Ind Cas 111 A suit lies against trustees  
*de son tort* A I R 1924 All 884=47 A 17=22 A L J 866=84 Ind Cas 631,  
see also A I R 1925 Mad. 212=78 Ind Cas 950, A I R 1922 All 542=21 A L  
J 10,=44 A 652=69 Ind Cas 990, 40 Ind Cas 165 Persons in possession of  
trust properties under claim adverse to trust are not necessary parties 11 Pat 288=  
12 P L T 817=A I R 1932 Pat 33

**Sanction**—Advocate General's permission is necessary unless plaintiff has a  
special claim or interest 35 Ind Cas 846 With due sanction any two persons  
can sue where object of suit is to secure certain advantage to trust 3 L W 512=35

more than two persons all must join  
on granted for suit under s 92 means any  
It is not confined to one of the species

of suits that could be raised on the application 48 C 493=25 C W N 794=30  
M L T 194=43 I A 12 (P C)=62 Ind Cas 737 (P C) Status and position of  
those who come forward as representatives of community is an important considera-  
tion in giving sanction Before giving sanction notice should be issued to the  
trustees A I R 1930 Mad 179=0 L W 954=(1929) M W N 911=58 M L J  
39=53 M 223=124 Ind Cas 220 But sanction is not invalidated by want of notice  
to defendants (1930) M W N 456 Sanction is necessary even where suit does not  
specifically ask for relief mentioned in s 92 but does so by implication A I R  
1927 Mad 886=26 L W 274 Fresh sanction is not required where new party is  
added but scope of scheme is not enlarged A I R 1929 Mad 635=122 Ind Cas  
644 Where some reliefs sanctioned by collector while others refused, suit may be  
tried so far as relief sanctioned A I R 1923 Bom 428=79 Ind Cas 200 Sanction  
is not necessary in the case of a suit in which one trustee sues another for accounts  
A I R 1923 Nag 298=6 L J 209=74 Ind Cas 45 see also A I R 1927 Mad  
448=39 M L T 214=105 Ind Cas 194, 52 Ind Cas 628, 40 B 430=18 Bom  
L R 335=34 Ind Cas 167, A I R 1922 M 17 (F B)=15 L W 18=45 M  
113=41 M L J 608=69 Ind Cas 304, A I R 1923 Nag 298, A I R 1922 Mad.  
17 (F B) This section is not applicable to suits by worshippers of temple for

worshipping at a temple and of making offerings and of giving subscriptions are persons having an interest in the temple and are entitled to maintain a suit under this section with necessary sanction A I R 1932 All 708=1932 A L J 886, 9 O W N 966, A L R 1933 Lah 583=A I R 1933 Lah 920=146 Ind Cas 136 In a suit for declaration that certain property and income therefrom is *wakf* certain person is its trustee and alienations thereof are void, heirs of the founder of the trust have *locus standi* A L R 1933 Lah 721=A I R 1933 Lah 670 Suit by constant visitors of temple who are close relatives of founder is maintainable A I R 1929 All 133=1929 A L J 438=117 Ind Cas 828, see also A I R 1929 Lah 428=116 Ind Cas 451 Collaterals of founder have sufficient interest to entitle them to sue A I R 1929 Lah 428=116 Ind Cas 451 Descendants in female line from founder of charity have an interest therein although not directly obtaining benefit A I R 1924 P C 221=51 I A 282=47 M L J 361=47 M 884=22 A L J 983=26 Bom L R 1121=40 C L J 454=29 C W N 154=82 Ind Cas 804 Persons not having interest in trust will not be entitled to sue even with Advocate General's written consent A I R 1974 P C 221=51 I A 282 Where founder lays down persons in whom the right of control is vested, they are not the only persons who can sue A I R 1979 Lah 428=116 Ind Cas 451 A suit under this section can be maintained by Hindus of neighbouring villages attending the temple on important occasions A I R 1926 Mad 267=49 M L J 746=19 6 M W N 40=91 Ind Cas 974, see also A I R 1925 Lah 189=5 Lah 455=85 Ind Cas 111, 35 M L J 661=9 L W 1-25 M L T 86 Mere worshippers as such cannot sue for possession of trust properties A I R 1925 Rang 294=3 Rang 213=89 Ind Cas 623, 96 Ind Cas 934=A I R 1926 Lah 425=8 Lah L J 231=27 P L R 833 Where property is dedicated to *chuttram* all persons entitled to receive food can sue A I R 1928 Mad 268=108 Ind Cas 199 If the persons are interested in the trust it is not necessary that they should be personally affected A I R 1927 Mad 462=50 M 726=25 L W 594=(1927) M W N 197=53 M L J 545=102 Ind Cas 270, see also 44 C L J 339=A I R 1927 Cal 130=31 C W N 184=99 Ind Cas 205, see also A I R 1929 Bom 193=31 Bom L R 349=117 Ind Cas 523 Interest must be clear present and substantial A I R 1926 Mad 466=23 L W 240=92 Ind Cas 950, A I R 1926 Lah 100=7 Lah 275=27 P L R 115=94 Ind Cas 195 A I R 1930 Lah 1=11 Lah 142=31 P L R 424=124 Ind Cas 305, A I R 1925 Mad 1018=86 Ind Cas 371 A I R 1926 All 518=101 Ind Cas 744 73 Ind Cas 302 58 Ind Cas 124=(1920) M W N 478, 43 M 720=30 M L J 504=56 Ind Cas 450 Mere right to worship in a temple is not interest sufficient to sue for a scheme 42 M 360 36 M L J 396=50 Ind Cas 693 The question whether there are sufficient grounds for the removal of a *shebut* is within discretion of the Court and the Court will be guided by the consideration of the welfare of the trust 30 C L J 177=24 C W N 478=54 Ind Cas 5 Members of Church need not sue by virtue of office 39 M 1056=30 M L J 423=3 L W 348=34 Ind Cas 557 Person who are in the habit of going to the *Thakur d'ars* in the evening to worship the idol are persons who have sufficient interest in 5=A I R

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The words  
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It will apply in all cases, whether wakf  
there is an obligation annexed to the  
objects of a public nature 11 P 288=  
12 P L T 817=136 Ind Cas 417=A I R 1932 Pat 33=A L R 1932 Pat 373

**Parties**—In a suit under s 92 only the trustee is a necessary party and not those who may be in possession of trust properties even adversely to the trust 12 P L T 611. The trustee is to be either *de jure* or *de facto* of the trust 1931 M W N 101. *Archikis* is burdened with the

service to the temple the appropriation of the income by the *Archakas* is not misappropriation of trust income and the *Archakas* are not managers *de son tort* of the trust 1931 M W N 898 Suit by only some of the persons obtaining sanction is not maintainable A I R 1930 Mad 129=30 L W 934=1909 M W N 911=58 M L J 39=53 M 223=124 Ind Cas 220, A I R 1927 Lah 382=100 Ind Cas 838 It is desirable that permission to apply should be given to any person interested in the trust A I R 1928

with Advocate Generals

or some other good reason

A I R 1925 Sind 1=76

suit lies for settling scheme and a heir at law is a proper party to such suit A I R 1923 Mad 376=17 L W 31=52 M L T 47=46 M 300=73 Ind Cas 991 A trustee is not prevented from being plaintiff A I R 1925 Mad 820=48 M L J 535=87 Ind Cas 194. Where under Scheme Board of Trustee was given liberty to apply to the court for directions the Board as a whole must apply A I R 1929 Mad 625=119 Ind Cas 469 Any decree passed, in suit under s 92 is binding not only on the trustees, but also on all the worshippers A I R 1925 Mad 1070=(1925) M W N 505 In a suit instituted for settlement of scheme for *Dargah Mullawalli* in possession is necessary party A I R 1929 Mad 635=12 Ind Cas 644 Transference of trust property can be impleaded A I R 1925 All 683=47 A 770=73 A I J 601=89 Ind Cas 40 see also A I R 1925 Cal 187=80 Ind Cas 44, 32 Ind Cas 80=42

necessary part of  $\mathcal{V}$  in a

9=38 Ind Cas 1,331

trustees there is still to be made parties 50 Ind Cas 58 A trustee is not prevented from being plaintiff A I R 195 Mad 80 48 M L J 35 67 Ind Cas 194 Question of interest must be determined by the facts of each case A I R 1921 Mad 563=41 M L J 20=63 Ind Cas 631 Suit to recover trust property from trespasser or trustee transferee cannot be brought under s 92 by virtue of either r 3 or r 10(2) of Order 1 28 C L J 4=47 Ind Cas 111 A suit lies against trustees *de son tort* A I R 1924 All 884=47 A 17=22 A L J 866=84 Ind Cas 631, see also A I R 1925 Mad 212=78 Ind Cas 950, A I R 1922 All 542=21 A L J 10=44 A 6, 2=69 Ind Cas 990, 40 Ind Cas 165 Persons in possession of trust properties under claim adverse to trust are not necessary parties 11 Pat 288=12 P L T 817=A I R 1932 Pat 33

**Sanction**—Advocate General's permission is necessary unless plaintiff has a special claim or interest 35 Ind Cas 846 With due sanction any two persons can sue where object of suit is to secure certain advantage to trust 3 L W 512=35

one of the species

of suits that could be raised on the application 48 C 493=25 C W N 794=50 M L T 194=48 I A 12 (P C)=62 Ind C's 737 (P C) Status and position of those who come forward as representatives of community is an important considera

L W 954=(1929) M W N 911=58 M L J  
ut sanction is not invalidated by wint of notice

Sanct on is necessary even were suit does not  
s 02 but does so by implication. A I R

1927 Md 886=26 L W 274 Fresh sanction is not required where new party is added but scope of scheme is not enlarged. A L R 1020 Md 635=122 Ind Cas

644. Where some reliefs sanctioned by collector while others refused, suit may be tried so far as rel. sanctioned. A. I. B. 1933 Bom. 428-30 Ind. Cas. 200. Sanction

is not necessary in the case of a suit in which one trustee sues another for accounts.

declaration that it is trust property 1 Lah L J 150=84 P L R 1922=67 Ind Cas 320, see also 26 C W N 587=A I R 1921 Cal 405=69 Ind Cas 910 Suit for declaration that the property is *wikf*, does not require sanction A I R 1927 Lah 350=28 P L R 486=8 Lah 111 see also A I R 1927 All 257=49 A 435=25 A L J 329=99 Ind Cas 1045, A I R 1925 Pat 544, 4 Pat 741=7 P L T 4=88 Ind Cas 1035, A I R 1928 Lah 888=113 Ind Cas 120

The condition precedent to the proper institution of a suit under s 92 is the obtaining of the sanction of the Advocate General and no other condition for the maintainability of a suit is to be found in the Code The amendment of the law embodied in the present s 92 has obviated the necessity for a representative suit A I R 1926 Mad 280=50 M L J 1926 Mad 280=50 s to sanction cannot be waived be sued unless there is

*prima facie* case against real trustee A I R 1926 Mad 970=24 L W 419=(1926) M W N 686-97 Ind Cas 462 Sanction obtained against a person who is not a trustee cannot subsequently be availed of against real trustee *Ibid* see also A I R 1928 Lah 717=116 Ind Cas 334, (1930) M W N 456

**Forum**—Suit under s 92 C P Code can be tried by Additional Judge by virtue of assignment of the functions of the District Judge under the Bengal Civil Courts Act s 8 (2) A I R 1921 Cal 210=48 C 53=62 Ind Cas 115, see also 52 Ind Cas 45=22 O C 93, 31 Ind Cas 397 Suit under s 92 cannot be referred to arbitration, as it is not a suit for determination of private rights A I R 1923 Nag 112=6 N L J 7

basis of  
187=80  
romise of

199=A I R 1928 Mad 268 As regards effect of compromise by some of the plaintiffs, vide, A I R 1928 P C 16=32 C W N 482=55 I A 96=55 C 519=48 C L J 55 (P C)=108 Ind Cas 361

**Abatement of suit**—Although one of the plaintiffs obtaining sanction for instituting suit dies neither the suit nor appeal therefrom abates A I R 1925 Mad 244=47 M L J 745=20 L W 882=85 Ind Cas 666, 97 P R 1918=73 P W R 1918=47 Ind Cas 983 Suit under this section is prosecuted as representing general public and so it does not abate on the death of the original plaintiff 48 C 493=13 L W 318=(1921) M W N 24=17 N L R 37=48 I A 12=25 C W N 794=30 M L F 194 (P C)=62 Ind Cas 737 In a suit under s 92, for removal of the defendant and framing a scheme death of the defendant pending the suit does not cause the whole suit to abate A I R 1926 Mad 162=48 M 688=49 M L J 324=91 Ind Cas 107 But order bringing on record new trustees instead of old ones in evasion of sect on 92 is without jurisdiction A I R 1931 Cal 281=52 C L J 78=130 Ind Cas 866

suit is brought within sanction, subsequent ones without obtaining fresh sanction does not I 35=16 S I R 221=79 Ind Cas 539, see

also 34 Ind Cas 384=40 M 110, 43 M 707=38 M L J 201 Whether new sanction is necessary when new defendant is added depends on whether scope of suit is enlarged or altered thereby A I R 1926 Mad 970=24 L W 419=97 Ind Cas 462, W N 478 A I R 1929 Mad 635, but see be parties defendants do not require any A I R 1927 Rang 180=5 Rang 263=103 Ind Cas 261 see also 32 C W N 482=A I R 1928 P C 16=26 A L J 464=55 I A 96=55 C 519=50 Bom L R 774=103 Ind Cas 361 (P C)

**Clause (n)**  
W N 744=  
erdowment  
of the welfare  
be removed so  
ment of *mull* property, for keeping mistress and gambling 80 Ind. Cas 674=27 O C 149. To justify removal of trustee there must be some gross negligence or miscon-

duct as to evidence a want either of capacity or of fidelity which is calculated to put the trust in jeopardy. Failure in the discharge of duty on account of mistake or misunderstanding is not a ground for removal unless such failure shows want of capacity to manage the trust. If the trustee renews a lease for his personal benefit purchases the trust property concerns in a breach of trust, asserts a hostile title with knowledge that it was unfounded fails to keep accounts, wrongfully alienates trust property, obstructs the management and wants only to waste the estate he may be removed. A I R 1928 Cal 225, see also A I R 1925 Mad 10,0=1925) M W N 505, A I R 1924 Lah 107-4 Lah 364=77 Ind Cas 398, A I R 1927 Mad 1033, A I R 1922 P C 325=45 M 565=43 M L J 536=49 I A 257=4 Bom. L R 1214=21 A L J 250=27 C W N 317=36 C L J 524 (P C)=68 Ind Cas 1. Clause in scheme providing for removal of trustee merely by application is invalid. A I R 1931 Nag 82=131 Ind Cas 423. A trustee cannot be removed for his mere indebtedness or failure to keep accounts. A I R 1929 All 433=(1929) A L J 438=117 Ind Cas 82.

68 Ind Cas  
W N 522  
endowment  
by worship  
e falls under  
for appeal  
to remove  
of a Mutt  
L J 271=  
-31 52 Ind  
Cas 914, 40 M 745, 43 C 707, 33 Ind Cas 583 (P C), 43 M 253 *Bona fide*  
assertion of adverse title is no ground for removal. A L R 1933 Mad 571

trustee Court can appoint  
A I R 1928 Mad 955=  
(19) plaintiff has not prayed for  
the removal of the trustee Court can appoint Receiver *pendente lite*. A I R 1923  
Mad. 224=41 M L J 545=68 Ind Cas 565. Section 92 is mandatory and cases  
which before 1908 held that founder or his heirs could sue for due performance of  
aid of s 92 are  
4=88 Ind Cas  
administration of  
741=7 P L T  
4=88 Ind Cas 1035

Clause (c)—The words vesting any property in a trustee refers to cases where  
a new trustee is appointed and are not intended to cover cases in which it is sought  
to recover possession of the trust property by ejecting trespassers who are wrongfully  
I R 1932 Rang 152-140 Ind Cas 317  
possession is also included, Court is not  
J 601=89 Ind Cas 40, see also 31 M L J

Clause (d)—Suit for accounts and directions as to what should be done with  
trust funds falls within s 92. A I R 1924 Bom 518=26 Bom L R 950=86  
Ind Cas 490, see also 28 Ind Cas 886, 2 C L J 431, 21 B 48, A I R  
1931 Bom 33=32 Bom L R 1435, A I R 1928 Mad 870=113 Ind Cas 635  
under cl (i) and cannot be  
Mad 6,6=16 L W 155=  
Mad 17=45 M 113=15  
229 Nag 293. Suit by a  
dismissed is outside the

declaration that it is trust property 1 Lah L J 150=84 P L R 1922=67 Ind Cas 320, see also 26 C W N 587=A I R 1921 Cal 405=69 Ind Cas 910 Suit for declaration that the property is *wife's*, does not require sanction A I R 1927 Lah 350=28 P L R 486=8 Lah 111 see also A I R 1927 All 257=49 A 435=25 A L J 329=99 Ind Cas 1045, A I R 1925 Pat 544, 4 Pat 741=7 P L T 4-88 Ind Cas 1035, A I R 1928 Lah 888=113 Ind Cas 120

The condition precedent to the proper institution of a suit under s 92 is the obtaining of the sanction of the Advocate General and no other condition for the maintainability of a suit is to be found in the Code The amendment of the law embodied in the present s 92 has obviated the necessity for a representative suit A I R 1926 Mad 280=50 M L J 1926 is to sanction cannot be sued unless there is W 419=(1926) n who is not a see also A I R 1928 Lah 717=116 Ind Cas 334, (1930) M W N 456

**Forum**—Suit under s 92 C P Code can be tried by Additional Judge by virtue of assignment of the functions of the District Judge under the Bengal Civil Courts Act s 8 (2) A I R 1921 Cal 210=48 C 53-62 Ind Cas 115, see also 52 Ind Cas 45=22 O C 93, 31 Ind Cas 397 Suit under s 92 cannot be referred to arbitration as it is not a suit for determination of private rights A I R 1923 Nag 112=6 N L J 7

**Compromise of suit**—A judge has jurisdiction to pass a decree on the basis of *bona fide* compromise in a suit brought under section 92 A I R 1925 Cal 187=80 Ind Cas 44, see also 18 C W N 1264 Court should not sanction compromise of suit under s 92 under which any portion of trust properties is given to any party 37 M L J 489=47 Ind Cas 611 Where plaintiff approves appointment of certain persons as comm ttee, the decree is not consent decree A I R 1927 Lah 382=109 Ind Cas 838 Fraudulent compromise does not bar subsequent suit 108 Ind Cas 199=A I R 1928 Mad 263 As regards effect of compromise by some of the plaintiffs, vide A I R 1928 P C 16=32 C W N 482=55 I A 96=55 C 519=48 C L J 55 (P C)=108 Ind Cas 361

one of the plaintiffs obtaining sanction for appeal therefrom abates A I R 1925 88=85 Ind Cas 666, 97 P R 1918=73 P R 1918 Under this section is prosecuted as representing on the death of the original plaintiff 48 C 4=17 N L R 37=48 I A 12=25 C W N 737 In a suit under s 92 for removal of trustee of the defendant pending the suit does not cause the whole suit to abate A I R 1926 Mad 162=48 M 688=49 M L J 324=91 Ind Cas 109 But order bringing on record new trustees instead of old trustees is an evasion of sec 92 as without jurisdiction A I R 1931 Cal 281-52 C L J 78=130 Ind Cas 866

**Addition of Parties**—Where suit is brought within sanction subsequent addition of parties is not allowed A I R 1926 Mad 280=50 M L J 1926 is to sanction cannot be sued unless there is W 419=(1926) n who is not a see also A I R 1928 Lah 717=116 Ind Cas 334, (1930) M W N 456

**Clause (a)**—Clauses (a) and (b) are distinct A I R 1930 Mad 226=(1929) M W N 744=122 Ind Cas 455 Trustees can be removed for mismanagement of endowment In removing a trustee Court should be guided solely by considerations of the welfare of the trust A I R 1924 Cal 1074=81 Ind Cas 850 Trustees may be removed for breach of trust 21 A 200 A Mahant can be removed from management of *mutt* property, for keeping mistress and gambling 80 Ind Cas 674=27 O C 149 To justify removal of trustee there must be some gross negligence or miscon-



scope of s 92 A I R 1921 Mad 403=14 L W 38=(1921) M W N 439=62 Ind Cas 761 Suit by general trustee for balance of amount due brought against subordinate trustee is bad for want of sanction A I R 1921 Mad 479=14 L W 238=62 Ind Cas 911

to prayers not covered by 3 M 223=124 Ind Cas 220 to frame a new scheme is o=6 R 594=114 Ind Cas. waste in settling a scheme for the conduct of institution A I R 1919 P C 27=31 Bom L R 243=33 C W N 352=(1929) P C 50 (P C)=114 Ind Cas 10 Where temple properties and *Kattalu* properties dedicated for special purposes separate scheme should be framed by each A I R 1928 Mad 935=(1927) M W N 403=108 Ind Cas 649 Where malversation is not proved no scheme can be settled A I R 1928 Mad 401=106 be construed as having A I R 1929 Mad 322 and remuneration of person in charge is unsatisfactory 6 L W 134=42 Ind Cas 474 Where the Court be made is what are properties t is entitled to go into questions 41 M L J 20=68 Ind Cas 631 A oss mismanagement of affairs of 7=74 Ind Cas 115 In framing can sanction *cypres* application if itself cannot apply income *cypres* Suit for partition of right of temple does not lie s complete discretion in into consideration such J 937=58 Ind Cas 566 he parties cannot invest A I R 1926 Mad 559= 49 M 580=1926 M W N 226-95 Ind Cas 720 see also 47 Ind Cas. 548=(1918) M W N 595=8 L W 357 A I R 1926 Mad 655=1926 M W N 283=95 Ind Cas 5 85 Ind Cas 188=A I R 1925 Mad 411=47 M L J 714=20 L W 687 No distinction can be drawn between interpretation of an Act, and of scheme under section 92 A I R 1924 Mad 369=47 M 139=18 L W 237 =(1923) M W N 664-75 Ind Cas 189 Where scheme drawn up by the Court contains a provision permitting parties interested to apply to the Court for directions and modifications to be made in the scheme already existing, the proper remedy for defects discovered in the original scheme is to apply to the Court and not to file a regular suit A I R 1922 Mad 413=(1922) M W N 477=70 Ind Cas 579 of a charitable trust can be

barred under this section A I R 1922 Mad 570=A I R 1933 Mad 70-63 M the decree in a suit for a right of certain persons d in the scheme framed

pursuant to the decree preventing those persons from joining the congregational prayers or from offering or conducting their own prayers in the mosque 34 Bom L R 655=A I R 1931 Bom 434=138 Ind Cas. 810=A L R. 1932 Bom 999 Obviously no trivial deviation from formal compliance with the rules under the , and no injury is done if the rules have 1932 Mad 658=36 L W 659=140 Ind n in the scheme decree providing for the in Court is *ultra vires* A I R 1931

Nag 82=131 Ind Cas 423 A rule in the scheme of management giving liberty to apply for modification of the scheme is not *ultra vires* 33 Bom L R 546=A I R 1931 Bom 388=133 Ind Cas 823 Such application can be made without sanction of the Advocate General *Ibid* see 33 Bom L R 520=A I R 1931 Bom 391=



133 Ind Cas 740=55 Bom 414, 24 B 45, 27 Bom L R 872, 28 Bom L R. 309, 37 C L J 281, A I R (1923) P 420

Clause (h)—'Further or other relief' in clause (h) must be read *ejus dem generis* with clauses (a) to (g) of section 92 (1) 33 Bom L R 1575=135 Ind Cas 806=A I R 1932 Bom 65. Where the relief sought is joint management of a mosque by plaintiffs together with defendants and the residents of their *mohallas*, it is not one under clause (h) 33 Bom L R 1575=135 Ind Cas 806=A I R 1932 Bom 65. The words 'further or other relief' in this clause means reliefs on the nature of those which are enumerated in cls (a) to (g) A I R 1928 P C 16=55 C 519=55 I A, 96=32 C W N 482=26 A L J 461=54 M L J 609=30 Bom L R 774=48 C L J 55=108 Ind Cas 361. Legislature did not intend to include relief against third parties in cl (h) under further or other relief. *Ibid* Decree for actual possession against transferees from trustee cannot be passed A I R 1925 All 683=47 A 770=23 A L J 601=89 Ind Cas 40. Words 'such further relief as the nature of the case may require' cover every subsidiary order or direction on details necessary for carrying out main purposes of section 40 Ind Cas 182. Under s 92 (h) court has inherent power to appoint new trustees and to direct old ones to deliver properties 17 A L J, 957=58 Ind Cas 366.

Other reliefs—Prayer for declaration that property is not personal property of defendant but public charitable property is one for relief not covered by s 92 A I R 1930 Bom 1. Ind Cas 445, see also A I R 1928 Rang 143=6 Bar. R 1926 Mad 1029=74 I W 286=97 Ind Cas 630. reliefs sanctioned invalidates suit if omission is material A I R 1928 Mad 205=59 M L T 628=107 Ind Cas 21 L W 71. Suit by new trustee, s 92 42 B 742=20 Bom L R 954=10. ers under s 92, it cannot impose

control which was not a part of the original trust A I R 1922 Mad 409=(1922) M W N 670=70 Ind Cas 87. Suit brought under s 92 must be limited to matters included in it and it is not competent to grant reliefs other than those included there in 50 P W R 1919=144 P R 1919=51 Ind Cas 611. Decree for damages for loss caused to *Deo Jethanani* by the trustee's misconduct cannot be passed A I R 1926 Mad 507=92 Ind Cas 520. Suit is not bad where additional prayer not covered by sanction was added and subsequently removed A I R 1927 Mad 1033=26 L W 581=106 Ind Cas 134. Where there is no *mutwalli*, court can appoint one in respect of a wakf even without suit under this section A I R 1928 Cal 368=55 C 1254=32 C W N 835=110 Ind Cas 416.

by art 17 (4) Schedule II of R 1928 Lah 113=6 Lah 730=Fee Rules (1925) do not exempt R 1927 Mad 940=53 M L J 3 C L J 211=14 C W N 932, M 149 note. Where in a suit plaintiff, but it is only claimed that

the trustee should be compelled to restore misappropriated sums to trust Art 17 (b) 5th H Court fees Act applies A I R 1925 Mad 722=48 M L J 514=87 Ind Cas 25.

Limitation—Where the suit is brought on behalf of the public there is no bar of limitation 69 Ind Cas 15=43 M L J 448=(1922) M W N 464=A I R 1922 Mad 394.

Cost—Judge deciding absence of misfeasance cannot record decision that trust is public nor award costs 20 C W N 1354.

Appeal—No appeal nor revision lies from an order of District Judge as *person designated* under scheme of management of a charitable institution A I R 1926 Bom 167=28 Bom L R 64=93 Ind Cas 195. Orders passed in relation to a scheme sanctioned in scheme suit are not in 1927 Mad 1110=102 Ind Cas 633, A I 514=128 Ind Cas 515. Application to C decree is one in execution and order th -39 M L T 579=27 L W 32=107 Ind suit returned for representation but not Mad 456=28 M L W 279=54 M L J.

framed, appeal from order of the court in the matter of its execution does not lie A I R 1926 Mad 659=91 Ind Cas 794 Where Court reserves to itself right to confirm elections held under scheme framed by itself and application for confirmation is filed by parties on one side and opposed by parties on other side, court's order being decree is appealable as such A I R 1928 Rang 168=6 Rang 97=110 Ind Cas 41 Where remedy is not asked in the suit but given in the scheme, it cannot be and need not be asked in execution and as such order 1924 Mad 369=47 M 139=75 Ind Cas 18) When application to amend scheme order on such application appealed against A I R 1926 Mad 559=1926 M W N 226=49 M 580=95 Ind Cas 720 The rules framed by court under a scheme decree to regulate the functions *Dharma Kartas* and to enforce office discipline are not appealable A L R. 1933 Mad 993

**93. [S. 539, last para.]** The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf

Exercise of powers of Advocate General outside Presidency towns  
130=A I R 1928 Mad 205 But such order cannot be signed by the Assistant Collector during Collector's absence 35 B 243=13 Bom L R 207 Conditional

particular  
prose-  
(1931)  
37=61  
matters,  
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before

the provisions of s 93 can be utilized Having regard to the terms of section 93 the previous sanction of the Local Government is necessary whether the suit is instituted by a collector or by an officer appointed by the Local Government, or whether the suit is instituted by two or more persons with the consent in writing of such collector or officer 591 A 121=53 A 990=62 M L J 249=55 C L J 54=36 C W N 257=35 L W 224=9 O W N 53=1932 A L J 182=34 Bom L R 494=136 Ind Cas 461=A I R 1932 P C 51=1932 M W N 685=A L R 1932 P C 56 (P C)

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ground of the absence of the requisite sanction *Vide ss 2, 3 4 of the Public Suits Validation Act of 1932*, see also 9 O W N 966

## PART VI

### SUPPLEMENTAL PROCEEDINGS.

**94. [New]** In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, Supplemental proceedings

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his

appearance, and if he fails to comply with any order for security commit him to the civil prison,

- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property,
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold,
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property,
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient

**Scope**—A *prima facie* case must be established before a relief can be granted in an application for an interlocutory order A I R 1928 Cal 469=55 C 978=32 C W N 576=112 Ind Cas 712

**Clause (a)**—Vide Order 38, rules 1 to 4

**Clause (b)**—Vide order 38, rules 5 to 12, see also 14 W R 384, 31 C L J 179 *Panchayat* being a public body can be compelled by Court to produce documents in its possession A I R 1928 Mad 299=51 Mad 1=54 M L J 174=108 Ind Cas 760

A I R 1926 Cal 604=30  
d to temporary injunction on  
reach of peace is apprehend  
ed A I R 1926 Cal 601 30 C W N 214=94 Ind Cas 871 Rule 2 (3) of order 39 is sufficiently wide and it applies to disobedience of all the injunctions under s 94 also A I R 1926 Mad 574=50 M L J 401=95 Ind Cas 196 Injunctions cannot be granted by a Civil Court to party to proceeding under s 40 of the Bengal Tenancy Act preventing him from further proceeding with application to Revenue Court under the same section 5 P L J 76=(1919) Pat 461=53 Ind Cas 37

**Clause (d)**—Vide order 40 rules 1 5 The appointment of a receiver is discretionary with the Court 16 C W N 997

**Clause (e)**—Vide 17 C W N 318

Compensation for obtaining arrest attachment or injunction on insufficient grounds 95 [Ss 491, 497] (r) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

(a) it appears to the Court that such arrest or attachment or injunction was effected on insufficient grounds, or

(b) the Court is satisfied that there is sufficient ground for instituting the same,

the defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees as it deems a reasonable compensation to the defendant for the expense or injury caused to him

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction

**Scope**—In order to entitle the plaintiff to succeed in an action for damages under s 95, it is necessary that the suit should have terminated in his favour or only when the attachment is actually severed from the basis of the compensation is allowed excepting that in a suit the plaintiff has to show that attachment was applied for not merely on insufficient grounds but that it was done maliciously and without probable cause A I R 1925 Bom 337=40

629=27 Bom L R 525=87 Ind Cas 1026 A person whose property was attached wrongfully can claim damages from the attaching creditor though acting *bona fide* A I R 1929 Lah 200=112 Ind Cas 848 This provides for compensation as a limited and incidental relief native remedy In a suit

England is that actual malice must be proved without such proof 35 M 598=10 M L R 365=(1911) 2 M W N 414, 32 M 170 Injury having been caused as a result of what was actually done though attachment was not completed may entitle plaintiff to claim compensation A I R 1922 Mad 206=45 M 527=15 M L W 440=66 Ind s property is sufficient ground for compensation if those property was or though acting made in counter

bar to a suit for damages Section 95 acts as a mentioned therein have been fulfilled 38 M I section is not applicable in case of enforcement of

R  
9

for attachment before judgment free in the suit and is not capable of 17 M L J 310 Amount not limited to Rs 1,000 as to suits under the ordinary

Cas 763 If no evidence as to the damages suffered is forthcoming general in injunction plaintiff has 1923 Mad conditional 5 and the 17 compensation include conditional M W N on or human

liation are also included in expense or injury in s 95 for "wrongful arrest" 32 Ind Cas 592=3 L W 30=(1916) M W N 76

Whether this section application of the injured compensation in respect of injured defendant is at application under this section application must 536=A L R 1932 upon proof that judgment before judgment cause of action is

C W N 447=A I R 1932 Cal 821 Except for malice or want of probable cause, it merely on the ground that it was subsequently held to be 55 Suit for damages can lie on insufficient grounds A I

R 1927 Cal 247=53 C 1008=100 Ind Cas 318 16 C W N 540, 18 C W N 1189 30 C W N 465 Tortious temporary injunction is a sufficient ground for a separate suit for compensation In absence of sufficient grounds in an action under s 95 (2) malice can be inferred if the plaintiff has suffered injury A I R 1922 Lah 303=45 P L R 1922=69 Ind Cas 573 In an independent suit for damages where plaintiff was not a party to the suit it is not necessary to prove that the prosecution was taken out maliciously and without probable cause In such a case a suit will lie in case of wrongful attachment though made in good faith A I R 1924 Rang 302=83 Ind Cas 433

**Appeal.**—An appeal lies from an order under this section 49 Ind Cas 86=25 M L J 45=9 L W 69, 11 Ind Cas 917=4 Bur L T 204 But no second appeal lies 21 Ind Cas 756, 4 Bur L T 204=11 Ind Cas 917 An appeal does not lie when an order under this section is passed by a Small Causes Court 50 Ind. Cas 886=36 M L J 435=(1919) M W N 490, 26 Ind Cas 359

## PART VII.

### APPEALS

#### APPEALS FROM ORIGINAL DECREES.

96 [S 540, Jud Act, 1873, S 43] (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court

(2) An appeal may lie from an original decree passed *ex parte*

(3) No appeal shall lie from a decree passed by the Court with the consent of parties

**Appeal**  
any application  
decision of

59 I A 283  
L J 643-9 O  
R 1932 P C  
an appeal and an  
dismissed the

Appellate Court exercises its jurisdiction while in the latter it sent rely d scree  
tionary with the High Court to exercise it or not A I R 1931 Nag 17=130 Ind  
Cas 145 The word an 'appeal' in this section includes the filing of a fresh appeal  
unless the dismissal of the first appeal bars a fresh one A I R 1933 Pat 514=4  
P L T 405=75 Ind Cas 284

a decision may amount  
A I R 1929 Mad 404=  
person who sought the  
sed against  
lies A I

all lies under  
every other  
case governed by the provisions of C P Code unless it is so allowed by the Code  
re in respect  
other and  
ough unless  
ro forma or

otherwise A I R 1930 All 706=(1930) A L J 847=52 A 886=128 Ind Cas  
390 Subsequent enactment during the pendency of a suit cannot take away the right  
of appeal which is a substantive one A I R 1930 All 706-(1930) A L J 842=  
52 A 886=128 Ind Cas 390 An appeal lies under s 96 from a decision in refer  
ence under s 30 of the Land Acquisition Act though not under s 54 A I R 1929  
Mad 223=9 L W 237=55 M L J 387=115 Ind Cas 345 Right of appeal  
exists in all civil proceedings though not called suits unless it is expressly barred  
by the code *Ibid* Plaintiff can be said to have sustained an injury if joint possession  
instead of an exclusive one is awarded by a decree A I R 1924 Cal 850=28 C  
W N 86, 40 C L J 90=82 Ind Cas 386 Where the order in a decree was  
that certain defendants are not liable for mesne profits appeal lies from a decree and  
not against judgment A I R 1924 Cal 1006=39 C L J 731=81 Ind Cas 577  
No appeal lies from an order as to costs unless a question of principle is involved.  
A I R 1924 All 794=80 Ind Cas 39 Appeal does not lie from an order rejecting  
the claim of a person as a legal representative of deceased plaintiff, and not conclu

629=27 Bom L R 525=87 Ind Cas 10  
wrongfully can claim damages from the  
A I R 1929 Lah 100=112 Ind Cas  
limited and incidental relief, in the  
native remedy. In a suit for damages  
should prove that the defendant had negligence  
and also malice in fact. The rule, under  
which this section allows a limited remedy  
1365=(1911) 2 M W N 414 32 M  
of what was actually done though attached  
to claim compensation. A I R 1912 V  
Cas 760. That the defendant was negligent  
sufficient to justify attachment before judgment  
stances 25 M I J 45=9 L W 69  
attached wrongfully can claim damages  
*bonafide*. A I R 1929 Lah 100  
affidavit for compensation for wrongfully  
bar to a suit for damages. Section 10  
mentioned therein have been fulfilled  
section is not applicable in case of enforcement  
than Rs 1000. A L R 1933 Mad  
=38 L W 385=65 M L J 342=1933  
language of this section an order for costs  
on sufficient grounds must be embodied.

Cas 763. If no evidence as to the  
damages can be claimed in an action for  
was granted after hearing both parties and  
not filed in his suit it is uncertain if it  
352=17 L W 150=71 Ind Cas 450. Will  
order of attachment of certain movable  
attachment was sufficient continuation of suit  
sation appellate court is decree in  
379=33 Ind Cas 9=19 M L J 268  
3 C W N (2) 4 C W N 44  
M L J 112 (1 B)=18 Ind Cas 55

**Who can appeal.**—An appeal does not lie by a decree holder from a decree  
with adverse finding. A I R 1919 Pat 386=8 Pat 617=10 P L T 643=119 Ind  
Cas 514. Appeal lies from a decree though formally in favour of a mortgagor but  
with adverse findings on their contentions on the strength of which the court dis-  
missed the plaintiff's suit. A I R 1916 Mad 974=51 M L J 211=97 Ind Cas  
346. Persons wrongly  
has a right of appeal  
108=41 Ind Cas 468  
as *res judicata* and dec

771. Defendant has no right of appeal in finding of certain facts when a suit was  
dismissed for want of cause of action. 20 C W N 1354=35 Ind Cas 837. Right

of appeal is in  
co-defendants  
do not operate as

M L J  
particular  
sufficient

1 L J  
at adverse

merely on some other ground. A I R 1924 Mad 689=29 L W 63=119 Ind Cas  
960=47 M 633=(1924) M W N 491. Where an appeal is dismissed re-  
not an aggrieved party and therefore he cannot appeal. A I R 1912  
77 Ind Cas 477. Appeal lies against decision whether such decision was

Continuation of original suit

M W N 223=30 M L J  
W R 261, 19 C W N 359,  
Cas 733=(1915) M W N 844, 24

of the plaintiff or not in a suit for rent where the plaintiff's title was proved but relation of the tenancy disproved 43 C L J 384=63 Ind Cas 520 Opinions on adverse finding made in the judgment by appellate court cannot operate as *res* incompetent judgments implied in a I R 1924

Mad 858=47 M L J 612=(1924) M W N 867=85 Ind Cas 868

An appeal shall lie from an *ex parte* decree—An appeal lies against a consent decree passed *ex parte* by a person not a party to the compromise by his abstention from appearance A I R 1928 Mad 922=108 Ind Cas 784 In an appeal from *ex parte* decree Appellate Court is to look to the merits only and whether there has been proper service of summons is not a subject matter of an appeal but Bur L J 282 ed in a suit out no appeal held that no dismissed on District Judge

39 A 143=14 A L J 1226=36 Ind Cas 277 Wrongly excluded evidence can be directed to be produced by the appellate court even in case of *ex parte* decree 34 Ind Cas 493=9 S L R 191 In a suit for foreclosure the court made a compromise decree in which the present plaintiff was *ex parte* No steps were taken to set aside *ex parte* decree and the present suit was brought for a declaration that the *ex parte* decree was a nullity Held though the decree might be wrong it was not without jurisdiction Not having questioned by way of appeal plaintiff is bound by it (1931) A L J 301=A I R 1931 All 425

No appeal from consent decree—Where the parties agree to abide by the finding on a particular matter the decision on such case is in the nature of an arbitrator's award and is such is not appealable 113 Ind Cas 365 see also 19 A L J 14=43 A 266=A I R 1911 All 310=59 Ind Cas 787 see also 109 Ind Cas 713=10 Lah L J 333, A I R 1926 Bom 39=27 Bom L R 1279=91 Ind Cas 294, A I R 1926 All 90=89 Ind Cas 586 Appeal does not lie from decisions arrived at by court by spot inspection and oral statements at spot, at the instance of the parties themselves in a dispute respecting land A I R 1930 All 127=(1930) A L J 452=122 Ind Cas 685 Where parties agree as to the procedure to be adopted to come to decision on merit and also agree that such decision will be binding the decision not being an adjustment under Order XXIII, bars a right to appeal therefrom A I R 1929 Oudh 451=6 O W N 771=120 Ind Cas 826 When order recording compromise is not contested, decree passed in terms of such compromise is not appealable 57 B 206=35 Bom L R 127=A I R 1933 Bom 205=144 Ind Cas 448=A L R 1933 Bom 209, see also A L R 1933 Pat 329, see also A L R 1933 Sind 28=A I R 1933 Sind 29=26 S L R 395, A I R 1929 Bom 68=30 Bom L R 1610

Compromise decree can be appealed against by a person not a party to the compromise 22 C L J 332=20 C W N 178=31 Ind Cas 426 Appeal lies from a decree on compromise by a person on whose behalf the suit was compromised by a party without

118 Ind Cas 74

who denies th

114 Ind Cas 10

passed, not limited merely to the property in dispute A I R 1929 Sind 32=114 Ind Cas 101 Appeal lies as to the exact nature of the compromise in dispute A I R 1928 Cal 108=46 C L J 353=106 Ind Cas 529 Consent decree ceases to be consent decree if consent to it has been caused by the compulsion of the Court. A I R 1923 Lah 129=69 Ind Cas 653 Order passed with the consent of the pleader under a mistake of fact can be set aside only if grave injustice is established A I R 1923 P C 184=40 C L J 272=47 M L J 164=26 Bom L R 189=46 M L J 160=77 Ind Cas, 355 The Judge does not become arbitrator in a case where he is asked to dispose of it off and in a particular manner by the parties unless they agree to abide by his decision 76 Ind Cas 309=A I R 1924 Sind 134=18 S L R 306 The fact of the defendant not objecting to a particular relief decree, does not make a decree a consent decree, if the relief is eventually given 49 Ind Cas 840=15 N L J 9. Decree passed under order 23

sively determining the rights of the parties Hence remedy by way of revision lies A I R 1924 Mad 813=47 M L J 370=(1924) M W N 763=80 Ind Cas 242 A preliminary decree can not be appealed against after the passing of the final decree But appeal may be allowed to be so amended as to convert it into one against the final decree 33 C L J 414-25 C W N 776=48 C 1036=61 Ind Cas 928, see also A I R 1925 Sind 178=18 S L R 133=78 Ind Cas 978 Appeal must be dismissed if the decree appealed from has been set aside on review during the pending of an appeal 140 P R 1919=54 Ind Cas 966 Appeal lies against decree making defendants liable for their own costs on withdrawal of claim against some of them 18 M L J

An appellate Court can dismiss additional evidence, if it afterwards  
34 C W N 839=131 Ind Cas

ever and appeal is pending, the proper course is to draw a fresh decree as it appears

for taking

Cal 353=

extent what

trial Judge should so far as possible be avoided but it is otherwise when the question in issue depends upon circumstantial evidence and the evidence has not been shifted by the trial court with reference thereto A I R 1922 Cal 260=34 C L J 384=25 C R 1933 Oudh  
242=10 O W N Decree in suit  
transferred from S 23 Pro S C C  
Act is appealable to have abated  
amounts to dismissal 3 and 4 Order  
XXII C P Code an L T 364=30  
M L J 486=(1916) 1 M W N 301 An order of remand under s 151 C P Code is not appealable. It is however open to revision 32 P L R 169=A I R 1931 Lah 302 It is not necessary for the party aggrieved by an order under order 23 rule 3 to appeal both from the order and the decree, in order to maintain his appeal against the order under order 23 rule 3 36 C W N, 1013

Appeal in Continuation of suit—An appeal is continuation of original suit and appellate court's decree is decree in suit (1916) 1 M W N 223=30 M L J 379=33 Ind Cas 9=19 M L T 268 see also 18 W R 261, 19 C W N 359, 3 C W N 62 (n), 4 C W N 44, 30 Ind Cas 753=(1915) M W N 844, 24 M L J 112 (F B)=18 Ind Cas 55

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53=83 Ind. Cas

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960=47 M  
not an agg  
77 Ind Cas



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3, is not *ipso facto* a consent decree within s. 96. A decree based on finding against the consent is not within s. 96 (3) and is appealable. A decree dismissing the suit on the ground of an alleged compromise cannot be said to be under order XXIII, rule 3. 46 Ind. Cas. 775. It is within the competence of the court to set aside an interlocutory order made by consent if a proper case is made out by an application in the same suit.

Second appeal of the Appellate C

9 Lah. 176=30 P. L. R. 135=119 Ind. Cas. 257. The only remedy by which an objection can be taken by a party to a compromise is either by review or by a separate suit and not by way of appeal. A. I. R. 1926 Cal. 512=91 Ind. Cas. 620. Appeal does not lie from order recording compromise after decree has been passed thereon. A. I. R. 1926 Cal. 412=29 C. W. N. 928=87 Ind. Cas. 248; A. I. R. 1922 Mad. 416=43 M. L. J. 290=(1922) M. W. N. 495=70 Ind. Cas. 425; 66 Ind. Cas. 837=A. I. R. 1921 Mad. 697=16 L. W. 155=(1922) M. W. N. h. 399=3 Lah. 175; 30 C. L. J. 231=57 Ind. Ca. been waived the decree following is a cons. A. I. R. 1920 P. C. 139=18 A. L. J. 625=39 M. L. J. 68=28 M. L. T. 97=12 L. W. 260=24 C.

and acted on it and the defendant agreed not to prefer a second appeal, but inspite

no express leave of the court  
It is not a consent decree  
(1931) A. L. J. 76. A decree  
ence and is not a consent  
decree A. I. R. 1934 Lah. 67.

97. [New] Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Scope—If appeal against preliminary decree in partition suit is not filed, right to object against the Court to which party Ind. Cas. 841. If a party is under this section

75 Ind. Cas. 319. Bar of limitation cannot be pleaded as an appeal against final decree if not already pleaded before passing of the preliminary decree. 50 Ind. Cas. 747. Provisions of personal decree in preliminary decree must be appealed against within period of limitation; otherwise right to object is lost. 6 O. W. N. 569=123 Ind. Cas. 215; see also 6 O. W. N. 974. Where the memorandum of appeal filed purported to be from the final judgment and decree and was accompanied by a copy

of the final decree and a copy of the preliminary judgment held that the appeal in no conceivable view be regarded as an appeal from the preliminary decree which was not even referred to in the memorandum and no copy of which accompanied it 59 C 781=36 C W N. 420=A I R 1932 Cal 589=140 Ind Cas 662

Where no preliminary decree is drawn up—There can be no appeal under this section from a preliminary finding unless a formal decree is drawn 15 Bom L R 382=37 B 480=19 Ind Cas 894, see 14 Bom L R 560=36 B 536=15 Ind Cas. 159, 16 Bom L R 67=38 B 331=23 Ind Cas 605, but see 19 C W. N 755=20 C L J 476 Under the Civil Procedure Code, it is the duty of the Court to draw up a decree 38 B 331=16 Bom L R 67=23 Ind Cas 605

pre  
prel

the final decree A I R 1930 Pat 177=11 Pat L R 61=127 Ind Cas 449 (F. B.); 32 C W N 858=48 C L J 28=117 Ind Cas 557=A I R 1928 Cal 720, A I R 1928 Nag 68=105 Ind Cas 567, A I R 1929 Nag 359=120 Ind Cas 334, 68 Ind Cas 475, 19 C W N 1132=33 Ind Cas 59 Appeal from a preliminary decree after final decree is not competent unless the final decree is also appealed against A I R 1926 Cal 157=91 Ind Cas 358, A I R 1928 Lah 73=107 Ind Cas 610, 71 Ind Cas 290, 82 P L R 1922=A I R 1921 Lah 265=67 Ind Cas 278, 33 C W N 414, 25 C W N 776, 67 Ind Cas 261, 33 Ind Cas 146=18 Bom L R 76, 33 Ind Cas 137 An appeal from preliminary decree after the final decree is competent Appeal against final decree is unnecessary for maintaining an appeal against preliminary decree though final decree may not wholly be dependant on preliminary decree A I R 1923 Cal 689=50 C L J 466=34 C W N 66=57 C 1013=123 Ind Cas 30, (F B) Final decree passed during the pendency of an appeal against preliminary decree is valid A I R 1909 A 287=1929 A. L. J 480=51 A 640=119 Ind Cas 510 107 Ind Cas 581, A I R 1928 All 192 If

appeal may be necessary if final order refers to what happened after preliminary T 563=27 L W 267=107 Ind Cas 793  
final decree after the success of appeal

54 C 328=31 C  
preliminary decree no

must appeal or

Bom 43=27 Bom L R 1492=92 Ind Cas 545

Where appeal was filed against preliminary decree but was dismissed before passing of the final decree, the final decree is passed A against preliminary decree ca A I R. 1924 Cal 543=78 Ind

]  
]

Cas 802, see also 52 Ind Cas 697 Order fixing interest at any suitable rate in a preliminary decree cannot be objected to, if no appeal has been made against it 4 P L J 306=51 Ind Cas 738 Order of remand after settlement of certain issues is a preliminary decree and hence appeal lies therefrom 20 C W N 43=32 Ind Cas 866 Finding that notice was necessary is not preliminary decree and hence is not appealable (1917) 3 U B R 1=11 Bur L T 95=40 Ind. Cas 677 Finding

on an issue whether the plaintiff was an agriculturist is not a preliminary decree A I R 1922 Bom. 336=70 Ind Cas 728 Single appeal from both the preliminary and final decree is permissible in a suit for accounts, and the appellant is bound by the valuation in the plaint for the purposes of Court fee A I R. 8921 Mad 406=14 L W 389=(1921) M W N 558=70 Ind Cas 392 Appeal from order granting application from final decree having been objected by the judgment debtor the ground that the decree was  
I. R 1925 Oudh 102=27  
issue as to jurisdiction of him

subsequently dismissed does  
ion If the appeal succeeds,  
pellate Court A I R 1928

Cal 804=115 Ind Cas 591.

98. [S. 575] (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision where appeal heard  
by two or more Judges

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

“(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patents of any High Court”\*

**Scope**—“This section with certain variations reproduces section 575 of the former code. But there is difference between the two codes which make a very important difference for the purposes of a reference such as that now before me. Under the old Code it is a point of law that is to be heard by one or more of the other Judges. The result is that whereas under the old Code I could have disposed of this appeal on a reference under the present Code I cannot. The intention of section 98 is that the Judges hearing the appeal should come to a complete decision with the reservation on the point of law on which they differ and they should by their judgments make it clear that if the point of law is decided in one way it will have a certain final result and if it decided in another way it will have another and a different final result. *Per Jenkins C J* in 18 C W N 33 (36), see also 39 C 353=14 C I J 532. If an appeal against a decree heard by two Judges, only that part of decree will be reversed upon which the judges were agreed and decree will be confirmed as to the rest. A I R 1928 Mad 180=51 M 201=51 M L J 703=28 L W 158=109 Ind Cas 153. Section 98 governs when Bench differs in deciding an appeal. A I R 1926 Cal 121=52 C 1018=91 Ind Cas 897. A I R 1926 Lah 63=7 Lah 179=27 P L R 50=8 Lah L J 13=93 Ind Cas 344. Where two judges differ appeal is confirmed. A I R 1925 Mad 1032=21 L W 721=86 Ind Cas 857. A I R 1926 Lah 65=7 Lah 179=27 P L R 50=8 Lah L J 13=93 Ind Cas 344. 22 C I J 525=31 Ind Cas 965. Section 98 is confined to appeals from Mofussil Courts and does not apply to Letters Patent appeal. A I R 1923 Bom 218=76 Ind Cas 317. Section 98 (2) proviso restricts third Judge to give decision of points of law referred. A I R 1922 Oudh 189=9 O L J 219=25 O C 213=68 Ind Cas 209. Third Judge disagreeing with referring Judges can only express his opinion. A I R 1922 Cal 544=76 C W N 985. If he disagrees he should confirm the judgment. *Id.* In case of Division Bench differing on point of law reference must be made under s 98. 109 P W R 1916=154 P L R 1916=71 P R 1917=34 Ind Cas 714. Section 98 does not apply in revision 18 M L T

591=32 Ind. Cas  
governed when  
35 M. L. J. 110=

Award given should be  
41 M 643=8 L W 261=  
Subordinate Court, and  
differs in opinion one of the  
s 9<sup>2</sup> comes into operation  
s, see also 28 N L R 80=

140 Ind Cas 630=A I R 1932 Nag 83.

Section 98 does not control cl. 36 of Letters Patent A I R 1921 P C.  
6=45 B 718=19 A L J 403=23 Bom L R 623=30 C L J 488=25 C W N.  
605=40 M L J 519=48 I A 181=(1921) M W N 408=60 Ind Cas 822 Appeals  
from Mofussil Courts are governed by s 98 and cl 36 of Letters Patent 43 B  
433=21 Bom L R 157 (F B)=50 Ind Cas 715 Section 98 applies to appeal  
from Subordinate Courts and not to Letters Patent appeals A I R 1925 Pat 625  
=4 Pat 510=6 P L T 634=87 Ind Cas 849 Section 98 supersedes where  
clause 36 of Letters Patent is inconsistent A I R 1925 Cal 845=41 C L J 456=  
29 C W N 755=52 C 894 Section 98 C P Code and cl 36 Letters Patent, contain  
rules of  
case,  
A I R . . . . .  
Where :

is competent to decide. 17 C W. N 1165=35 A 487 (P C), see also 23 C L J  
592 Where in a suit there are several items for adjudication and where Judges  
composing the Bench differ in their view as to some of the items, the decree appealed  
from should be varied so far as the Judges composing the Bench agree to vary it  
word 'decree' in section 98 does  
it the formal expression of an  
in controversy in a suit If there  
ssion of adjudication as regards  
at sense, a adjudication as regards  
VI r 1 1 1

Subsection (3) of each item A L R 1934 All 55.

Subsection (3)—The amendments state in precise terms the fact implicit in  
s 4 of the C P Code that the Letters Patent of the High Courts override the provi-  
sions of s 98 *Statement of objects in the Reasons of Act 18 of 1928* With the addition  
of sub section 8, s 98 C P Code made by the Repealing and Amending Act 18 of  
1928, that section has no application to cases heard by Division Bench of a Chartered  
High Court, whether such appeals from decrees of subordinate Courts or from decrees  
passed by a Judge of the High Court on the original file All cases of difference  
of opinion among the Judges composing the Division Bench are governed  
by cl 26 Letters Patent and the Division Bench should state expressly the points  
of difference A I R 1934 Lah 571 Subsection (3) excludes chartered High Courts  
from the operation of s 98 11 P 772 Section 98 cannot control or override the  
provisions of cls 10 and 27 of the Letters Patent 135 Ind Cas 58 1931 A I J  
1157=A I R 1932 All 195, (1931) A L J 1157

The words of sub section (3) of s 98 cannot be construed to mean that s 98 (1)  
and (2) is superseded by reason of certain provisions of the Letters Patent Cl 27,  
Letters Patent Allahabad and s 98 of the Code are not inconsonant Cl 27 of the

circums  
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by s 98  
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1127=146 Ind Cas 84, but see A I R 1933 Lah 648=34 P L R 5  
Cas 427

**99. [S. 578]** No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction

**Scope**—Provision of s 99 and s 105 do not conflict A I R 1927 Rang 150=

case 52 C L J 566=A I R 1931 Cal 164, see also 32 Bom L R 300=A I R 1930 Bom 225

**Misjoinder of parties**—Necessary parties must be added, if not the suit should be dismissed Proper party may be added Objection as to non joinder must however be taken at the earliest stage A I R 1922 Mad 317=15 L W 283=(1922) M W N 106=42 M L J 133=31 M L T 266=70 Ind Cas 645 Non joinder of party is not fatal when the order in appeal is in his favour A I R 1922 Mad 439=70 Ind Cas 105 is doubtful whether misjoinder includes L W 241=44 M L J 249=72 Ind Cas 63 e irregularity 52 Ind Cas 105, 54 Ind Cas 850 to misjoinder of parties and causes of action cannot be entertained in appeal 43 Ind Cas 960, 108 Ind Cas 545=(1928) M W N 82 Misjoinder of parties affecting merits or jurisdiction affords no ground for second appeal 18 P L R 1916=37 Ind Cas 197 Non joinder is a mistake and is covered by s 99 A I R 1926 Cal 592=92 Ind Cas 899

613  
mis  
333 Sec 5199 does not cover case where joinder is  
Cal 419=89 Ind Cas 121

**Error defect or irregularity in any proceeding**—The irregularity of not joining a party to the suit cannot be cured by parties  
337=27  
only a  
1d Cas  
appeal  
A I R 1930 Lah 735=128 Ind Cas 303, see also A I R 1928 Pat 51=8 P L T 820=104 Ind Cas 747 But plaint signed and verified by next friend of a plaintiff who was major before institution of the suit is not valid as it is a material irregularity A I R 1924 All 54=45 A 701=21 A L J, 626=77 Ind Cas 30 Absence of general power of attorney in a suit is a mere irregularity and can be no ground to disturb the decree appealed from A I R 1923 Bom 44=24 Bom L R 1302=47 B 227=76 Ind Cas 34, see also A I R 1923 Rang 206=74 Ind Cas 100 Court's mistake in procedure must not make the party suffer A I R 1931 Oudh 22=126 Ind Cas 385 Questions about constitution of a right to maintain suit do not arise in proceedings in suit and so it is doubtful if s 99 applies A I R 1929 Cal 445=

under wrong section but in substance right was not set aside 41 Ind Cas 89 Where plaint states all facts freely, the defendant cannot object to the frame of the plaint in appeal 12 N L R 90=34 Ind Cas 704 Omission to appoint guardian of a minor is fatal to the suit A I R 1921 Cal 534=25 C W N 525=62 Ind

There can be  
taken after confirm  
from lines of domain

2 Court  
late Court  
refusal to  
R 1923  
99 if it is  
defendant  
30 Even

where after the court's finding that the defendant is major the suit is not amended,  
and the major defends the suit with  
of the parties A I R 1923 All 2  
grounds of delay and absence of  
trial A I R 1925 Bom 105=26 Bom. L R 907=24 Ind Cas 363 Omission to  
give notice to natural guardian before appointing a guardian by which a minor is  
not prejudiced is a mere irregularity and is cured by this section A I R 1925  
All 548=88 Ind Cas 294

Error of Court fee is cured by s 99 A I R 1925 Rang 65=2 Rang 462=84  
Ind Cas 971 Omission to apply to court for substitution of name of legal repre  
sentative of judgment debtor and where he acquiesces the irregularity is covered by  
1 Ind Cas 1050 Defect of omission to  
3=93 Ind Cas 291 Failure to amend  
this are not affected A I R 1928  
38 Omission to frame issue when suit  
A I R 1926 Bom 384=28 Bom L

R 743=96 Ind Cas 827 Tenants possessing several holding were made defen  
dants in a single suit The landlord, in spite of the irregular procedure cannot  
object to the use of evidence given in the case of some tenants as evidence in  
476=18 A L J 707=22 Bom L R  
After appellate decree is passed, an  
proceedings by the party executing  
the decree, though bad in form, is merely an error of procedure which is curable  
under

199  
the c  
1929  
by s  
ground  
Lah 402 Appellate court can interfere where non joinder affects the jurisdiction of  
the Trial Court 31 L W 717=130 Ind Cas 453=A I R 1930 Mad 757=58 M  
L J 613 Omission to sign and verify the plaint is a mere irregularity A I R  
1930 Lah 715=178 Ind Cas 303, see also 40 A 147, 22 A 55, 20 A 442, A I R  
1932 B.  
126 Ind  
here has

in accordance

diction of the  
case 59 C 496=138 Ind Cas  
1213 Appellate Court can  
necessary party A L R  
72=(1933) M W N 1209=3

on appeal in order to satisfy himself whether a certain claimant was admitted to  
tenancy or not obtained evidence of certain records but failed to record his reason  
for doing so as required by s 41 rule 27, the failure is mere irregularity which does  
not affect the merits of the case 14 L R 366 (Rev)

## APPEALS FROM APPELLATE DECREES

100. [S 584.] (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely —

(a) the decision being contrary to law or to some usage having the force of law,

(b) of law

(c) Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Scope High Court In the first  
appeal the onous finding of fact by the  
lower Court t A I R 1929 All 885=  
(1930) A I R should carefully consider the  
entire mater 2 1930 Lah 12=123 Ind  
Cas 573 e and not based on surmise  
A I R 192 When second appeal decided  
only on que A I R 1921 Lah 341=  
4 Lah L J 464, see also 43 A I A second  
appeal is only competent on the gr C 753=16  
A A 077-173

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having the force of law or failed to determine some matter which means some  
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1930 All 510=(1930) A L J 1119=127 Ind Cas 531 Court will decide in second  
appeal only admissibility of the documentary evidence and not their evidentiary  
value A I R 1926 Cal 727=92 Ind Cas 104 Court in second appeal cannot  
reverse finding of lower Appellate Court on authority not quoted before it A  
I R 1930 Lah 737=126 Ind Cas 433 Where the decision is arbitrary the  
appellate Court can come to independent decision A I R 1922 Lah 127=65 Ind  
Cas 464 But the fact that upon the evidence, the High Court would have come  
to a different conclusion is no ground for second appeal A I R 1926 Nag 192=  
90 Ind Cas 209, see also 31 C W N 32=A I R 1927 Cal 1=99 Ind Cas 189,  
101 Ind Cas 695=A I R 1927 All 574, 57 Ind Cas 561=A I R 1921 Pat 61=

533 A I R 1925 Cal 993=8, Ind Cas 540 Finding of trial Court  
material accepted on grounds of appeal cannot be examined in appeal though counsel  
was careless in drafting the grounds 21 P W R 1921=59 Ind Cas 689  
In an appeal against an order of remand the appellant's only grounds to attack the



judgment are those which would be available to him in second appeal A I R 1926 Mad 475=91 Ind Cas 462 In setting aside lower Court's judgment of appeal finding. . . . .

being with appellate finding. . . . .  
 liable to . . . . .  
 Privy Council takes a . . . . .  
 1926 All . . . . .  
 tion of . . . . .  
 foreign . . . . .  
 W 679 . . . . .  
 not be . . . . .  
 question . . . . .  
 of fact . . . . .  
 particular property still has . . . . .  
 Oudh 306=27 O C 76=11 O . . . . .  
 e argument is allowable in second . . . . .  
 all 289 No second appeal hes . . . . .  
 against a decision under s 53 of the Provincial Insolvency Act A L R 1934  
 Lah 78

Second appeal when decision is contrary to law—The term 'law' . . . . .  
 31 A 228 . . . . .  
 the first . . . . .  
 1=22 I A . . . . .  
 ion of law . . . . .  
 Deducing . . . . .  
 1930 Cal . . . . .  
 What is . . . . .  
 331 Oudh . . . . .

19=7 O W N 1091=10 Ind Cas 335 Finding that mere adjustment of his personal debt by means of the firm's lib by a partner is of itself prejudicial to the firm is open to interference in second appeal A I R 1931 Lah 136 A finding that there has or has not been a disruption of joint Hindu family is not a finding of fact, and can be questioned in second appeal It is an inference of the legal effect of the . . . . .  
 sed on expert and . . . . .  
 297=A I R 1933 . . . . .  
 formation in *situ* . . . . .

is question of fact But where inference is to be drawn from documents is a mixed . . . . .

but from application of judicial authorities is one of law and can be questioned in second appeal A I R 1929 Lah 426=11 L L J 110=10 Lah 868=31 P L R 93=117 Ind Cas 380 Judicial exercise of discretion in admitting appeal beyond time, cannot be interfered with in second appeal 123 Ind Cas 83 Reducing period for redemption by lower court can be questioned in second appeal A I R 1930 Lah 1060=120 Ind Cas 274 Plea of estoppel where facts are all admitted and the question is what consequence would flow from is pure question of law and can be raised . . . . .

either adverse posses . . . . .  
 482=27 P L R 89 . . . . .  
 scientific involves a . . . . .  
 legation of absence of . . . . .  
 of law 40 Ind Cas . . . . .  
 139=4 O L J 140 Where presumption arising from habits of people is not considered in coming to decision, error of law is committed rendering second appeal . . . . .  
 of dis . . . . .  
 tion of . . . . .  
 tion of . . . . .  
 or not . . . . .

=120 Ind Cas 683 Whether son was . . . . .  
 estion of law and not one of fact A I . . . . .  
 Ind Cas, 539 If a tenant is entitled to . . . . .  
 a pure question of law A I R 1927 . . . . .  
 4 Question of burden of proof is one . . . . .  
 217b 249=64 Ind Cas 901. Legal . . . . .

**Substantial error and defect in procedure**—No second appeal lies where there is no error of procedure A I R 1933 Rang 35=142 Ind Cas 829 In second appeal the High Court has the power of considering whether the procedure adopted by the lower appellate the inferences of fact or law are well founded has not apparently considered all the material facts and circumstances of the case, the procedure adopted by it in the trial of the case is not one in accordance with law and is a substantial defect which may lead to an error in the decision of the case on the merits 6 C W N 357 Where the lower court disposed of a suit upon a case not raised by the parties and to which evidence had not been directed held that there was a substantial error or defect of procedure within the meaning of this section 29 B 1=6 Bom L R 770=1 A L J 637 (P C)=8 C W N 865 Omission to try material issue is a substantial error decided by court held that the court possibly have produced error or defect in the decision of the case upon the merits and therefore a second appeal lay A I R 1927 Pat 209=6 Pat 298=9 Pat L T 722 (F B)=10, Ind Cas 633 Finding of fact based on misconception of law and an error of procedure can be questioned in second appeal A I R 1924 Pat 310=2 Pat 919=5 P L T 310=76 Ind Cas 347, see also A I R 1925 Cal 98=39 C L J 261=81 Ind Cas 999 Omission to determine critical question between parties and to consider oral evidence adduced Cas 40 The rejection of a commission in a case which court ought not to be error or defect in procedure which the decision upon the merits 23 C L J 600=34 Ind Cas 30 Where a Judge disposes of a suit on a point taken by himself on appeal without affording the parties an opportunity of proving what is necessary to meet the point he commits an error agreed to pro- tells party that In such a case interference in second appeal is proper A I R 1928 Cal 136=46 C L J 558=106 Ind Cas 841

**Error in dealing with evidence**—Findings of fact though very clear, but based on inadmissible evidence are not binding in second appeal A I R 1930 Lah 672=31 P L R 198=12, Ind Cas 50, A I R 1924 Lah 470=6 Lah L J 204=80 Ind Cas 705, 36 C L J 389=74 Ind Cas 383, 71 Ind Cas 825=A I R 1923 Lah 150, A I R 1922 All 439=66 Ind Cas 313, A I R 1921 Lah 119=2 Lah 271=64 Ind Cas 929, A I R 1921 Oudh 137=24 O C 237=64 Ind Cas 86 Where admission of document produced at a late stage is refused, second appeal lies A I R 1914 Pat 208=72 Ind Cas 397 An objection that a document that *per se* is not admissible in evidence has been improperly admitted in evidence cannot be entertained in the court of Appeal A I R 1923 Cal 378=72 Ind Cas 98, Case must be remanded if certain evidence has been refused A I R 1921 Cal 1034=41 C L J 374=86 Ind Cas 734, 10 Ind Cas 561 nents received 34 Ind Cas 726, 53 Ind P L T 343 can be raised at any stage but question of proof is one of law and can be waived A I R 1912 Pat 122=3 Pat L T 149 Question of admissibility and legal effect of evidence if not raised in first appeal cannot be agitated afresh A I R 1914 All 709=22 A L J 153=78 Ind Cas 221 Fresh objection regarding admissibility of evidence can 86 Ind Cas 734 Inadmissible of the finding though it may A I R 1923 Nag 107=18 document is a question of fact where objection to admissibility is not taken in lower court it cannot be taken in second appeal 97 Ind Cas 414 (Cal) Where finding of lower court is supportable on admissible evidence no necessity for a

revised finding A I R 1933 Pat P L R 225, 136 Ind Cas 783= evidence are ignored in arriving at in second appeal 1932 A L J 615=A I R 1932 All 603, see also 136 Ind Cas 710=33 P L R 263=A I R 1932 Lah 322, 137 Ind Cas 115=32 P L R 861=A I R 1932 Lah 293, A L R 1934 Pat 20 A finding arrived at by the final court of fact after discussion of the evidence which can in no sense be regarded as proper is not binding in second appeal A L R 1934 Pat 8=A I R 1934 Pat 66

**Irregularity in tak**  
allowed without stating  
79 Ind Cas 408 Where  
but did not base its fi  
second appeal A I R  
Lah 156=34 P L R 99=A I R 1933 Lah 328=144 Ind Cas 954 Rejection of  
fresh evidence not with discretion, but due to pie apprehension of insurmountable  
difficulty can be agitated A I R 1925 All 288=47 A 412=23 A L J 193=86 Ind  
Cas 761 Order of lower Appellate Court rejecting application for admission of  
additional evidence under Order 41 rule 27 (1) cannot be disturbed in second appeal  
42 M 737=37 M L J 125=53 Ind Cas 274, *contra per Sudaswa Aiyar* in *Ibid*  
The High Court should not admit fresh evidence as to facts in second appeal *Per*  
*Sadaswa Aiyar J* in 39 Ind Cas 954=1917 M W N 560, *contra per* Spencer *J*  
in *ibid*, see also A I R 1922 Bom 147=77 Ind Cas 515 A I R 1925 Mad 260=  
47 M L J 686=84 Ind Cas 973, 14 L R 102 Rev=17 R D 120 Where lower  
appellate court refuses to admit a certain material document as additional evidence  
in appeal the High Court will not interfere in second appeal 32 P L R 813

**New plea whether can be raised in second appeal**—Whether new plea  
patent on record and hence could be raised should be allowed to be raised depends  
upon facts of case and nature of plea A I R 1930 Lah 937 12 Lah L J 203=  
130 Ind Cas 513 New question of law not requiring fresh investigation of facts  
can be allowed in second appeal 54 C 4 4 A I R 1917 Cal 393=45 C L J 191  
=101 Ind Cas 150 (1928) M W N 601 113 Ind Cas 547 A I R 1923 Lah  
491=83 Ind Cas 768 A new point may be raised by a party for the first time in  
appeal if it is a pure question of law and does not take his opponent by surprise  
But the new plea cannot be allowed in second appeal when the new plea raises  
question of fact or mixed question of fact or law A I R 1923 Cal 247=36 C L J  
336=71 Ind Cas 849, see also 71 Ind Cas 381=A I R 1923 All 343, A I R  
1921 Pat 326=2 P L T 285=60 Ind Cas 393, 18 A L J 923=48 A 18=57 Ind  
Cas 266 51 Ind Cas 588=10 L B R 10=12 Bur L T 75, 41 Ind Cas 45=13  
N L R 98, 44 C 47=20 C W N 1099=24 C L J 140=34 Ind Cas 869, 2 Lah  
L J 255=67 Ind Cas 919

New plea cannot be allowed to be raised in second appeal so as to change nature  
=127 Ind Cas 254, 27 Ind Cas  
63=3 Lah 239, 10 A 495, 26  
be raised for the first time in  
requiring investigation into facts  
cond appeal 43 Ind Cas 87=

3 P L W 213=43 Ind Cas 857, see also 43 Ind Cas 955=4 P L W 136 50  
Ind Cas 190=6 O L J 76=22 O C 3, 51 Ind Cas 256, 57 Ind Cas 883, 3 Lah  
L J 516 62 Ind Cas 761 4 Lah L J 437, A I R 1922 All 124=66 Ind Cas  
858, A I R 1923 Cal 285=(7 Ind Cas 770, 68 Ind Cas 557=A I R, 1922 Lah  
363=3 Lah 239, 69 Ind Cas 655=A I R 1924 Cal 353, 70 Ind Cas 417=A I R  
1922 Bom 233, 56 Ind Cas 304 (All), A I R 1926 All 707=97 Ind Cas  
342, A I R 1927 Mad 411=38 M L T 102=99 Ind Cas 367, 99 Ind Cas 691=  
A I R 1927 Mad 455, A I R 1927 All 763=101 Ind Cas 426, A I R 1927  
Nag 351=104 Ind Cas 584

New plea even of law cannot be raised in second appeal unless good cause  
is shown why they were not taken in the Lower Appellate Court A I R 1930 All  
885=126 Ind Cas 18: Point not taken in the lower Court cannot be allowed for  
first time in the second appeal A I R 1913 All 358=45 A 53=74 Ind Cas 1004,  
A I R 1923 All 450=75 Ind Cas 612 A I R 1924 Mad 116=18 L W  
553=75 Ind Cas 613 A I R 1922 Pat 598=3 Pat 23=5 P L T 795=69  
Ind Cas 185, 72 Ind Cas 131=A I R 1923 Mad 306=17 L W 169, A L R  
1923 Cal 177=27 C W N 218=76 Ind Cas 213 Plea as to absence of notice  
cannot be raised for the first time in second appeal A I R 1923 Lah 609=72



revised finding A I R 1933 Pat 656=145 Ind Cas 944, 138 Ind Cas 399=33 P L R 225, 136 Ind Cas 783=A I R 1932 Mad 173 Where material facts and evidence are ignored in arriving at a finding of fact such finding can be challenged in second appeal 1932 A L J 615=A I R 1932 All 603, see also 136 Ind Cas 710=33 P L R 763=A I R 1932 Lah 322, 137 Ind Cas 115=32 P L R 861=A L R 1932 Lah 293, A L R 1934 Pat 20 A finding arrived at by the final court of fact after discussion of the evidence which can in no sense be regarded as proper is not binding in second appeal A L R 1934 Pat 8=A I R 1934 Pat 66

**Irregularity in taking** cc  
allowed without stating reasons =  
79 Ind Cas 408 Where an al  
but did not base its finding in  
second appeal A I R 1926 Mad 864=92 Ind Cas 661, see also A L R 1933 Lah 156=34 P L R 99=A I R 1933 Lah 328=144 Ind Cas 954 Rejection of fresh evidence not with discretion, but due to pre apprehension of insurmountable difficulty can be J 193=86 Ind  
Cas 761 Order r admission of  
additional evidence second appeal  
42 M 737=37 M L J 125=33 Ind Cas 274, *contra per Sadasiva Aiyar in Ibid*  
The High Court should not admit fresh evidence as to facts in second appeal *Per Sadasiva Aiyar J* in 39 Ind Cas 954=1917 M W N 560, *contra per Spencer J* in *ibid*, see also A I R 1922 Bom 147=77 Ind Cas 515, A I R 1925 Mad 260=47 M L J 686=24 Ind Cas 973, 14 L R 102 Rev=17 R D 120 Where lower appellate court refuses to admit a certain material document as additional evidence in appeal the High Court will not interfere in second appeal 32 P L R 813

**New plea whether can be raised in second appeal**—Whether new plea patent on record and hence could be raised should be allowed to be raised depends upon facts of case and nature of plea A I R 1930 Lah 957=12 Lah L J 203=130 Ind Cas 513 New question of law not requiring fresh investigation of facts can be allowed in second appeal 34 C 424 A I R 1917 Cal 303 45 C L J 191=101 Ind Cas 130 (1928) M W N 601=113 Ind Cas 547 A I R 1923 Lah 491=83 Ind Cas 768 A new point may be raised by a party for the first time in appeal if it is a pure question of law and does not take his opponent by surprise But the new plea cannot be allowed in second appeal when the new plea raises question of fact or mixed question of fact or law A I R 1923 Cal 247=36 C L J 336=71 Ind Cas 849, see also 71 Ind Cas 381=A I R 1923 All 343, A I R 1921 Pat 326=2 P L T 285=60 Ind Cas 393, 18 A L J 923=48 A 18=57 Ind Cas 206, 51 Ind Cas 588=10 L B R 10=12 Bur L T 75, 41 Ind Cas 45=13 099=24 C L J 140=34 Ind Cas 869, 2 Lah

raised in second appeal so as to change nature

=127 Ind Cas 254, 27 Ind Cas  
63=3 Lah 239, 10 A 495, 26  
be raised for the first time in  
requiring investigation into facts  
second appeal 43 Ind Cas 857=  
3 P L W 213=43 Ind Cas 857, see also 43 Ind Cas 955=4 P L W 136 50  
Ind Cas 190=6 O L J 76=22 O C 3, 51 Ind Cas 256, 57 Ind Cas 883, 3 Lah  
L J 516, 62 Ind Cas 761, 4 Lah L J 437, A I R 1922 All 124=66 Ind Cas  
838, A I R 1923 Cal 285=7 Ind Cas 770, 68 Ind Cas 557=A I R, 1922 Lah  
363=3 Lah 239, 69 Ind Cas 655=A I R 1924 Cal 353, 70 Ind Cas 417=A I R  
1922 Bom 233, 56 Ind Cas 304 (All), A I R 1926 All 707=97 Ind Cas  
342, A I R 1927 Mad 411=38 M L T 102=97 Ind Cas 567, 99 Ind Cas 691=  
A I R 1927 Mad 455, A I R 1927 All 763=101 Ind Cas 476, A I R 1927  
Nag 351=104 Ind Cas 584

**New plea even of law cannot be raised in second appeal unless good cause**  
is shown why they were not taken in the Lower Appellate Court A I R 1930 All  
885=126 Ind Cas 18 Point not taken in the lower Court cannot be allowed for  
first time in the second appeal A I R 1923 All 358=45 A 53=74 Ind Cas 1004,  
A I R 1923 All 430=75 Ind Cas 612, A I R 1924 Mad 116=15 L 1  
553=75 Ind Cas 613 A I R 192 Pat 398=3 Pat 23=3 P L T 72,  
Ind Cas 18, 72 Ind Cas 131=A I R 1923 Mad 506=17 L W 169, 1  
1923 Cal 177=27 C W N 218=76 Ind Cas 213 Plea as to absence of  
cannot be raised for the first time in second appeal A I R 1923 Lah

Ind Cas 779 A technical plea should not be allowed to be taken for the first time in appeal A I R 1924 Lah 328 Point involving additional evidence cannot be urged in second appeal A I R 1923 Bom 37=72 Ind Cas 993

A point not taken in the Court below, whether omission was by the appellant in that Court or whether the respondent failed to support his decree by taking the point will not be permitted to be raised except possibly (1) where the point may be described as involving a question of public policy, *e.g.* (i) involving jurisdiction (ii) involving the principles of resjudicata (iii) where the decision on the point would prevent future litigation In the above mentioned cases the plea may be allowed to be argued only if it can be decided from the materials before the court and does not involve the taking of further evidence or the sending of any case or any issue back to the lower Court or a decision of a question of fact (2) Where the plaint discloses no cause of action or the written statement no ground of defence, it is not a ground for permitting a new point to be argued merely (i) that it was omitted by oversight in the court below (ii) that the materials are all on record and that the answer to the point is plain 53 A 65=133 Ind Cas 428=1930 A L J 601= A I R 1931 All 35 (F B), see also A I R 1931 All 219=132 Ind Cas 426, A I R 1933 Lah 606=144 Ind Cas 669, 27 S L R 41=A I R 1933 Sind 176, 1934 M W N 118, 11 O W N 317

Fresh question of law and fact cannot be admitted for the first time in second appeal A I R 1924 Mad 913=47 M 861=47 M L J 503=(1924) M W N 820=83 Ind Cas 1009, A I R 1923 Lah 56=79 Ind Cas 990, A I R 1925 Mad 207=81 Ind Cas 498, A I R 1925 Cal 225=29 C W N 17=40 C L J 564=85 Ind Cas 875, A I R 1926 Nag 164=89 Ind inadmissibility at any stage 92=25 L W s 20 of the not be allowed

for the first time in second appeal A I R 1923 Bom 82=47 B 128=24 Bom L R 1284=76 Ind Cas 115 But question, if defendant is a necessary party, can

in appeal for first time A I R 1929 Lah 875=117 Ind Cas 907

Point of law for right decision of which there is no material in pleadings and R 1929 All 456=116 Ind Cas 525 Whether a gift is bad as question of law and fact and A I R 1928 Cal 49=140 Ind changed is a question of fact up of business question whether element of debt being a mixed

qu  
A  
C

Mad 528=100 Ind Cas 202 Where the facts are not disputed a question of limitation can be raised for the first time in second appeal A I R 1927 All 177=99 Ind Cas 280

Question of procedure dependant on facts cannot be raised for the first time in second appeal 91 Ind Cas 417 A mixed question of law and fact cannot be

in second appeal A I R 1927 All 50=97 Ind Cas 611= The plaintiff and must not s no adequate

investigation in the Lower Courts 96 Ind Cas 504 (All), see also 8 Lah 1 J 430=27 P L R 628=58 Ind Cas 268 A I R 1927 Nag 129=23 N L R 1=99 Ind Cas 187 A I R 1927 Lah 426=28 P L R 181=102 Ind Cas 426 But no decree can follow from plea not stated in plaint nor being consistent with it A I R 1921 Mad 349=50 L W 787=118 Ind Cas 219

Validity of imposition of the personal tax under s 85 of the old Bengal Municipal Act could not be questioned for the first time in the argument in the High Court A I R 1929 Cal 452=49 C L J 383=33 C W N 684=124 Ind.

Cas 335  
with order  
Ind Cas

appeal 3 P L T 623=6, Ind Cas 277, see also 67 Ind Cas 322=22 Bom L R 323=46 B 966, 49 C 1048=28 C W N 92=69 Ind Cas 530, 44 M L J 596=69 Ind Cas 363, 4 Lah L J 437, 36 C L J 186=64 Ind Cas 266=A I R 1921 Cal 781, 59 Ind Cas 3, 59 Ind Cas 316 (Cal), 59 Ind Cas 709=A I R 1921 Nag 94, 62 Ind Cas 884=19 A L J 442=3 U P L R (All) 81 Question whether parties constituted joint Hindu family cannot be introduced as a new plea in second appeal

New plea prejudicial to other party cannot be

23 Cal 292=65 Ind Cas 701 Issue depending

65 Ind Cas 706 Consideration of evidence

cannot be made in second appeal A I R 1922 Pat 167=65 Ind Cas 666 Objection taken in trial court but not argued in the lower appellate court cannot be raised in second appeal 19 A L J 511=43 A 555=63 Ind Cas 366, 55 Ind Cas 481=16 N L R 89 Respondent first coming to know of erroneous order restoring the appeal without notice can object to its validity in second appeal A I R 1922 Pat 281=6 P L J 625=3 P L T 117=63 Ind Cas 99 Point not raised before lower Appellate Court though mentioned in the memorandum of appeal cannot for the first time be allowed in second appeal 53 Ind Cas 441=7 O L J 17 New plea on which issue was not framed cannot for the first time be allowed in second appeal 31 C L J 78=24 C W N 53=54 Ind Cas 719, see also 52 Ind Cas 517=(1919) M W N 548=10 L W 157 Question of interest cannot be raised for the first time in second appeal 48 Ind Cas

on an issue of fact not

8 A court of second appeal

and involving questions of fact. 22 C W N 156=44 Ind Cas 91 Point of law patent upon record but not raised in lower court or in chief court cannot be given effect to by the court *suo motu* in second appeal 31 P L R 1918=54 P W R 1918=7 P L R 1918=45 Ind Cas of Tenant's failing to establish plea of permanent tenancy in suit for injunction cannot in second appeal ask for fresh enquiry to determine whether pecuniary compensation would suffice instead of injunction 55 Ind Cas 931 The point as to whether the notice to quit was legal and sufficient, when not raised in lower Appellate Court cannot be raised in second appeal 2 Pat L J 595=2 P L W 52=42 Ind Cas 663 Substituted defendants in place of a deceased defendant cannot raise in second appeal a plea of abatement raised in their written statement but as to which no express issue was framed 41 Ind Cas 1 A finding of fact based on admissible evidence cannot be questioned in second appeal 3 O L J 244=19 O C 166=34 Ind Cas 745 Whether a suit for declaration of a right of way by grant must fail for want of legally sufficient evidence to prove the grant can be argued in appeal though not taken in courts below 20 C W N 1158=34 Ind Cas 430

A new point which was not taken in either of the courts below cannot for the

1, 146 Ind Cas 939=A I R

42=A I R 1933 Nag 318,

523 When a point raised

under appeal and was not

1 at the preliminary hearing

time when the notice was issued to the respondent

ke the respondent by surprise and that it

court where it is a question of law apparent on

1. Pcs 6-A I R 1934 Pcsn 3 A new point

proven if the facts found are sufficient for the

determination of the point 3 A W R 436, 38 C W N 497 Where adverse

possession was never pleaded there was no issue upon it and it had never been

discussed it is a matter of evidence and cannot be dealt with in second appeal

3 A W R 486

**Abandonment of a point in Lower Court.**—Point even of law abandoned in Lower Appellate Court cannot again be raised in second appeal A I R 1930 Oudh 268=7 O W N 523=127 Ind Cas 86, A I R 1929 Nag 343=119 Ind Cas 698 A I R 1929 Lah 81, see also A I R 1929 Rang 213, A I R 1928 Mad 900=103 Ind Cas 178, A I R 1926 Nag 160=89 Ind Cas 18, 88 Ind Cas 477=A I R 1925 Cal 1184, A I R 1931 Sind 170=85 Ind Cas 387=A I R 1925 Oudh 310,

79 Ind Cas 462=A I R 1913 Lah 252=5 Lah L J 14, 69 Ind Cas 44, A I R 1922 Oudh 102=65 Ind Cas 408=8 O L J 600, A I R 1929 Pat 717 High Court is bound to take notice of legal point considered by the first Court but not by appellate Court A I R 1925 Oudh 506=12 O L J 382=2 O W N 529=89 Ind Cas. 563

**Abandonment whether a question of law or fact**—Finding of abandonment of right in house is question of law A I R 1930 Lah 215=125 Ind Cas 188, see also A I R 1928 Cal 891=32 C W N 1111=114 Ind Cas 482 A I R 1921 Lah 229=3 Lah L J 26=66 Ind Cas 935 A finding on abandonment of a holding is a question of fact and hence a second appeal only in matters of legal principle arising out of these facts can be taken up 41 P R. 1919=82 P R 1919=51 Ind Cas 396 Abandonment or non abandonment is a question of fact A I R 1929 Cal 120=48 C L J 390=141 Ind Cas 153 A I R 1921 Lah 162=3 Lah L J 445, 88 Ind Cas 1032=4 Pat 838=6 P L T 500=A I R 1925 Pat 741, A I R 1924 Cal 366=71 Ind Cas 304, 32 Ind Cas 355, 91 Ind Cas 493=A I R. 1916 Cal 751 Question whether a person has abandoned a particular trade mark is a question of fact A I R 1928 Lah 924=9 Lah 487=29 P L R 615=113 Ind Cas 228

**Admission**—The evidence of admission is like other evidence in the suit, a matter the cogency of which is for the lower appellate court to determine and cannot be questioned in second appeal A I R 1933 Pat 698

lies from an order of abatement, from the decision of the case 1933 A. L. J

**Decision regarding adverse possession**—Decision regarding adverse possession derived from inference of facts can be questioned in second appeal on ground of legality of conclusion A I R 1929 Pat 590=117 Ind Cas 644 A I R 1929 Oudh 337=6 O W N 536=115 Ind Cas 440, A I R 1923 Nag 65=6 N L J 70=74 Ind Cas 51, A L R 1924 Oudh 266=10 O L J 646=27 O C

A I R 1931 Lah 489, 32 P L R 727 documents it is not a question of fact can be upset by Privy Council 42 A J 259=22 Bom L R 451=24 C W N stion of adverse possession is a mixed ndant did act in a particular manner is a hat act upon the title of the plaintiffs

is a question of law 29 C L J 241=51 Ind Cas 123, see also 54 Ind Cas 873=170 P R 1919=2 Lah L J 136, 40 Ind Cas 420, 94 Ind Cas 38=A I R 1926 Cal 881 26 C W N 890=68 Ind Cas 200=A I R 1922 Cal 54, 33 C L J 344=60 Ind Cas 298 Adverse possession is a mixed question of fact and law, and cannot be allowed to be pleaded for the first time in second appeal A I R 1927 Lah 522=102 Ind Cas 476 Finding regarding absence of adverse possessor is one of fact A I R 1921 Lah 264=4 Lah L J 309, R 1931 All 323=130 Ind Cas 286, Lah 628

When a question of established facts it is not a question of simple fact but one of law 32 P L T 727, A I R 1932 Lah 72 Question whether possesson is adverse or not is a mixed question of law and fact A I R 1931 All 323=130 Ind Cas 295 A decision that a party's possession is adverse being an inference from facts the correctness of this as a legal conclusion to be drawn or not is a question open to second appeal 32 P L R 467=A I R 1931 Lah 489 see also 54 A 6 8=1932 A L J 425=140 Ind Cas. 653=A I R 1932 All 393 Finding as regards adverse possession is one of fact and is binding in second appeal A L R 1932 Lah 825, see also 135 Ind Cas 680=32 P L R 494, A L R 1932 Lah 628, A I R. 1933 Oudh 462=10 O W N 1011

**Question of Acquiescence**—The question of waiver, acquiescence or estoppel is a question of legal inference from facts found which can be examined by High Court in second appeal A I R 1929 Cal 437=56 C 201=116 Ind Cas 733 see also A I R 1928 Nag 87=23 N L R 192=107 Ind Cas 522, A I R. 1927 Cal 220=44 C L J 434=100 Ind Cas 302 A I R 1926 Nag 416=9, Ind Cas 636, 82 Ind Cas 309=A L R 1925 Cal 288, 41 Ind Cas. 927=103 P W R 1917=69 P R. 1917, 71 Ind Cas. 942=A I R 1924 Nag 56, 73 Ind Cas 137=A I R,



1921 Nag 167 Whether there is waiver in the case is a question of fact and finding thereon is not challengeable in second appeal 14 S L R 128=59 Ind Cas 607

**Ancestral nature of property**—Finding by lower Court of property as with ancestral or otherwise is a finding of fact and the High Court will not interfere such finding in second appeal A I R 1921 Lah 138=3 Lah L J 414=67 Ind Cas 439, A I R 1924 Lah 263=5 Lah L J 449=76 Ind Cas 147, A I R 1921 Lah 380=20 P L R 1972, 42 P L R 1919 But if such finding is based on no evidence but on mere conjecture a second appeal is competent 64 Ind Cas 428=A I R 1922 Lah 65=4 Lah L J 31, A I R 1926 Lah 659=8 Lah 30=8 Lah L J 485=27 P L R 721=97 Ind Cas 241 Whether the self acquired property of a member of a joint Hindu family has been thrown into the common stock or not is a question of fact A I R 1926 question whether it is the intention  
evidence elsewhere should sever all  
the intention of the family that  
large of the  
D 195=13  
34 P L R

ancestral land on

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739=A I R 1933 Lah 350, A I R 1933 Lah 765=34 P L R 567=145 Ind Cas 628, A I R 1934 Lah 351

**Birth date of**—Finding as regards date of birth is a finding of fact 28 N L R 127=140 Ind Cas 66=A I R 1932 Nag 117=A L R 1932 Nag 227

**Attestation of a document**—Whether a scribe is an attesting witness or not is a question of fact A I R 1926 Cal 150=90 Ind Cas 774 So also whether from the attestation of a document assent to its terms may be implied is a question of fact 51 Ind Cas 621 But the High Court is competent to come to a finding that the execution was witnessed by the attesting witnesses A I R 1923 Mad 56=46 M 64=43 M L J 745=(1922) M W N 708=71 Ind Cas 153

**Bona fides**—Question of good faith or *bona fides* of a party is always a question of fact A I R 1925 Lah 507=7 Lah L J 358=26 P L R 641 92 Ind Cas 602, 138 Ind Cas 646=33 P L R 740=A I R 1932 Lah 531, A I R 1921 Sind 13=15 S L R 11=62 Ind Cas 507, see also A I R 1925 Mad 285=49 M L J 549=22 L W 560=91 Ind Cas 742, 4 Lah 40=A I R 1921 Lah 291, A I R 1921 Ind Cas 109 Ind Cas 776 Finding cannot be questioned in second  
Cas 585 Question regarding  
N 51=A I R 1925 Cal 152=  
evidence from which to make  
binding in second appeal 33

P L R 263=136 Ind Cas 710=A I R 1932 Lah 322=A L R 1932 Lah 456  
Whether a purchaser has acted in good faith so as to have the benefit of s 41 of T P Act is a question of fact 34 P L R 642=A I R 1933 Lah 738

*benami* or fraud is not a question of law If improper inference is drawn, in second appeal 3 P L W 399=43 Ind Cas 49, but see A I R 1929 Oudh 83=5 O W N 1122=4 Luck 265=115 Ind Cas 99, where it has been held that the question of *benami* being a purely finding of fact cannot be raised in second appeal The finding that a person is a *benamidar* is a finding of fact and cannot be disturbed in second appeal 32 P L R 295, 32 P L R 289, 34 P L R 642=A I R 1933 Lah 738

**Consideration**—Finding that a pro note is for a consideration or not is one of fact A I R 1924 Lah 39=5 Lah L J 198=71 Ind Cas 783 Nature of consideration is also a question of fact 103 Ind Cas 444=A I R 1927 Lah 530=28 P L R 388=9 Lah L J 319

**Contract**—Questions of existence of contract and consideration for it are questions of fact 408 Whether

Cas 157 In absence of written contract the finding as regards pay

79 Ind Cas 462=A I R 1923 Lah 252=5 Lah L J 14, 69 Ind Cas 44, A I R 1922 Oudh 102=65 Ind Cas 408=8 O L J 600, A I R 1929 Pat 717 High Court is bound to take notice of legal point considered by the first Court but not by appellate Court A I R 1925 Oudh 506=12 O L J 382=2 O W N 529=89 Ind Cas. 563

**Abandonment whether a question of law or fact**—Finding of abandonment of right in house is question of law A I R 1930 Lah 215=125 Ind Cas 188, see also A I R 1928 Cal 891=32 C W N 1111=114 Ind Cas 482 A I R 1921 Lah 229=3 Lah L J 26=66 Ind Cas 935 A finding on abandonment of a holding is a question of fact and hence a second appeal only in matters of legal principle arising out of these facts can be taken up 41 P R 1919=82 P R 1919=51 Ind Cas 396 Abandonment or non abandonment is a question of fact A I R 1929 Cal 120=48 C L J 390=141 Ind Cas 153, A I R 1921 Lah 162=3 Lah L J 445, 88 Ind Cas 1032=4 Pat 838=6 P L T 500=A I R 1925 Pat 741, A I R 1924 Cal 366=71 Ind Cas 304, 32 Ind Cas 355, 91 Ind Cas 493=A I R 1926 Cal 751 Question whether a person has abandoned a particular trade mark is a question of fact A I R 1928 Lah 924=9 Lah 487=29 P L R 615=113 Ind Cas 228

in the suit, a  
and cannot

**Abatement**—Though no second appeal lies from an order of abatement, it may be questioned in second appeal if it affects the decision of the case 1933 A. L. J 561=144 Ind Cas 133=A I R 1933 All 294

**Decision regarding adverse possession**—Decision regarding adverse possession derived from inference of facts can be questioned in second appeal on ground of legality of conclusion A I R 1929 Pat 590=117 Ind Cas 644 A I R 1929 Oudh 337=6 O W N 536=115 Ind Cas 440, A I R 1923 Nag 65=6 N L J 70=74 Ind Cas 51, A I R 1924 Oudh 266=10 O L J 646=27 O C 77 24 Ind Cas 616=1 Pat L J 47, A I R 1931 Lah 489, 32 P L R 727 from documents it is not a question of fact courts can be upset by Privy Council 42 A M L J 259=22 Bom L R 451=24 C W N question of adverse possession is a mixed question of fact and law, if a defendant did act in a particular manner is a question of fact and law, if the title of the plaintiff is a question of law 29 C L J 241=51 Ind Cas 123, see also 54 Ind Cas 873=170 P R 1919=2 Lah L J 136, 40 Ind Cas 420, 94 Ind Cas 38=A I R 1926 Cal 881 26 C W N 890=68 Ind Cas 200=A I R 1922 Cal 54, 33 C L J 344=60 Ind Cas 298 Adverse possession is a mixed question of fact and law, and cannot be allowed to be pleaded for the first time in second appeal A I R 1927 Lah 522=102 Ind Cas 476 Finding regarding absence of adverse possession is one of fact A I R 1921 Lah 264=4 Lah L J 30 R 1931 All 323=130 Ind Cas 2 Lah 628

When a question is established facts it is a question of fact A I R 1932 Lah 72 Question whether possession is adverse or not is a mixed question of law and fact A I R 1931 All 323=130 Ind Cas 295 A decision that a party's possession is adverse being an inference from facts the correctness of the fact is a question of law 32 P R 1917=69 P R 1917=71 Ind Cas 942=A I R 1924 Nag 56, 73 Ind Cas 137=A I R, 680=32 P L R 494, A I R 1932 Lah 628, A I R 1933 Oudh 462=10 O W N 1011

**Question of Acquiescence**—The question of waiver, acquiescence or estoppel is a question of legal inference from facts found which can be examined by High Court in second appeal A I R 1929 Cal 437=56 C 201=116 Ind Cas 733 see also A I R 1928 Nag 87=23 N L R 192=107 Ind Cas 522, A I R 1927 Cal 220=44 C L J 434=100 Ind Cas 302 A I R 1926 Nag 416=95 Ind Cas 636, 82 Ind Cas 309=A I R 1925 Cal 283, 41 Ind Cas 927=103 P W R 1917=69 P R 1917, 71 Ind Cas 942=A I R 1924 Nag 56, 73 Ind Cas 137=A I R,

L R 201=123 Ind Cas 283, A I R 1928 Lah 667=110 Ind Cas 428, A I R 1927 All 689=103 Ind Cas 255

Findings based upon the construction of or inferences drawn from documentary evidence cannot be interfered with in second appeal A I R 1917 Oudh 541=4 O W N 165=103 Ind Cas 631, 99 Ind Cas 183, A I R 1928 Oudh 18=104 Ind Cas 760, A I R 1926 All 542=48 A 588=24 A L J 700=95 Ind Cas 582 Whether personal liability has been taken by the executant of a pronote having

culty is not a question of law A I R 1928 P C 243=55 I A 380=56 M L J 1=48 C L J 557=111 Ind Cas 288 Finding of fact based on misconstruction of document is not purely one of fact A I R 1930 Lah 139=123 Ind Cas 533 The meaning of the words in a document is a question of fact in all cases, the effect of the words the inference to be drawn from the words in a document is a question of law 7 Luck 116=8 O W N 800=134 Ind Cas 411=A I R 1932 Oudh 283, A I R 1932 All 289 But construction of a title deed is a question of law 135 Ind Cas 693=A I R 1932 Oudh 51 Unless there has been misconstruction a mistaken inference from document is an error, not of law but of fact 60 I A 231=143 Ind Cas 437=57 C L J 519=35 Bom L R 816=29 N L R 210=A I R 1933 P C 171=65 M L J 154 (P C), see also A I R 1931 Lah 594=131 Ind Cas 126 32 P L R 508=A I R 1931 Lah 605, 34 Bom L R 372=A I R 1931 Bom 230 No second appeal lies on ground of misinterpretation of documents where there is no error of law A I R 1934 Lah 291, A I R 1934 Cal 461

ample evidence A I R 1930 P C 237=34 C W N 849=59 M L J 134=52 C I R 1931 P C 48=33 439=35 C W N 438=

d on error of law A I R 1929 P C 38=116 Ind Cas 593, see also A I R 1928 Nag 153=11 N L J 21=111 Ind Cas 488, A I R 1923 Rang 196=1 Rang 135=76 Ind Cas 449, 33 Ind Cas 666=(1915) U B R 92 Where two Courts have come to the same conclusion on a question of fact, which goes to the foundation of the case it is not open to the High Court on second appeal, to interfere 17 C 726 (F B) Findings supported by no evidence though concurrent, can be challenged in second appeal A I R 1931 Oudh 136=7 O W N 1079=129 Ind Cas 331

Court can interfere in second appeal 64 Ind Cas 962, see also A I R 1928 Oudh 224=5 O W N 35=107 Ind Cas 881

**Court fee**—In the absence of defect of jurisdiction, the question of Court fee cannot be allowed to be raised for the first time in second appeal A I R 1927 Nag 321=103 Ind Cas 337 In case of error in the calculation of Court fee a second appeal lies, where memorandum of appeal was rejected for non payment of deficit Court fees 51 Ind Cas 114, see also A I R 1927 Nag 100=98 Ind Cas 663; 7 A 528

**Dedication**—The question whether a dedication is real or nominal is a question of fact A I R 1931 Lah 170=131 Ind Cas 283=32 P L R 304, see also 33 P L R 288=138 Ind Cas 215

**Questions of onus of proof**—Question of onus of proof is one of law A I R 1924 Lah 195=73 Ind Cas 216, see also 77 Ind Cas 246=A I R 10 199=4 Lah L J 199, see also 2 Lah 249=A I R 1921 Lah 128=106 1921=64 Ind Cas 901 The question upon which puts the onus of





particular point lies is undoubtedly a question of law on which a second appeal lies 65 Ind Cas 745, 4 O L J 556=43 Ind Cas 478, 58 Ind Cas 982=1 Lah 429, 76 Ind Cas 347=A I R 1924 Pat 310=2 Pat 919=5 P L T 315, A I R 1926 All 455=24 A L J 513, A I R 1932 Mad 415, A I R 1931 Cal 668=53 C L J 606, 64 Ind Cas 901=

128 Ind Cas 108=51 C L J 4

1926 Lah 652 Even Privy C

from placing burden of proof on wrong party A I R 1929 P C 13=31 Bom L R 264=33 C W N 223=56 I A 6=56 M L J 115=56 M 83=114 Ind Cas 5, see also A I R 1930 P C 170=34 C W N 593=58 M L J 626=32 Bom L R 887=32 L W 51=123 Ind Cas 557 Where party is not prejudiced by wrong placing of burden of proof, there is no reason for interference by High Court A I R 1924 Lah 335=69 Ind Cas 521, A I R 1921 Lah 162=3 Lah L J 445 Finding of fact arrived at by Appellate Court on correct interpretation of direction of

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194=38 Ind Cas 817, see also 121 Ind Cas 377=A I R 1930 Lah 677 A finding of fact based not on positive evidence but on the failure of a party to discharge the onus of proof is not such a finding as is final under section 100 of the C P Code when the onus is wrongly placed 56 C W N 221 P C = 59 I A 29=59 5 I W 112=55 C L J 72=34 Bom L M L J 336 (P C) It cannot

be laid down as a that an erroneous view of the burden of proof necessarily renders a court incapable of weighing the evidence properly When the lower appellate court notwithstanding its erroneous view as to the burden of proof weighed the evidence in the case *pro* and *con* and came to a determinate conclusion that the case set up by the plaintiff was true and that the defence was not, where it did not consider that the evidence was evenly balanced or find that the onus determined the matter and where there was not the slightest ground for supposing that its conclusion was in any way influenced by its view of the incidence of burden of proof held that its finding of facts was binding in the second appeal 35 L W 511=1932 M W N 345=A I R 1932 Mad 415, see also A I R 1932 Cal 351

**Damages question of**—Finding that damage has been done is one fact and no second appeal is maintainable against such finding A I R 1924 Pat 240=1 Pat L R 398=79 Ind Cas 183 Where the amount of damages has not been fixed arbitrarily it cannot be agitated in second appeal 80 Ind Cas 297=A I R 1923 All 199 Where the principle of assessment of damages is involved, the matter is open to question in second appeal 28 N L R 320 The finding as to the amount of damages is a question of fact 28 N L R 142=140 Ind Cas 68=A I R 1932 Nag 118

**Discretion of lower court**—The question as to the exercise of discretion is ordinarily one of fact But such discretion must not be exercised arbitrarily but upon sound legal principles 677=92 Ind Cas 1031 in the absence of very

as 731, see also A I R 1924 Lah 303= 18 P W R 1923=71 Ind Cas 568 The High Court should not interfere with the fact it is not arbitrary 69 Ind Cas 758= 1923 Lah 513=77 Ind Cas 460 Where fact which does not support it and one is granted for filing appeal the High Court can interfere 4 P L R 381=52 Ind Cas 225 Relief for declaration in a suit being discretionary there can be no interference in second appeal 46 Where the lower Appellate Courts 5 Limitation Act, are untenable, the High 18 Cas 375 Interference on the question High Court A I R 1927 Nag 164=100

, not exercised  
after application  
second appeal  
document beyond  
second appeal  
court has not  
art can interfere

A I R, 1926 Mad 57=49 M L J 516=91 Ind Cas 525 The Appellate Court is always reluctant to interfere with the decision in a matter of discretion A I R 1929 Rang 221=121 Ind Cas 815, 34 Ind Cas 547, 101 Ind Cas 237=A I R 1927 Lah 424 Where in the exercise of discretion the lower appellate court refused to allow a point not included in the memorandum of appeal, to be raised at hearing, it cannot be challenged in second appeal unless improperly exercised A I R, 1928 Lah 536=107 Ind Cas 283 The lower Appellate Court's refusal to exercise of discretionary powers under Order XLII r 33, is not an error of law A I R

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s 490 But where in deter-

the lower courts have gone

outside the proper foundation for determination of such a question, the High Court will interfere in second appeal A I R 1926 Bom 33=27 Bom L R 1318=91 Ind Cas 426 Inference of fraud from facts found is a question of law 17 C L J 209, A I R 1929 All 861, 5 Ind Cas 598 Where inference of fraud drawn is based upon the facts so found and the first appellate court refused to draw an inference of fraud upon the facts so found, the decision cannot be questioned in second appeal unless the facts found necessarily amounts to fraud A I R 1922=Pat 507=3 P L T 501=77 Ind Cas 957 Whether a debt is fictitious is a question of fact and finding cannot be questioned in second appeal 110 Ind Cas 432 Question whether intention of transfer was to defeat or delay creditors is one of fact 60 Ind Cas 527 (Lah), see also 63 Ind Cas 169 The finding that a decree was obtained by fraud is a finding of fact against which no second appeal lies A L R 1934 Lah 50

Consideration of evidence and second appeal—Finding of fact arrived at without considering the whole evidence or very important piece of evidence is not binding in second appeal A I R 1922 Pat 503=70 Ind Cas 853, see also 68 Ind Cas 332, 6, Ind Cas 504, 65 Ind Cas 497, A I R 1922 Pat 562=3 P L T, 483, 79 Ind Cas 107=A I R 1925 Lah 87, 71 Ind Cas 992=A I R 1930 All 401; A I R 1930 Lah 150=124 Ind Cas 337, A I R 1929 Lah 145=112 Ind Cas 385, A I R 1929 Rang 257=7 Rang 751, A I R 1928 Mad 826=54 M L J 600=27 L W 827=110 Ind Cas 593, A I R 1927 Mad 493=110 Ind Cas 306 The findings of fact based on theories and assumptions can be questioned in second appeal A I R 1927 Nag 392=99 Ind Cas 1046 Neither erroneous finding of fact nor amount of evidence required to prove fact can be questioned in second appeal A I R 1931 Lah 144=31 P L R 381=132 Ind Cas 379, 87 Ind Cas 1040=A I R 1925 Oudh 247, 88 Ind Cas 490=A I R 1925 Oudh 691; 79 Ind Cas 440=A I R 1923 Lah 21 Decision as to market value and amount paid in pre-emption suit however erroneous, cannot be challenged in second appeal 3 Lah L J 108=64 Ind Cas 297 Finding based on inadmissible evidence or on no evidence can be interfered in second appeal 63 Ind Cas 811, 63 Ind Cas 954=25 C W N 1022=35 C L J 19, 62 Ind Cas 647=25 C W N 881=A I R 1921 Cal 71, 61 Ind Cas 102=A I R 1921 Pat 18, 6 P L J 72 T 17, 53 Ind Cas 308=10 L W 525=(19-0) M W N 163, 48 Ind Cas 179=46 Ind Cas 52, 42 Ind Cas 397=2 Pat L W 183, 447=21 L W 227=86 Ind Cas 919, A I R 1925 Oudh 38 R, O W N 10, A I R 1922 Pat 562=3 P L T 483, 64 Ind

1929 Lah 119=2 Lah 271, 38 Ind Cas 586=17 P W R 1917, 42 Ind Cas 282=100 P L R 1917=89 P W R 1917, 38 Ind Cas 561 Appellate Court in reversing finding of act should consider whole evidence 31 M L J 311=(1916) M W N 133=20 M L J 228=35 Ind Cas 421 In second appeal, the High Court does not interfere with finding of facts based on material facts and evidence 112 P R 1916=38 Ind Cas 62, see also 35 P R 1919=78 P L R. 1919=51 Ind Cas 378, 3 Lah L J 409 Every piece of relevant evidence must be considered but every portion of it need not be referred to 52 Ind Cas 173, 43 Ind Cas. 525, 43 Ind Cas 857=3 Pat L W 213

Failure of lower C  
for second appeal 38 I

such proper value to each

Court in second appeal cannot go into the weight to be attached to each 19 C W N 1015=31 Ind Cas 695, see also 32 Ind Cas 862, 46 C 152=22 C W. N 822=46 Ind Cas 237 47 Ind Cas 780, 53 Ind Cas 137, 52 Ind Cas 739, 1 P L T 224=55 Ind Cas 922, A I R 1921 Lah 284=4 Lah 426, A I R 1931 Oudh 116=8 O L J 202=61 Ind Cas 781 But the ignoring of an important piece of evidence by the lower Appellate Court affords a good ground for second appeal 18

finding as

question e g

L J 349=39 Ind Cas 666 Error of judge in criticising evidence or one wrong idea that other two had not been examined, vitiates his finding 41 Ind Cas 456

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not, it is not subject to second appeal A I R 1925 Allah 331=53 Ind Cas 407

Finding of trial Court regard

unless strong ground exists fo

reverse finding of lower Appellat

binding on High Court A

Lah 106=73 Ind Cas 756

evidence is one of fact Question whether a given document refers to a particular

law is one of fact A I R 1923 All 492=71 Ind Cas 762 Misconstruction of a

document alleged to contain admission is not a question of law which can be raised in

second appeal 68 Ind Cas 1003=A I R 1522 Cal 185=36 C L J 182

The High Court can consider the effect of expert evidence given on both sides and found to be true by the Lower Court A I R 1925 All 24=47 A 243=22 A L J 1045

=83 Ind Cas 77 Finding based on comparison of handwriting proved by

comparison

695=5 Lal

Courts not

desirable from

Committee is competent to deal with the case on its merits A I R 1922 P C

A I R 1922 All 312=44 A 109=19 A L J 204=53 Ind Cas 371 P L R 1922

that it was inadmissible in evidence for want of registration vitiates the finding of fact and a second appeal lies 29 P L R 287=108 Ind Cas 191

Finding of fact not based on legal evidence can be set aside even in second appeal 74 P W R 1916=33 Ind Cas 937, 42 Ind Cas 68=11 Bur L T 229,

A I R 1924 Mad 617=19 L W, 560=83 Ind Cas 567, 51 Ind Cas 177=24 C W N,



81=47 C 107=46 I A 140=37 M L J 36=21 Bom L R 220=17 A L J 700 (P C); A I R 1924 Lah 465=6 Lah L J 127-80 Ind Cas 329, A I R 1925 Cal 302=80 Ind Cas 903, A I R 1925 Oudh 525=27 O C 331=85 Ind Cas 338, A I R 19 9 All 481=(1929) A L J 873=118 Ind Cas 372, A I R 1926 Nag 99=89 Ind Cas 752, 104 Ind Cas 929=A I R 1926 Pat 187=7 P L T 547, 104 Ind Cas 781=A I R 1927 Mad 116=39 M L T 633, A I R 1927 P C 257=53 M L J 703=32 C W N 3=107 Ind Cas 449, A I R 1928 Lah 737=29 P L R 410=112 Ind Cas 455, A I R 1930 Lah 677=121 Ind Cas 377=Ind Rul (1930) Lah 217, A I R 1930 Cal 815=58 C 585=35 C W N 133, A I R 1911 Lah 213=12 Lah L J 107=131 Ind Cas 301 But findings of facts based on legal and admissible evidence cannot be questioned in second appeal even when such finding is erroneous A I R 1928 All 289=50 A 754=26 A L J 696=115 Ind Cas 448, see also 99 Ind Cas 183, 95 Ind Cas 925=A I R 1927 Oudh 95=1 Lah 458=29 O C 330, A I R 1928 Mad 37=109 Ind Cas 771, A I R 1928 All 289=50 A 74=26 A L J 696=115 Ind Cas 771, A I R 1930 Lah 999=32 P L R 119-12 Lah 224=129 Ind Cas 1, A I R 1930 Lah 911=11 Lah 410=12 Lah L J 161=133 Ind Cas 278, A I R 1931 Lah 220=31 P L R 195=123 Ind Cas 81, 120 Ind Cas 56=34 C W N 1=A I R 1929 P C 286=56 I A 388=51 C L J 1=57 M L J 849=32 Bom L R 114 (P C), A I R 1929 Oudh 402=6 O W N 652=119 Ind Cas 866, A I R 1930 Nag 11=119 Ind Cas 677, 90 Ind Cas 709=A I R 1926 Nag 192, A I R 1925 Oudh 658=87 Ind Cas 208; 82 Ind Cas 822=A I R 1925 Cal 469, 74 Ind Cas 1004, 45 A 53, 65 Ind Cas 475=A I R 1922 Lah 140 68 Ind Cas 500=A I R 1923 Cal 279, 69 Ind Cas 807=A I R 1922 All 281, 70 Ind Cas 202=A I R 1927 Lah 356=6 Lah L J 513 37 Ind Cas 459=3 O L J 644, 62 Ind Cas 1002=15 S L R 84, A I R 1921 Lah 284=4 Lah L J 426, 4 Lah L J 311 Finding of fact based on evidence which has been misread or misunderstood is open to objection A I R 1921 All 212=19 A L J 149= appeal where the lower A I R. 1926 Cal 603=91 I is pro ved on evidence .31 Ind Cas 395=A I R 1931 Oudh 142-8 O W N 12=131 Ind Cas 39, In second appeal where any evidence has been wrongly admitted or wrongly rejected the case had not necessarily go back A I R 1924 Pat 55

**Judgment from which second appeal lies**—Where the lower Appellate Court has proceeded on wrong assumptions the decree can be set aside in second appeal based on wrong R 1930 Cal 1169 I R 1923 Cal 278= d Cas 385=2 Pat e Appellate Court is error affecting the L T 520=31 it is dismissed that being an o Ind Cal 525 examined on the points and hence real parties in dispute were ignored such trial is vitiated and can be set aside in second appeal A I R 19 7 Nag 180=100 Ind Cas 855 Finding of fact on inadmissible evidence cannot be maintained A I R 1927 Lah 448=8 Lah L J 651=29 P L R 74=103 Ind Cas 889 Appellate Court's *ex parte* decree against respondent not summoned is subject to second appeal on ground of illegality 117 Ind Cas 229 Finding of fact of lower Court if there is no error of law is binding on Court of appeal A I R 1929 Pat 127=10 P L T 138=115 Ind Cas 890, see also 4 C 1104=43 I A 172=20 C W N 1245=18 Bom L R 838=37 Ind Cas 223 (P C), 38 Ind Cas 161, A I R 1921 Lah 211=3 Lah L J 231=60 Ind Cas 805, 57 Ind Cas 350=31 C L J 501, 37 M L J 199=52 Ind Cas 497=24 C W N 201=22 Bom L R 7=17 A L J 1004 (P C), 3 Lah L J 470, 61 Ind Cas 135=8 O L J 4 67 Ind Cas 803=A I R 1922 Oudh 96=9 O L J 127, 70 Ind Cas 299=A I R 1923 Lah 11, A I R 1923 Oudh 26=9 O L J 417=70 Ind Cas 74 A I R 1923 Lah 33=6 P L R 451=7 Lah L J 70=36 Ind Cas 88, A I R 1925 Lah 377=7 Lah L J 127=6 P L R 167=88 Ind Cas 1019, 95 Ind Cas 463=13 O L J 146; 90 Ind Cas 976=A I R 1926 All 130, A I R 1927 All 377=100 Ind Cas 626,

A I R 1927 Lah 845=99 Ind Cas 890, A I R 1927 Mad 33=52 M L J 100=25 L W 76=99 Ind Cas 981, 96 Ind Cas 14=A I R 1926 Oudh 522, 98 Ind Cas 876 A I R 1928 Rang 303=6 Rang 586=114 Ind Cas 538; 124 Ind Cas 358=A I R 1929 Oudh 447=5 Luck 377=6 O W N 859=124 Ind Cas 358, 111 Ind Cas 791, A I R 1931 Mad 206=1930 M W N 1235=131 Ind Cas 121, A I R 1930 Pat 564=129 Ind Cas 133, A I R 1931 Nag 67=27 N L R 8=131 Ind Cas 662, A I R 1931 Nag 95=13 N L J 202, A I R 1930 Lah 1067=31 P L R 214=123 Ind Cas 285, A I R 1930 Lah 1010=11 Lah 393=31 P L R 755=128 Ind Cas 293, A I R 1930 Lah 142=120 Ind Cas 170, A I R 1929 Lah 165=117 Ind Cas 813. Second appeal does not lie on ground of even grossly erroneous finding of fact or of mistake as its meaning of document containing evidence A I R 1931 Oudh 142=8 O W N 152=131 Ind Cas 395. New question of fact cannot be raised in second appeal for first time A I R 1931 Mad 284=33 L W 681. Finding legally proved that compromise in good faith exists is one of fact and cannot be questioned in second appeal 121 Ind Cas 291. Findings of fact arrived on pure conjectures, unjustifiable assumptions and unwarranted inferences are not final in second appeal. A I R 1930 Lah 238=122 Ind Cas 109. High Court can leave out of considerations findings of lower court not definite and not necessary for the case A I R 1929 Lah 653=120 Ind Cas 5. Findings based on whimsical reasoning must be set aside A I R 1925 Oudh 386=12 O L J 10,=86 Ind Cas 686 see also A I R 1929 Oudh 453=6 O W N 801=123 Ind Cas 63. Finding of fact contradicting other finding is open to second appeal A I R 1928 Lah 690=108 Ind Cas 521. Privy Council like the High Court is bound by a finding of fact by Lower Appellate Court A I R 1928 P C 219=28 L W 204=32 O W N 1146=48 C L J 415=111 Ind Cas 106=54 I A 196=31 C W 42 (P C)=101 Ind Cas 141 appeal correctness of c 144 The High possible inferences drawn by the lower Court 46 Ind Cas 794. Finding of fact upon evidence cannot be questioned in second appeal A I R 1925 Pat 384=6 P L T 67=86 Ind Cas 141, see also 86 Ind Cas 847=A I R 1925 Nag 271=8 N L J 29, A I R 1924 Nag 240=78 Ind Cas 887, A I R 1923 Lah 236=7 P W R 1923=73 Ind Cas 232

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769=12  
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112 Ind Cas 847 A I R 1926 Nag 332=9 N L J 70=95 Ind Cas 553, 96 Ind Cas 356=A I R 1926 Nag 494, A I R 1928 Lah 722=111 Ind Cas 645, A I R 1928 Nag 153=11 N L J 21=111 Ind Cas 488, 55 C 355=32 C W N 184=107 Ind Cas 81=1928 Cal 315, A I R 1929 All 861=118 Ind Cas 381, A I R 1928 All 39=50 A 180=25 A L J 1014=108 Ind Cas 729 A I R 1928 Lah 774=10 Lah 360=30 P L R 541=112 Ind Cas 736 103 Ind Cas 486=A I R 1927 Nag 166=10 N L J 12, A I R 1927 All 601=105 Ind Cas 49 A I R 1928 All 39=50 A 180=25 A L J 1014, A I R 1927 All 811=28 P L R 406=105 Ind Cas 930=31 P L R 662=128 Ind Cas 379, A I R 1928 Lah 930=103 Ind Cas 207, A I R 1923 Lah 10=78 Ind Cas 112

inference from admitted facts is a  
J 581=53 M 510=31 L W  
P L R 547=123 Ind Cas 536,  
R 1929 All 875=119 Ind Cas  
Ind Cas 81, 113 Ind Cas 746,  
929 All 767=122 Ind Cas 756,  
J 70=95 Ind Cas 553, 96 Ind  
Cas 356=A I R 1926 Nag 494, A I R 1928 Lah 722=111 Ind Cas 645, A I  
R 1928 Nag 153=11 N L J 21=111 Ind Cas 488, 55 C 355=32 C W N 184=  
107 Ind Cas 81=1928 Cal 315, A I R 1929 All 861=118 Ind Cas 381, A I R  
1928 All 39=50 A 180=25 A L J 1014=108 Ind Cas 729 A I R 1928 Lah  
774=10 Lah 360=30 P L R 541=112 Ind Cas 736 103 Ind Cas 486=A I R  
1927 Nag 166=10 N L J 12, A I R 1927 All 601=105 Ind Cas 49 A I R  
1928 All 39=50 A 180=25 A L J 1014, A I R 1927 All 811=28 P L R 406=  
105 Ind Cas 930=31 P L R 662=128  
Ind Cas 379, A I R 1928 Lah 930=  
103 Ind Cas 207, A I R 1923 Lah  
10=78 Ind Cas 112

Soundness of the conclusions from facts may involve matters of law and may be questioned by a Court of second appeal A I R 1931 Lah 216=73 Ind Cas 795, see also 62 Ind Cas 534=A I R 1921 M L J 661=40 M I J 301=13 L W 218= (1921) M W N 233 A I R 1921 Bom 38=4, B 1186=23 Bom I R 514=63 Ind Cas 248, see also A I R 1931 Mad 54=43 M I J 556=71 Ind Cas 330, 69 Ind Cas 781=A I R 1922 Nag 56, 71 Ind Cas 1, 114 Pat 373=111 L R 32, A I R 1923 Lah 497=77 Ind Cas 43, 114 Ind Cas 1, R 1924 Nag 410=21 N L R 12, 87 Ind Cas 64=A I R 1924 Nag 19=6 N L R

197=90 Ind Cas 196, A I R 1926 Mad 511=50 M L J 251=(1926) M W N 344, 57 C L J 509. In second appeal it is not for the High Court to decide whether the conclusions drawn by the Lower Appellate Court from facts are correct or not, but it has only to be satisfied if such conclusions are legally deducible from the evidence on record. 20 Ind Cas 523=7 S L R 11, 62 Ind Cas 1002=A I R 1921 Sind 25=15 S L R 84.

Inference from proved or admitted fact is not necessarily question of law and where it is based on balance of evidence, the question is one of fact. A I R 1930 All 218=127 Ind Cas 586. Lower Appellate Court's inference that previous order of cash deposit was varied from Court's acceptance of security is not question of fact. A I R 1930 Lah 567=31 P L R 37=11 Lah 531=127 Ind Cas 713. Where inference is drawn not from evidence given, it can be challenged in second appeal. A I R 1929 Lah 198=10 Lah L J 455=116 Ind Cas 325. A wrong inference from facts does not entitle the High Court to interfere. 74 Ind Cas 818=A I R 1924 Oudh 164, 74 Ind Cas 843=A I R 1924 Pat 305. The question whether a particular section of an Act does or does not apply is a question of law. A I R 1923 All 583=45 A 520=21 A L J 428=74 Ind Cas 307. Inferences from documents other than those of title are questions of facts. A I R 1925 All 39=78 Ind Cas 112, A I R 1924 Oudh 183=74 Ind Cas 811. Inference from entries admitted, unless illegitimate, being one of fact cannot be reargued. A I R 1925 All 353=85 Ind Cas 584, see also A I R 1924 Lah 719=6 Lah L J

legal status of a party. A I R 1927 Nag 200=101 Ind Cas 252. Inferences as to jointness or disruption of joint Hindu family are findings of fact. 97 Ind Cas 817=A I R 1926 Lal 44=71 L R 223. The inference of knowledge on the part of a landlord or his agent that a tenant of his is setting up a rent free right based on certain facts is not an inference of law but an inference of fact. A I R 1934 Pat 167.

**Question of jurisdiction**—Order passed without jurisdiction can be set aside in second appeal. A I R 1931 Lah 96=37 P L R 293=131 Ind Cas 141, A I R 1930 Lah 1003=32 P L R 90=121 Ind Cas 722, 29 C L J 48=49 Ind Cas 135, 45 C 926=27 C L J 115=43 Ind Cas 758, 1933 A L J 103=A I R 1933 All 403. Question of jurisdiction can be taken in the second appeal for the first time. A I R 1923 Lah 551=77 Ind Cas 532, A I R 1924 All 83=75 Ind Cas 1053, A I R 1923 Bom 321=47 B 843=25 Bom L R 945=77 Ind Cas 654, 43=126 Ind Cas 401. Plea raised for first time in second appeal ground that fictitious plot of land can not be taken for first time in second appeal. 51 Ind Cas 862.

**Question of legal necessity**—Whether there existed legal necessity or not. A I R 1926 Nag 486=96 Ind Cas 1006. Devolution of ancestral property by Hindu father. 24-3 Lah L J 491=63 Ind Cas 515, see also A I R 1932 Lah 348, 32 P L R 607, A I R 1928 All 28=70. Question of fact and whether a tender should see to the application of money is a question of law. A I R 1925 Oudh 740=90 Ind Cas 345, see also 85 Ind Cas 489=A I R 1925 Oudh 557=27 O C 319, A I R 1924 Lah 689=75 Ind Cas 674, 33 P L R 607. Where lower appellate Court decided the question as to the existence of legal necessity on entirely wrong principles, the High Court is competent to go into the question. A I R 1923 Lah 600=75 Ind Cas 919, see also 47 Ind Cas 39=38 P L R 1918=92 P W R 1918. Failure to prove legal necessity for rate of interest cannot be raised for the first time.

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in second appeal A I R 1972 Pat 356=1 Pat 612=3 Pat L T 367=67 Ind Cas 790 Legal necessity for alienation is a finding of fact and is binding in second appeal 33 P L R 564=A I R 1932 Lah 473=33 P L R 564

**Question of Limitation**—The question as regards limitation is a mixed question of law and fact A I R 1927 Cal 30=79 Ind Cas 635 Where the facts are admitted plea of limitation can be allowed for the first time in the second appeal (1929) A L J 229=A I R 1928 All 689=114 Ind Cas 734, see also 65 Ind Cas 580=A I R 1922 Lah 240 Plea of limitation, though one of law, can not be argued on second appeal, if it involves investigation of facts and was not taken below or in memorandum of second appeal A I R 1930 Cal 385=57 C 114=115 Ind Cas 607, 115 Ind Cas 680=10 P L T 53, A I R 1929 Lah 432=11 Lah L J 91=30 P L R 296=115 Ind Cas 71, 72 Ind Cas 326=A I R 1923 Bom 254=25 Bom L R 245, A I R 1928 Cal 870=32 C W N 778=115 Ind Cas 66

**Question of marriage**—Sufficiency of evidence to prove marriage is a question of fact A I R 1921 Lah 201=5 Lah L J 117=84 Ind Cas 1039, 111 Ind Cas 712, A I R 1924 Lah 188=5 Lah L J 505=73 Ind Cas 896 But the question as to the form of marriage is a question of law 90 Ind Cas 358=A I R 1926 All 1=48 A 126=23 A L J 281

**Question of minority**—The finding that a person is a minor cannot be questioned in second appeal A I R 1925 Pat 367=3 Pat L R 16=86 Ind Cas 856

**Question of misjoinder**—A finding of misjoinder of parties cannot be questioned in the second appeal for the first time A I R 1928 Mad 635=110 Ind Cas 548 A finding on misjoinder arrived at on evidence being one of fact cannot be gone into in second appeal 33 Ind Cas 188=(1916) 1 M W N 9

**Misapprehension of evidence**—Where a finding of fact is arrived at as a result of misreading of a document a second appeal is competent, 73 P L R 1917=42 Ind Cas 218, see also 4 Lah L J 307, 80 848=46 A 773=72 A L J 739=L R 5 A 53 Pat 49; 88 Ind Cas 924=A I R 1925, Mad 630, A I R 1927 Mad 1167=39 M L T 633 where the lower courts have misread evidence relied for their conclusion upon inadmissible evidence, or where they misdirected themselves as to any question of importance or where they relied upon personal knowledge or where they took a wrong view as to the onus of proof or where they decided points not raised by the parties, or where they misconstrued important documents When a court misconstrued a document it relies upon a construction which is not capable of bearing and such misconstruction leads not merely to a wrong view of the evidence but to relying upon what it considers to be an inference from the evidence which the evidence is not capable of bearing The misconstruction of an important document therefore is a ground for interference 93 Ind Cas 307=A I R 1926 Mad 652=24 L W 88, see also 42 Ind Cas 772=92 P L R 1917, 76 Ind Cas 513=A I R 1923 Lah 585, A I R 1925 Lah 251=6 Lah L J 508, A I R 1926 All 463=94 Ind Cas 190 A I R 1926 Lah 541=95 Ind Cas 240, A I R 1930 Lah 712=12, Ind Cas 623, but see 113 Ind Cas 57, Finding based on wrong view of pleading can be questioned in second appeal A I R 1926 Oudh 333=13 O L J 556=3 O W N 460=94 Ind Cas 779 Finding as to the amount of rent based on plaintiff's supposed admission on where there was none can be questioned in second appeal as the court is deemed to have made a mistake of law A I R 1928 Oudh 331=108 Ind Cas 102 Where the finding of the lower Appellate Court is based on misreading of trial court's judgment, that finding can be questioned in second appeal 77 Ind Cas 473=A I R 1923 Lah 502

**Mixed question of law and fact**—Whether a custom exists or not is a mixed question of law and fact and is such a second appeal is competent A I R 1931 Bom 167=32 Bom L R 1679=129 Ind Cas 881 The question of agency is a mixed question of law and fact 128 Ind Cas 455=(1930) M W N 729=12 L W 615, A I R 1925 All 763=48 M L J 518=21 L W 441=87 Ind Cas 663 Whether a Hindu family is joint or not is both a question of fact as well as of law A I R 1925 Nag 284=86 Ind Cas 505, 95 Ind Cas 183=A I R 1926 Nag 389 Where the communal character of land was arrived at by applying wrong principles it can be interfered in second appeal as it is a question of fact as well as of law 127 Ind Cas 630=59 M L J 844=32 L W 973=A I R 1931 Mad. 213;

see also 98 Ind Cas 211=A I R 1927 Cal 136 Whether the nature of the tenancy is permanent or not is a mixed question of law and fact A I R 1924 Cal 465=73 Ind Cas 2 If the facts found attracted the operation of s 14, Limitation Act is a mixed question of law and fact A I R 1927 Pat 51=8 P L T 561=101 Ind. Cas 674 Whether a particular transfer is fraudulent or not is a mixed question of fact and law A I R 1923 Nag 124=61 Ind Cas 193 Whether the alterations made in the deed are material or not also falls under the same category A I R 1925 Nag 43=8 N L J 1=86 Ind Cas 185 What can be classed as necessities

Nag 360=73 Ind Cas 380  
be transferred or not is a  
on a variety of circum

A L J 183=113 Ind Cas 242 In suit for malicious prosecution the existence of  
on of law and fact and can be  
=57 C 25=125 Ind Cas 667

law and fact A I R 1927 Mad 311=52 M L J 68=99 Ind Cas 838, 94 Ind  
Cas 68=A I R 1926 Mad 851=23 L W 349 Question if rent dues have accrued

and law A I R 1924 All  
ower is mixed question of fact  
Whether a certain provision

is waived in the lower Court the question cannot be raised in the appellate court  
A I R 1929 Pat 717=10 P L T 669=9 Pat 487=124 Ind Cas 625 Finding  
regarding deed based on its interpretation and also on other facts cannot be set aside  
A I R 1925 Lah 344=7 Lah L J 74=76 P L R 110=86 Ind Cas 595 Whether  
the vendee has acted with reasonable care under s 41 T P Act is a mixed  
question of law and fact and High Court will interfere only in such a case where strong  
reasons exist A I R 1927 All 138=99 Ind Cas 1 Whether certain property is  
sulk & strid in or not is a mixed question of law and fact A I R 1926 All 26

L W 272=A I R 1933 Mad 395 So also the question of family settlement  
554=1933 A L J 1183=A I R 1933 All 493=144 Ind Cas 293

**Tenancy, nature of.**—The question whether on given facts a tenancy is at  
will or permanent is a mixed question of law and fact 35 Ind Cas 603=44 C  
119=24 C L J 350=21 C W N 550, see also 55 Ind Cas 544=1 Pat L J 157,  
123 Ind Cas 492=A I R 1930 Bom 39=31 Bom L R 1279, A I R 1927  
P C 102=8 Lah 573=54 I A 178=52 M L J 663=29 Bom L R 870=31  
C W N 677=39 M L J 870=25 A L J 959=28 P L R 658=101 Ind Cas  
355, 33 C W N 211=56 C 738=A I R 1929 Cal 37=116 Ind Cas 378, A I R  
1928 Cal 597=37 C W N 771=112 Ind Cas 180, 111 Ind Cas 76=A I R  
1928 Lah 720=10 Lah L J 251 87 Ind Cas 368=A I R 1926 All 83, A I R  
1921 Lah 329=29 P W R 1922=72 Ind Cas 177, 21 C W N 809=40 Ind Cas  
513, 46 Ind Cas 351, 51 C L J 353=A I R 1932 Cal 398=137 Ind Cas 658  
So also the question whether relation of landlord and tenant exists is one of law  
A I R 1925 Cal 1238=85 Ind Cas 757 Finding as regards jointness of holding  
is a question of fact A I R 1924 All 231=21 A L J 899=72 Ind Cas 567,  
see also A I R 1926 Mad 33=49 M L J 358=22 L W 511=90 Ind Cas 880  
Though a substantial question of law arises in determining whether a tenant is a  
raiyat or a tenure-holder the point depends ultimately on questions of fact  
A I R 1926 Pat 9=6 P L T 787=90 Ind Cas 895 The question whether the  
tenants are raiyats depends on the question of law and Court should look to the  
attendant circumstances 100 Ind Cas 466=A I R 1927 Cal 1413

**Notice.**—Question whether notice is reasonable and sufficient is a question  
of fact A I R 1922 Mad 617=30 L W 583=118 Ind Cas 279; A L R 1931  
All 338=130 Ind Cas 292 So also the question whether a notice was duly served  
is a question of fact A I R 1927 All 215=99 Ind Cas 622 But the question  
whether from certain facts giving of notice can be proved is one of law A I R  
1926 Pat 95=(1926) Pat 258=8 P L T 221=95 Ind Cas 991.



Cas 303; 63 Ind Cas 746=A I R 1921 Lah 263=3 Lah 569, A I R 1926 Oudh 614=96 Ind Cas 357, A I R 1931 Lah 220=31 P L R 195=123 Ind Cas 81; A I R 1931 Pat 72=130 Ind Cas 165, A I R 1931 Lah 170=32 P L R 304=131 Ind Cas 283, A I R 1930 Mad 590=32 L W 160 Exclusion of lands from the assets in calculating *peshcush* is a question of fact A I R 1924 Mad Cas 465 Question of dedication but can be decided by noting 1931 Lah 170=32 P L R 304=10,6=ore the question power

of attorney, to be ascertained from terms of the document, and where interpretation does not depend on legal phraseology or legal effect the question is one of fact A I R 1929 Lah. 90=30 P L R 168=109 Ind Cas 380

**Finding as to Limitation**—Finding that the time between date when copies are ready for delivery and the date of actual delivery cannot be excluded is a question of fact A I R 1923 Lah 676=73 Ind Cas 447. Similarly finding as to time required for obtaining copies is one of fact and cannot be questioned in second appeal 67 Ind Cas 478

ue of a property, in the agitated in second appeal h 137=111 Ind Cas 814, =4 Luck 683 124 Ind 561=127 Ind Cas 589

is used in a particular A I R 1925 Cal 1209=88

Ind Cas 77, 20 C W N 584=32 Ind Cas 240

**Nature of property**—Finding as regards character and nature of property is one of fact and as such cannot be considered in second appeal A I R 1923 Lah 532=79 Ind Cas 543 A I R 1911 Lah 843=3 Lah L J 514 Whether a certain place is a town or a village is a question of fact and cannot be questioned in second appeal A I R, 1926 Lah 542=8 L J 61 also 112 Ind Cas 402=10 Lah L J 360 That the lands in question are included in be questioned in second appeal A I R question whether certain property has been is purely one of fact A I R 1918 (P C) 135=47 C L J 292=30 Bom L R 762 (P C)=107 Ind Cas 453

**Nature of transaction**—Whether a certain transaction amounts to sale or mortgage is a question of fact 26 P L R 799=92 Ind Cas 42, see also A I R 1929 Lah 530=11 Lah L J 151=119 Ind Cas 767, but see A I R 1925 Mad 37=47 M L J 385=84 Ind Cas 50, In a case that mortgage has been extinguished by subsequent sale, the question whether there was sale is one of fact A I R 1930 P C 91=(1930) A L J 292=32 Bom L R 380=31 P L R 145=11 Lah 197=57 I A. 86=51 C L J 518=122 Ind Cas 316 Whether a particular transaction carries with it a share in the *Shamilat* is a question of fact but disregard of law in such finding entitles the High Court to interfere 38 Ind Cas 120

**Question of negligence**—The question of negligence is one of fact A I R 1922 Cal 317=71 Ind 346, A I R 1924 Lah 594=6 Lah L J 237=79 Ind Cas 428, 94 Ind Cas 348, A I R 1927 Oudh 478=1 Luck Cas 498=10, Ind Cas L J 375=39 M L J 15 (1918) 1st 178, A I R Cas 736 The question of law A I R

1926 Mad 505=(1926) M W N 300=95 Ind Cas 707, A I R 1924 All 613=77 Ind Cas 1032, A I R 1925 Mad 258=47 M L J 700=(1925) M W N 75=85

Whether particular fact R 1926 N 25 Lah 300=29=111 A I R

**Nuisance**—Whether nuisance exists or not is a question of fact A I R 1926 Nag 50=39 Ind Cas 929 90 Ind Cas 227=A I R 1927 Lah 424=7 Lah L J 192, 64 Ind Cas 169 (Lah), A I R 1929 All 504=118 Ind Cas 520

**Questions of presumption**—A finding based on mere conjecture and presumption can be considered in second appeal 44 Ind Cas 433=55 P W R 1918=33 P L R 1918, 27 C L J 563=22 C W N 826, 102 P W R 1918=45 Ind Cas 800, 5 Lah 106=79 Ind Cas 970, A I R 1930 Oudh 17=118 Ind Cas 808, 25 Ind Cas 278

**Ignoring presumption under s 114 Evidence Act is a ground for second appeal** A I R 1925 Nag 21=121 Ind Cas 730, 17 N L R 25=27 P W R 1918=46 Ind Cas 511 But a presumption based on probabilities deduced from the evidence is presumption of fact and not one of law 125 Ind Cas 327=A I R 1930 Lah 557 Whether evidence has rebutted statutory presumption is a question of fact A I R 1930 P C 91=(1930) A L J 292=32 Bom L R 380=57 I A 86=31 P L R 145=31 L W 321=11 Lah 199=51 C L J 518=59 M L J 53=122 Ind Cas 316

**Question whether presumption of correctness attached to entry in record of rights is rebutted or not is not reviewable in second appeal** 22 C W N 449=45 Ind Cas 65, 65 Ind Cas 527, 63 Ind Cas 226, 64 Ind Cas 190 Finding on question of legitimacy though one of fact of evidence and strong presumption 375 It is a mistake of law as of right A I R 1925 Nag 270=85 Ind Cas 81

brought on almost the last day allowed by the law of limitation, and from this the Court inferred that the plaintiff must all along have been receiving interest at the stipulated rate and on that calculation the mortgage debt had been fully satisfied. Held that the Court had erred in law in drawing the inference as to the payment of

of each case 136 Ind Cas 783=A I R 1932 Mad 173

980=114 Ind Cas 698 Whether the right of privacy in respect of a house has or has not been interfered with by neighbour, is a question of fact and cannot be disturbed in second appeal A I R 1929 Oudh 535=6 O W N 940=123 Ind Cas 222 Whether a particular user of passage imposes additional burden on servient heritage under s 23 Easement Act is a question of fact A I R 1931 Mad 128=(1931) M W N 631=130 Ind Cas 661 Question of enjoyment of easement as of right, peacefully and without interruption is a question of law A I R 1931 Lah 393 Whether any particular user of the passage by the dominant owner does or does not impose additional burden upon the servient heritage is essentially a question of fact 130 Ind Cas 661=1931 Mad 631=34 L W 369=A I R 1931 Mad 128=61 M L J 58

**Question of intention**—Question of intention is not a matter of law but of fact A I R 1928 All 61=50 A 203=25 A L J 970=107 Ind Cas 33, 69 Ind Cas 415=A I R 1924 Lah 582, 68 Ind Cas 661=A I R 1923 Nag 7, 42 Ind



Cas 303, 63 Ind Cas 746=A I R 1921 Lah 263=3 Lah 569, A I R 1926 Oudh 614=95 Ind Cas 357, A I R 1931 Lah 220=31 P L R 192=123 Ind Cas 81, A I R 1931 Pat 72=130 Ind Cas 165, A I R 1931 Lah 170=32 P L R 304=131 Ind Cas 283, A I R 1930 Mad 590=37 L W 160 Exclusion of lands *ishcush* is a question of fact A I R 1924 Mad N 732=75 Ind Cas 465 Question if dedication great difficulty but can be decided by noting

the conduct of founder or his successors A I R 1931 Lah 170=32 P L R 304=1056= ore the applicati question of fact power of attorney, to be ascertained from terms of the document, and where interpretation does not depend on legal phraseology or legal effect the question is one of fact A I R 1929 Lah 90=30 P L R 168=109 Ind Cas 380

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67 Ind Cas 478

**Market value**—Finding as regards the market value of a property, in the absence of legal mistake, is a question of fact and cannot be agitated in second appeal A I R 1926 Oudh 68=90 Ind Cas 679, A I R 1929 Lah 137=111 Ind Cas 814, 118 Ind Cas 8,=A I R 1929 Oudh 244=6 O W N 264=4 Luck 683 174 Ind Cas 30=A I R 1930 All 363=2 A 532=(1930) A L J 561=127 Ind Cas 589

**Meaning of words**—A finding that a particular word is used in a particular sense is one of fact and is binding on the High Court A I R 1925 Cal 1209=88 Ind Cas 77, 20 C W N 384=32 Ind Cas 240

**Nature of property**—Finding as regards character and nature of property is one of fact and as such cannot be considered in second appeal A I R 1923 Lah 1 L J 514 Whether a certain annot b questioned in second L R 73=94 Ind Cas 127 see ng of the lower appellate Court manent settlement of 1793 cannot

be questioned in second appeal A I R 1917 Cal 437=100 Ind Cas 507 The question whether certain property has been thrown into the assets of partnership, is purely one of fact A I R 1918 (P C) 132=47 C L J 297=30 Bom L R 762 (P C)=107 Ind Cas 453

**Nature of transaction**—Whether a certain transaction amounts to sale or mortgage is a question of fact 26 P L R 799=97 Ind Cas 42 see also A I R 1919 Lah 530=11 Lah L J 151=119 Ind Cas 767 but see A I R 1925 Mad 37=47 M L J 385=8 by subsequent sale 1 P C 91=(1930) A I I A. 86=51 C L J with it a share in the entitles the High Court to interfere 38 Ind Cas 120

**Question of negligence**—The question of negligence is one of fact A I R 1922 Cal 317=71 Ind 346, A I R 1924 Lah 594=6 Lah L J 237=79 Ind Cas 428, 94 Ind Cas 348, A I R 1917 Oudh 478=1 Luck Cas 498=10, Ind Cas 565 A I R 1927 Mad 443=(1927) M W N 213=23 M L J 372=29 M L J 15=103 Ind Cas 31, 45 Ind Cas 197=4 Pat L W 367=(1918) Pat 178, A I R 1918 Lah 774=10 Lah 360=30 P L R 541=112 Ind Cas 736 The ques on whether particular facts found constitute gross negligence is a question of law A I R 1916 Mad 502=(1916) M W N 300=9, Ind Cas 707, A I R 1914 All 613=77 Ind Cas 1032, A I R 1925 Mad 758=47 M L J 700=(1925) M W N 72=2, Ind Cas 812, 70 Ind Cas 391=A I R 1912 All 421 Whether particular facts justify inference of wilful neglect is a question of law A I R 1916 Nag 27=2 N L J 111=97 Ind Cas 19, A I R 1911 Lah 774=10 Lah 350=30 P L R 541=112 Ind Cas 736, A I R 1918 Lah 837=10 Lah 379=111 Ind Cas 51 The finding that there was no negligence is a finding of fact A I R 1918 All 117= L R 9 A 23 Rev=107 Ind Cas 702 Wilful neglect is not a pure

and therefore, an Appellate Court's finding of fact based on certain evidence and circumstances cannot be questioned in second appeal. A I R 1926 All 394=48 A 766=96 Ind Cas 1046. The finding of negligence derived through wrong principles can be questioned in second appeal. A I R 1929 Lah 314=30 P L R 128=11 Lah L J 82=118 Ind Cas 635, see also A I R 1929 Rang 17=6 Rang 643=116 Ind Cas 470.

Omission on the part of the lower Court to consider certain evidence does not render the judgment bad in law. 11 Lah L J 381. Whether a party offering a secondary evidence of document not lost or destroyed has sufficient reason for not producing it in reasonable time is a question of fact. A I R 1930 All 550=(1930) A L J 1003=125 Ind Cas 460. The question of *lambardar's* misconduct or negligence under s 164 of the Agra Tenancy Act is a mixed question of law and fact. A I R 1921 All 314=41 A 23=60 Ind Cas 643. The finding that a guardian has been negligent is one of fact. A I R 1933 Lah 337=142 Ind Cas 629=34 P L R 110.

Transaction, notice of.—The question of notice of a transaction is one of fact. 3 Lah L J 447, see also A I R 1926 Oudh 257=13 O L J 176=91 Ind Cas 1046, A I R 1929 Oudh 316=6 O W N 493=117 Ind Cas 405, see also 54 A 557=138 Ind Cas 439=1932 A L J 526=A I R 1932 All 540.

Ownership and Possession.—The question of ownership of a particular property is a question of fact. 96 Ind Cas 915=A I R 1926 Mad 102, 113 Ind Cas 886, A I R 1921 Lah 117=62 Ind Cas 809. The finding that a person is in possession of a property either of his own right or in a certain capacity is also a question of fact. A I R 1925 Oudh 170=81 Ind Cas 588, 67 Ind Cas 152, 14 A L J 1066=36 Ind Cas 427.

Partnership dissolution of.—A finding from circumstantial evidence that a partnership has been dissolved is one of fact and cannot be questioned in second appeal. 144 Ind Cas 573=1933 M W N 619=A I R 1933 Mad 353.

Reasonable and probable cause.—A finding as regards the absence and presence of reasonable and probable cause or reasonable care and good faith is a finding of fact and cannot be interfered in second appeal. A I R 1929 All 429=117 Ind Cas 619, A I R 1927 Nag 41=97 Ind Cas 988, 86 Ind Cas 595=A I R 1925 Oudh 339=12 O L J 88=2 O W N 62=28 O C 387, 91 Ind Cas 112. 60 Ind Cas 96, I R 1932 Lah 663. It is a mixed question of law and fact. A I R 1932 All 386=138 Ind Cas 282, 137 Ind Cas 829=35 L W 495=A I R 1932 Mad 601. 28 N L R 312.

Rate of rent.—Questions as regards rent or rate of rent is one of fact. A I R 1926 Cal 359=90 Ind Cas 564, 86 Ind Cas 316=A I R 1925 Cal 632=29 C W N 500=41 C I J 135. 23 C W N 345=51 Ind Cas 760=46 C 189.

Representation.—Finding as to representation in representation or conduct is one of fact. A I R 1921 Mad 198=13 L W 325=62 Ind Cas 764, 68 Ind Cas 203=A I R 1923 Cal 163, A I R 1926 Mad 39=49 M L J 396=90 Ind Cas 875.

Representation of a deceased.—Whether one heir of deceased tenant represents the whole tenancy is a question of fact. A I R 1926 Cal 517=91 Ind Cas 748. Finding if tenancy is correctly represented is one of fact and cannot be made ground of second appeal. A I R 1929 Cal 28=49 C L J 83=115 Ind Cas 180. Whether certain persons are representatives of another tenant is a question of fact. A I R 1927 Cal 81.

Persons acted as heirs or fact. A I R 1927 Mad question of plaintiff's status second appeal. 29 P L R 162=109 Ind Cas 358, see also A I R 1928 Nag 130=107 Ind Cas 911, A I R 1929 Mad 250=116 Ind Cas 153, A I R 1923 Lah 66=80 Ind Cas 264, A I R 1923 Lah 611, A I R 1921 Lah 767=3 Lah L J 552=67 Ind Cas 780. Whether or not a caste was split up is a question of fact. A I R 1929 Bom 67=50 B 124=27 Bom L R 1503=93 Ind Cas 549. Whether the parties to a suit follow custom or Muhammadan Law cannot be discussed in second appeal. 106 P W R 1916=60 P L R 1917=34 Ind Cas 219.

Question of Wakf.—Finding of lower appellate court as to character and dedication of property as wakf is final even when erroneous. A I R 1930 Lah 744=

=31 P L R 372=126 Ind Cas 17, 34 P L R 763=A I R 1933 Lah 342=144 Ind Cas 467

**Pardanashin lady**—A finding that a certain lady is not *pardanashin* lady is one of fact and cannot be questioned in second appeal A I R 1933 Lah 451=34 P L R 304=144 Ind Cas 720

**Copy right infringement of**—The question of infringement of copyright or breach of confidence is one of fact 142 Ind Cas 115=1933 A L J 393=37 L W 314=64 M L J 193 P C=A I R 1933 P C 26

**Question of proof of fact**—Question of proof of fact where evidence for and against has been properly admitted is one of fact 135 Ind Cas 693=A I R 1932 Oudh 51, 7 Luck 116=8 O W N 800=134 Ind Cas 411=A I R 1932 Oudh 288 But proper effect of proved fact is a question of law 7 Luck 116=A I R 1932 Oudh 283, 6 Luck 403=129 Ind Cas 335=A I R 1931 Oudh 19, 135 Ind Cas 693=A I R 1932 Oudh 51, 28 N L R 312

**Acknowledgment**—Acknowledgment of liability contained in settlement record is a question of fact A L R 1934 Lah 53=14 Lah 583

**Account**—Decision of lower appellate court as regards books of account is final 9 O W N 532=138 Ind Cas 716=A I R 1932 Oudh 225=A L R 1932 Oudh 470 138 Ind Cas 716=9 O W N 532=A I R 1932 Oudh 225 The High Court on the ground that the books have robbed the books 2 628

**Finding of fact**—A finding of fact arrived at by the lower courts on proper consideration of evidence cannot be questioned in second appeal A I R 1933 Lah 172=145 Ind Cas 155 A I R 1933 Lah 141=145 Ind Cas 122, A I R 1933 Rang 91=144 Ind Cas 315 A I R 1933 Oudh 115=142 Ind Cas 696, A I R 1933 Rang 174=146 Ind Cas 445=6 I R (Rang) 100, A I R 1933 Oudh 250=10 O W N 416=146 Ind Cas 233, A I R 1933 Pat 708

procedure affecting  
J 437=A I R 1932  
All 293 (F B)=138 Ind Cas 463, see also 9 O W N 1015, 9 O W N 568=A I R 1932 Oudh 264=139 Ind Cas 365; I R 1932 Lah 623, 136 Ind Cas 719=33 P L R 161, 9 O W N 1063, I R 1932 Lah 666 Erroneous finding of fact is not same as defect in procedure and hence wrongful finding of fact if there is sufficient evidence cannot be interfered with A I R 1929 P C 190=25 N L R 121=50 C L J 197=57 M L J 205=31 Bom L R 883=56 I A 280=33 C W N 893=(1929) P C 233=117 Ind Cas 1, A I R 19 9 P C 152=(1929) A L J 702=33 C W N 725=31 Bom L R 866=(1929) M W N 442=50 C L J 30=57 M L J 64=117 Ind Cas 481 see also A I R 1928 Nag 329=114 Ind Cas 454, 111 Ind Cas 376, A I R 1928 Oudh 354=5 O W N 510=100 Ind Cas 531, A I R 1927 Lah 574=103 Ind Cas 215, 100 Ind Cas 792=13 O L J 520, 99 Ind Cas 255, A I R 1927 Oudh 89=99 Ind Cas 199, 98 Ind Cas 1035, 98 Ind Cas 869 92 Ind Cas 327=A I R 1924 Nag 91=20 N L R 17 91 Ind Cas 1046=A I R 1926 Oudh 257=13 O L J 176 A I R 1926 Pat 9=6 P L T 787=90 Ind Cas 89, 19 C W N 270 88 Ind Cas 958=A I R 1925 Mad 823=48 M L J 467=22 L W 73 80 Ind Cas 290=A I R 1925 Cal 162 78 Ind Cas 36, 3 Lah L J 409=67 Ind Cas 436, 4 Lah L J 454, 3 Lah L J 103=64 Ind Cas 297 The question whether the defendant was of unsound mind at the time of the execution of the *dhiri* entry is one of fact 34 P L R 297=A I R 1933 Lah 458=144 Ind Cas 741 Whether the trustee used all reasonable diligence is in the main a question of fact A I R 1913 All 158=147 Ind Cas 691  
is also a question of fact A I R 1933  
existence of a custom in so far as it  
or does not prevail, is a finding of fact  
neither a promissory note is for a cash

consideration is a finding of fact which is not open to challenge in second appeal  
A I R 1932 Lah 30

**Question of Fact—what is—**That a woman has taken a life of immorality is a question of fact. 150 P W R 1915=31 Ind Cas 797. In action for libel such questions as whether writing was defamatory of plaintiff questions of fact. 32

1927 C 1 429=49 C 477=26 C W N 749=34 C L J 444=67 Ind Cas 77. That a *Dharmasala* was always treated as private property is question of fact and is binding in second appeal 3 Lah L J 514. Finding of undue influence is a finding on merits 40 Ind Cas 215. A finding on the question whether there was forfeiture of tenancy by denial of relationship of landlord and tenant is a finding of fact and no second appeal is competent from that finding 34 P L R 884=A I R 1933 Lah 377=145 Ind Cas 992. Whether there has been disruption of joint Hindu family or not is not a finding of fact 144 Ind Cas 919. Whether the amount of rent is fair and equitable is a question of fact 146 Ind Cas 811. What is reasonable compensation under s 74 of the Contract Act 1930. Where different and where the

is one of  
R 1934  
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1934 rat 48. Under this section the High Court has no jurisdiction to reverse the findings of fact arrived at by the lower appellate court, however erroneous 38 C W. N. 533 P. C 16 R D 377. Finding of lower court that plaintiff could claim share in specified trees in plots other than grove admitted to be joint is one of fact. A. I R. 1934 Oudh 177

Second appeal on no other grounds except on the grounds mentioned in section 100.

**102. [S 586]** No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

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the suit. Thus  
Rs 250 tries  
is Munsiff,  
=129 Ind Cas

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46 A 73=21  
Ind Cas 750 ;

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L. J 477=30  
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352=42 M L J 118=14 L W 349=66 Ind Cas 207.  
must be construed to apply to all suits of a civil nature of which the value  
t exceed Rs 500 except those which are contained in Sch. II of the Provincial

Small Cause Courts Act 129 Ind Cas 174=7 O W N 1112=A I R, 1931 Oudh  
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review and not on merits A I R 1921 Lah 124=3 Lah L. J 166=60 Ind Cas  
 259 Amount claimed in plaint and character disclosed in plaint determines whether  
 suit is of the nature of Small Cause Court A I R 1924 Cal 405=51 C 62=28 C W.  
 N 6=80 Ind Cas 317

be looked at and not the  
 of the order in execution pro-  
 d Cas 429, see also 46 Ind  
 Cas 82=5 O L J 187, 22 Ind Cas 712 The nature of a suit for s 102 is not  
 affected by the findings or by a question of title arising therein 50 Ind Cas. 629

Suit does not cease to be a  
 incidentally a question of title  
 original side A I R 1926  
 Mad 389=30 L W 36=116 Ind Cas. 114, see also 13 Ind Cas 493, 24 M  
 508, 32 B 356 The course of appeal is determined by the character of the plaint  
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377=23 M L T 255 Amount claimed in plaint and character disclosed in it  
 determines whether a suit is of the nature of Small Cause Court A I R 1924 Cal  
 405=51 C 62=28 C W N 6=80 Ind Cas 317, see also A I R 1928 Nag 136=  
 107 Ind Cas 193 The transfer of a suit under s 23 does not and cannot change  
 its nature which is the test under this section and a second appeal is barred. A I R  
 1926 Mad 622=23 L W 518=94 Ind Cas 77, see also 15 M 98, 24 C 557, 65  
 Ind Cas 7=8 O L J 391, 15 M 98, 120 Ind Cas 370=A. I R 1929  
 Mad 781, 134 Ind Cas 967=1931 A L J 967, 57 Ind Cas 557=23 O. C 117

Value of the suit does not exceed Rs 500—Second appeal is barred in  
 suit where value is Rs 500 and plaint discloses Small Causes Court nature 5  
 O W N 240=108 Ind Cas 898 No second appeal lies from execution proceedings  
 of Small Cause decree for less than Rs 500 A I R 1926 All 345=95 Ind Cas  
 292 A suit to recover less than five hundred rupees as grazing fee is not one for  
 appeal and no second appeal lies in it. 32 C L J 93=59 Ind. Cas. 595; see also  
 A I R 1921 Bom 770=45 B 223=22 Bom L R 1193=59 Ind Cas 192, 51 Ind  
 C. maintainability of second  
 be recovered. A. L. R  
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by defendant is not for  
 327 Rang 262=5 Rang.  
 388=104 Ind Cas 818 Suit for recovery of account papers where in a prayer for  
 damages is made in the alternative is not one cognizable by a Small Cause Court  
 A I R 1922 Cal 481.

for re-pay-  
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 A suit to  
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 41, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

the Courts below found  
was, therefore liable to  
been tried, it was tried  
6 Ind Cas 415, see also

625 Where in a  
were less than Rs 500,

as the suit was not exempted from the cognizance of a Court of Small Causes 12  
M L J 349, see also 24 C 557, 6 A 10, 18 W R 283, 10 C L J 198, 24 C  
557 A suit for damages for wrongfully cutting and carrying off trees, is involving  
a question of title and tried on the regular side remains a Small Cause suit for s 102  
2 M I T 81 = (1916) 2 M W N 215 = 4 L W 245 = 36 Ind Cas 202 Suit for

a Small Cause Suit 130  
ages for use and occupation  
is one of a Small Cause  
nature. A I R 1929 Mad 525 = 119 Ind Cas 380, see also A I R 1928 Nag

a landlord for damages for use and occupation  
gnizance by a Small Cause Court, and a second  
Mad 890 = 48 M L J 701 = 22 L W 528 = 90  
lies in suit against President of District Board for

damages A I R 1923 Mad 689 = 46 M 808 = 4, M L J 125 = 18 L W 82 = 32  
M, L T (H C) 178 = 74 Ind Cas 772 No second appeal lies in suit for damages  
for infringement

declaration of t

A I R 1923 C

damages only,

money 13 Ind Cas 473

Small Cause Court, even though questions of title are often raised in such suits  
(1912) M W N 810 = 23 M L J 193 = 15 Ind Cas 201 A suit for damages for  
cutting fruit trees is a suit of a Small Cause nature 130 Ind Cas 481 =  
1930 A L J 1247, see also A I R 1931 Oudh 415 = 8 O W N 1019 In all cases  
where it is suggested that the  
decision must vary according  
and  
Rs

the case

34 Ind

es below

reated is one for damages,

ract amounted to mortgage.

ner 15 A L J 534 = 40 Ind

Cas 578

**Suit for immoveable property**—A hut is immoveable property and a suit for  
a declaration in respect of a hut is not cognizable by the Small Cause Court 9 Ind.

moveable property for the purposes of the Provincial  
r injunction  
Court's juris

L J 1043 =

f the Small

negation in plaint that the  
eable property ousts the Small  
ation of share due to plaintiff

marriage, the suit is excluded from the cognizance of a Small Cause Court 14 Ind  
Cas 837

**Maintenance**—A suit to recover arrears of maintenance under an agreement is  
excepted from the cognizance of the Small Cause Court and a second appeal will lie  
in such a suit even where the value is less than Rs 500 33 Bom L R 10 = A I R  
1931 Bom. 286 see also 16 B 267, 15 C 164, 20 M 29

**Mesne profits suit for**—No second appeal lies from a suit for mesne profits,  
where the value of the subject matter in dispute is less than Rs 500 23 C 884  
(F B), contra 25 M 103 (F B) and 26 B 85 A suit for profits between co  
tenants is not exempted from the cognizance of a Court of Small Causes and where  
the value is less than Rs 500 no second appeal lies 132 Ind Cas 201 = A I R 1931  
All 551, see also 129 Ind Cas. 124 = A I R 1930 Lah. 613 = 31 P L R 698

**Rent**—The agreement to pay rent having been pleaded the mere omission to raise it in the pleadings is not a ground for setting aside a suit for rent. *A. I. R. 1922 Mad 119=15 L. W. 150=44 M. 697=40 M. L. J. 466*—(1921) *M. W. N. 565=63 Ind. Cas. 8*. A second appeal lies in a suit for rent other than house rent. *A. I. R. 1922 Pat 184=37 Ind. Cas. 980*. Alternative relief for rent cannot evade the bar of s. 102 for second appeal. Relief for recovery of rent cannot be joined with s. 102. *23 C. L. J. 557=34 Ind. Cas. 697*. Rent is not tenable by a Small Cause Court but Courts of Small Causes as mentioned in s. 102 are payable to the *mirasdar* is not rent but is dues mentioned under Art. 13 of the Provincial Small Cause Court Act and second appeal lies in a suit for the same. *34 M. L. J. 104=23 M. L. T. 44=41 M. 254 (B)=44 Ind. Cas. 699*.

**Miscellaneous cases**—Suit for declaration and refund of professional taxes is a suit of Small Cause nature. (1931) *M. W. N. 1107*, 1932 *M. W. N. 142=A. I. R. 1932 Mad 226*. But where injunction is prayed for in that case it is exempt from the jurisdiction of Small Cause Court. *L. W. 639*. A suit to enforce his share is not cognizable by Small Cause Court. *140 Ind. Cas. 252=A. I. R. 1932*. Amount paid in a decree there. *Ind. Cas. 381*. Removal of log is no criminal offence and a suit for the recovery of the logs or their value is triable by a Court of Small Cause. *155 Ind. Cas. 888=A. I. R. 1933 Mad 636*. Suit for compensation for loss suffered on account of percolation of drain water is cognizable by a Small Cause Court. *143 Ind. Cas. 493=34 P. L. R. 583=A. I. R. 1933 Lah. 563*. No second appeal in suit to recover *choutary* dues. *A. I. R. 1927 Mad 670=52 M. L. J. 706=38 M. L. T. 104*. *rustums* and road cess which is not of cl. 13 no second appeal lies. *A. I. R. 1925 M. 104*. Wrongful removal of trees without criminal offence therefore no second appeal lies. *A. I. R. 1923 Cal 568=27 C. W. N. 469=77 Ind. Cas. 836*. *riated* refers to *Ind. Cas. 731*. *93 C. P. Code*. *=45 A. 359=74 Ind. Cas. 836*. No second appeal only on mortgage money due. *66 Ind. Cas. 1* under an agreement is in the nature of a suit to recover money forcibly taken is cognizable by a Court of Small Causes. *2 U. P. L. R. 212=57 Ind. Cas. 505*.

**103. [New]** In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal [which has not been determined by the lower appellate court or which has been wrongly determined by such court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100].\*

Power of High Court to determine issues of fact on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal [which has not been determined by the lower appellate court or which has been wrongly determined by such court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100].\*  
 ce on any  
 erred to by  
 =A. I. R.  
 193  
 by the Lower Appellate Court, the High Court is perfectly entitled to determine the issue as one of fact. *A. I. R. 1930 Mad 489=127 Ind. Cas. 142*. High Court in second appeal has power to determine small question of fact and avail remand. *A. I. R. 1931 Cal 129=34 C. W. N. 951=130 Ind. Cas. 140*, see also *7 Pat 260*.

\* The words within brackets have been substituted for the words "but not determined by the lower appellate Court" by Act 6 of 1926.

the Courts be

was, therefore

been tried, it was tried in the Court, and, therefore, it was not

6 Ind Cas 415, see also

625. Where in a

were less than Rs 500,

as the suit was not exempted from the cognizance of a Court of Small Causes 12

M L J 349; see also 24 C 557; 6 A 10; 18 W R 283, 10 C L J 158; 24 C

557. A suit for damages for wrongfully cutting and carrying off trees, is involving

a question of title and tried on the regular side remains a Small Cause suit for s 102

22 M L T. 381=(1916) 2 M W. N 215=4 L W 245=36 Ind Cas 202 Suit for

a Small Cause Suit 130

ages for use and occupation

is one of a Small Cause

nature A I R 1929 Mad 525=119 Ind Cas 386; see also A I R 1928 Nag

136=107 Ind Cas 193 A suit by a landlord for damages for use and occupation

against tenants holding over is cognizable by a Small Cause Court, and a second

appeal does not lie A I R 1925 Mad 890=48 M L J 701=22 L W. 528=90

Ind Cas 401 No second appeal lies in suit against President of District Board for

damages A I R 1923 Mad 689=46 M 808=45 M. L J 125=18 L W 82=32

M. L. T. (H C) 378=74 Ind Cas 223 No second appeal lies in suit for damages

for infringement

declaration of t

A I R 1923 C

damages only, A

money 13 Ind Cas 493 A suit for damages for trespass is a suit cognizable by a

Small Cause Court, even though questions of title are often raised in such suits

(1912) M W N 810=23 M L J 193=15 Ind Cas 201 A suit for damages for

cutting fruit trees is a suit of a Small Cause nature 130 Ind Cas 481=

1910 A L J 1247; see also A I R 1931 Oudh 411=8 O W N 1019 In all cases

the plaintiff

less than

the case

34 Ind

ages below

reated as one for damages,

fact amounted to mortgage,

ner 15 A L J 534=40 Ind.

property and a suit for

ll Cause Court 9 Ind.

ses of the Provincial

prayer for injunction

Cause Court's juris

(1930) A L J 1043=

the nature of the Small

Cause Suit A I R 1922 All 241=00 Ind Cas 013 Allegation in plaint that the

defendant was wrongfully receiving profits of immoveable property ousts the Small

Cause nature of the suit but that of wrongful appropriation of share due to plaintiff

does not 31 Ind Cas 797

**Marriage-contract**—Where the basis of the claim is a breach of promise of

marriage, the suit is excluded from the cognizance of a Small Cause Court 14 Ind.

Cas 837

**Maintenance**—A suit to recover arrears of maintenance under an agreement is

ourt and a second appeal will lie

3500 33 Bom L R 10=A I R

M 29

where the value of the subject matter in dispute is less than Rs 500 23 C 884

(F. B), contra 25 M 103 (F B) and 26 B 85 A suit for profits between co-

tenants is not exempted from the cognizance of a Court of Small Causes and where

the value is less than Rs 500 no second appeal lies 132 Ind. Cas 201=A I R. 1931

All 551; see also 129 Ind. Cas. 124=A. I. R. 1930 Lah. 613=31 P. L R 698



**Rent**—The agreement to pay rent having been pleaded the mere omission to raise it in the grounds of appeal cannot alter the nature of the suit which remains a suit for rent and ejectment 137 Ind Cas 253=33 P L R 936=A I R 1932 Lah 388 A suit for rent of land is not a "land suit" within the meaning of s 2 and therefore no second appeal lies A I R 1926 Rang 19=3 Rang 390-91 Ind Cas 639 A Small Cause Court has no jurisdiction over a suit for rent by a land holder against his ryot A I R 1922 Mad 119=15 L W 150=44 M 697=40 M L J 466=(1921) M W N 565=63 Ind Cas 8 A second appeal lies in a suit for rent other than house rent A I R 1922 Pat 184=37 Ind Cas 980 Alternative relief for rent cannot evade the bar of s 102 for second ap; Relief for recovery of rent cannot be join of s 102 23 C L J 557=34 Ind Cas 697 is not tenable by a Small Cause Court bu Courts of Small Causes is mentioned in s payable to the *muratdar* is not rent but is dues mentioned under Art 13 of the Provincial Small Cause Court Act and second appeal lies in a suit for the same 34 M L J 104=23 M L T 44=41 M 254 (I B)=44 Ind Cas 699

**Miscellaneous cases**—Suit for declaration and refund of professional taxes is a suit of Small Cause nature (1931) M W N 1107, 1932 M W N 142=A I R 101 is prayed for in that case it is exempt from rt 140 Ind Cas 273=1932 M W N 1248=36 liability of the share holder for the balance due on Small Cause Court 59 C 1186=36 C W N 589=716 Second appeal lies against suit for excess amount paid in a decree through fraud and cheating A I R 1928 Cal 776=115 Ind Cas 381 Removal of logs of timber from custody of Court by order of Court is not criminal offence and a suit for the recovery of the logs or their value is triable by a Court of Small Cause 155 Ind Cas 888=A I R 1933 Mad 636 Suit for compensation for loss suffered on account of percolation of drain water is cognizable by a Small Cause Court 143 Ind Cas 493=34 P L R 583=A I R 1933 Lah 363 No second appeal in suit to recover *chout* or dues A I R 1927 Mad 670=52 M L J 706=38 M L T 385=103 Ind Cas 120 A claim for *jodi* *russums* and road cess which is not of the nature of the cesses mentioned in cl 13 no second appeal lies A I R 1925 Mad 1196=49 M L J 185 Suit for wrongful removal of trees without criminal intention is not excepted by Art 35 and N 469=77 Ind Cas 731 93 C P Code 5 No second 66 Ind Cas the nature of a ably taken is cognizable by a Court of Small Causes 2 U P L R 212=57 Ind Cas 505

**103. [New.]** In any second appeal, the High Court may if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal [which has not been determined by the lower appellate court or which has been wrongly determined by such court by reason of any illegality, omission, error or defect such as is referred to in sub section (1) of section 100]\*

**Scope**—The High Court point, which was taken in the lower appellate Court 1931 Rang 29=8 Rang 42, by the Lower Appellate Court, the High Court is perfectly entitled to determine the issue as one of fact A I R 1930 Mad 489=127 Ind Cas 142 High Court in second appeal has power to determine small question of fact and avail remedy A I R 1931 Cal 129=34 C W N 951=130 Ind Cas 140, see also 1930

\* The words within brackets have been substituted for the words "determined by the lower appellate Court" by Act 6 of 1926



\* [(f) and order under section 35 A,]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree,

(i) any order made under rules from which an appeal is expressly allowed by rules.

\* [Provided that no appeal shall lie against any order specified in clause (f) save on the ground that no order, or an order for the payment of a less amount, ought to have been made].

(2) No appeal shall lie from any order passed in appeal under this section.

Save as otherwise expressly provided—The effect of s 104 of the Civil Procedure Code which is materially different from s 588 of the Code of 1882 is not to take away a right of appeal given by Cl 15 of the Letters Patent but to create a right of appeal in cases even where

20 C W N 594=23 C L J 443=43 C

Code does not control the provisions of tl

Judge of the High Court in an appeal u

of the Letters Patent 56 M 915=145 Ind Cas 449=1933 M W N 850=65 M L J 222 (F B), see also 22 M 68, 13 M L J 497 (F B)

Or by any law for the time being in force—An appeal from the judgment of a single Judge of the High Court given by cl 15 of the Letters Patent of Calcutta High Court is expressly saved by the language of s 104 of the C P Code 23 C W N 557=48 I A 76=48 C 481=23 Bom L R 681=60 Ind Cas 274 (P C), see also 25 M 555, 26 C 361

Clause (a)—Under s 104

superseded under Schedule II cl

ing an arbitration has adopted

other available remedy, the Chief Court is competent to interfere in exercise of its revisional powers 251 P W R 1912=125 P R 1912

Clause (b)—The parties to a suit agree to refer their disputes relating to the properties in suit to the arbitration of two persons, and a consent of Judge's order was obtained. The two arbitrators differed on a question of law arising in the arbitration. The two arbitrators each expressed his opinion on the question and referred it for opinion to the High Court in the form of a special case under C P Code, Schedule II, rule 11, and the Indian Arbitration Act, s 10. It was decided by the Chamber Judge. Held that no appeal lay since the special case was in no sense an award. 12 Bom L R 852=8 Ind Cas 171

Clause (c)—The provision in cl (c) of subsection (1) of section 104 of the Code that an appeal shall lie from an order modifying or correcting an award, does not confer an unrestricted right of appeal, and when order has been made modifying an award, the validity of the whole award cannot be called in question in an appeal preferred against that order, but the appeal is allowed against the order only in so far as it modified the award 15 Ind Cas 519. Appeal lies from a decree passed in terms of an award, only in so far as it relates to modifications and correctness made in the award and on no other ground. A I R 1930 Lah 26=31 P L R 668=11 Lah 342=124 Ind Cas 339, see also 10 Lah 688=122 Ind Cas 90=30 P L R 322=A I R 1930 Lah 102, 93 Ind Cas 272=A I R 1926 Oudh 370=13 O L J 144, A I R 1930 Lah 102=10 Lah 688=30 P L R 722=122 Ind Cas 90, 120 Ind Cas 673=A I R 1930 Lah 219, 98 Ind Cas 336=A I R 1926 Lah 519=7 Lah 327=8 Lah L J 450=27 P L R 441=98 Ind Cas 336. Appeal from decree based on modified award can be converted into appeal from the order modifying the award, where party was misled by the only decision on the point 36 C W N 1069=138 Ind Cas 348=A I R 1932 Cal 713

\* Clause (f) and proviso to clause (i) were inserted by s 3 of the Civil Procedure (Amendment) Act, 1923 (9 of 1922), which under section 1 (2) thereof may with the previous sanction of the Governor General in Council be brought into force in any Province by the Local Government on any specified date

107 Ind Cas 821=A I R 1928 Pat 318 62 M L J 573=36 L W 687=1932 M W N 506=A I R 1932 Mad 545 When the appropriate issue is not framed by Court below the second Appellate Court may raise and decide it if evidence on record for deciding is sufficient 47 C 107=46 I A 140=17 A L J 700=15 N L R 97=37 M L J 36=21 Bom L R 920=10 L W 310=24 C W N 81 (P C)=51 Ind C1s 177, see also A I R 1922 Pat 4 536,  
47 Ind C1s 90=5 O L J 464, A I R 1922 494,  
A I R 1922 P C 292=45 M 586=43 M L L W  
102=49 Ind Cas 286=37 C L J 199=27 C 538,  
A I R 1927 Pat 167=81 P L T 74=102 Ind Cas 391, 31 C W N 32=99 Ind Cas 189=A I R 1927 Cal 1, 28 Ind Cas 673

New plea  
argued in H g1

31 P L R 755

lower Appellat

51 C L J 465

cence is not d

question on facts proved 16 A L J 779=47 Ind Cas 400 Where the judgment  
out of custom the High Court  
but should remand the case

40 M 1108=5 L W 346=

32 M L J 237=21 M L T 411=40 Ind C1s 516 Where the trial Court did not  
decide a question of fact and the evidence on record was sufficient for the purpose  
the High Court decided the fact itself A I R 1923 All 134=21 A L J 33=45

vised finding on one  
Court the former can  
decree accordingly 43

M 567=(1930) M V N 61=25 C W N 485=38 M L J 476=22 Bom L R

578=18 A L J 707=56 Ind C1s 117 (P L) Question of title whether of fact or  
of law if left undetermined by the lower Court can be decided by Court of second

10 O L J 646=27 O C 77=78 Ind Cas 895 see  
Mad 65=57 M L J 789=50 L W 1045=124 Ind

118 Ind Cas 312, A I R 1927 All 694=103 Ind

hat issue which is material to the decision  
R 1933 Lah 179

## APPEALS FROM ORDERS

104 [S 588] (1) An appeal shall lie from the following orders, and  
Order from which appeals save as otherwise expressly provided in the  
being in force from no other orders body of this Code or by any law for the time

(a) an order superseding an arbitration where the award has not been  
completed within the period allowed by the Court

(b) an order on an award stated in the form of a special case,

(c) an order modifying or correcting an award,

(d) an order filing or refusing to file an agreement to refer to arbitra-  
tion,

(e) an order staying or refusing to stay a suit where there is an agree-  
ment to refer to arbitration,

(f) an order filing or refusing to file an award in an arbitration without  
the intervention of the Court,

barred by the pronouncement of judgment and drawing up of decree A I R 1925 Pat. 810=4 Pat 670=7 P L T 644=93 Ind Cas 261 Where the decree is not in excess of the award or where the award is made through intervention of Court, the order is not appealable A I R 1924 Bom 324=26 Bom L R 171=79 Ind Cas

474=14 O L J 481=8 O W N 789=A I R 1931 Oudh 345

Where the decree is not in excess of the award and where the award is made through intervention of Court, it cannot be treated either as a compromise under r 3 order, 43, or an order appealable under s 104 (1) (f) A I R 1924 Bom 324=26 Bom L R 171=79 Ind Cas 723

Clause (g)—Order refusing or allowing relief under s 95 is appealable 49 Ind Cas 86=25 M L T 46=9 L W 69 But order made by s 95 by a Small Cause Court is not appealable 36 M L J 435=(1919) M W N 490=50 Ind Cas 886, but see 26 Ind Cas 359

Clause (h)—Both an order of arrest and of attachment before judgment are appealable A I R 1924 Rang 361=2 Rang 362=3 Bur L J 159=84 Ind Cas 270 Appeal from order of arrest or detention in civil prison of a person otherwise than in execution of decree is competent 136 Ind Cas 367=1932 A L J 221=A I R 1932 All 524=A L R 1932 All 508 Appeal lies under s 96 though not under s 104 (h) from an order issuing arrest warrant against judgment debtor A I R 1924 Lah 360=73 Ind Cas 766 Order in execution of decree under s 9 Specific Relief Act is not appealable therefore no appeal lies from an order for

Both an order of arrest and of attachment  
 of arrest is not enunciated in order 43  
 by s 104, and being a statutory right given  
 of procedure and cannot be taken away by  
 rules contained in the schedule Its omission from order 43 does not mean that it  
 does not exist A I R 1924 Rang 361=2 Rang 362=3 Bur L J 159=84 Ind  
 Cas 210

latter under a particular rule if

22 Bom L R 1126=59 Ind

XXI r 66 8 L B R 350=

10 Bur L T 115=36 Ind Cas 407 Order refusing to take action under Order 39, rule 2 (3) is appealable 39 M 907=3 L W 430=30 M L J 523=19 M L T 314=34 Ind Cas 588 No appeal lies from order granting leave to sue receiver for damages A I R 1921 Bom 427=45 B 99 Appeal does not lie from an order in terms of compromise passed in appeal by the District Court A I R 1922 Lah 309=3 Lah 175=66 Ind Cas 258 Order permitting withdrawal of a suit under Order 23, rule 1, does not amount to a decree and hence is not appealable A I R 1922 Lah 267=65 Ind Cas 719 Order refusing withdrawal of execution case is appealable A I R 1922 Pat 525=1 Pat 232=3 P L T 445=65 Ind Cas 122 Order made after preliminary decree directing Commissioners to ascertain value of the property and take possession, is merely an interlocutory order and as such not appealable A I R 1921 Oudh 224=24 O C 366=65 Ind Cas 983 No appeal lies from an order which is either conditional or provisional and does not result in a final decree A I R 1924 All 376=46 A 372=22 A L J 345=79 Ind Cas 363, No appeal lies against an order, under the Arbitration Act A I R 1923 Sind 81 See also 81 Ind Cas 759=17 S L R 193=A I R 1923 Sin 130 An order allowing a suit to be withdrawn with liberty to bring a fresh suit is not appealable A I R 1926 Oudh 184=88 Ind Cas 109 Appeal lies from Order under Succession Act passed by the District Judge to High Court and is governed in procedure by the provisions of C P Code relating to appeals A I R 1929 Rang 10=115 Ind Cas 401

Order granting interest on mortgage money for period during which sale-proceeds of mortgaged property are lying in Court is not appealable but is open to revision. A I R 1929 Rang 127=118 Ind Cas 416 An appeal from an order granting an amendment as such cannot lie unless it be considered as a question of review. A I R 1929 Cal 676=50 C L J 12=33 C W N 938=37 C 349=122 Ind Cas

Code an order for filing an  
act the order of reference  
appealable A I R 1926 All

an appeal lies therefrom 65 P. W. R 1917=62 P. W. R 1917=39 Ind Cas 508

850

Clause (f) — There is no appeal against the appellate order of the District Judge dismissing an application to file an award A I R 1920 Lah 507=120 Ind Cas 277  
in a suit pending  
ah 369 Where  
a revision lies  
110 Ind Cas 302=A I R 1929 Lah 367 Order filing or refusing to file an award  
on arbitration without the intervention of Court cannot be regarded as a decree A  
I R 1928 Lah 137=9 Lah 380=107 Ind Cas 706 If decreed (f) only final orders

party amounts to an order filing an award though there is no express order to that  
effect A 466=88 Ind Cas 533  
Order refus under s 104 (f) 76  
Ind Cas 5 sed after the objections  
certain order 73 Ind Cas 820=A I  
have been 211 Whereby a single order an award directed to be filed and a decree

appeal  
obtained  
refusing  
to file an award is appealable and in absence of any rules made by the High Court  
under s 20, C P Code is to be followed A I R 1921 All 273=19 A L J 132=  
43 A 348=61 Ind Cas 269 But an order filing an award in reference by Court  
and under para 19 Sched  
refers to cases referred to  
Under the Letters Patent  
not so under s 104 (f) 45  
setting aside of *ex parte*  
J 332=33 Ind Cas 80 Where part of a private award is outside the scope of  
arbitration the decision of Court on application to file is an order and is appealable  
No second appeal can be from decision in appeal 66 P R 1915=146 P W R 1915  
—31 Ind Cas 80

**Ex parte** — Ex parte decree passed in an application filed under para 20 Schedule  
II of the Code is appealable A I R 1928 Mad 969=55 M L J 262=29 L W 490=  
112 Ind Cas 691 Appeal from order under s 104 (f) is governed by Art 11, Schedule  
II Court fees Act, for Court fees A I R 1928 Lah 137=9 Lah 380=107 Ind Cas  
756, see also 6 Luck 703 For appeal against order filing an award without the  
intervention of the Court, the Court fee stamp is of eight annas A I R 1927 All  
771=25 A L J. 741=103 Ind Cas 315

Appeal lies against order refusing to execute an award under the Co operative  
Societies Act, holding it to be a mere nullity A I R 1926 Lah 547=8 Lah L J  
310=27 P. L. R 705=97 Ind Cas 288 The right of appeal to file an award is not

barred by the pronouncement of judgment and drawing up of decree A I R 1925 Pat. 810=4 Pat 670=7 P L T 644=93 Ind Cas 261 Where the decree is not

474=14 O L J 481=8 O W N 789=A I R 1931 Oudh 345

Where the decree is not in excess of the award and where the award is made through intervention of Court, it cannot be treated either as a compromise under r 3 order, 43, or an order appealable under s 104 (i) (f) A I R 1924 Bom 324=26 Bom L R 171=79 Ind Cas 723

Clause (g)—Order refusing or allowing relief under s 9, is appealable 49 Ind Cas 86=25 M L T 46=9 L W 69 But order made by s 95 by a Small Cause Court is not appealable 36 M L J 435=(1919) M W N 490=50 Ind Cas 886, but see 26 Ind Cas 359

Clause (h)—Both an order of arrest and of attachment before judgment are appealable A I R 1924 Rang 361=2 Rang 362=3 Bur L J 159=84 Ind Cas 270 Appeal from order of arrest or detention in civil prison of a person otherwise than in execution of decree is competent 136 Ind Cas 367=1932 A L J 221=A I R 1932 All 524=A L R 1932 All 508 Appeal lies under s 96 though not under s 104 (h) from an order issuing arrest warrant against judgment debtor A I R 1924 Lah 360=73 Ind Cas 766 Order in execution of decree under s 9, Specific Relief Act is not appealable therefore no appeal lies from an order for warrant, arrest of judgment debtor 5 P W R 1917 18 P L R 1917=39 Ind Cas 379, see also 39 Ind Cas 375 Both an order of arrest and of attachment before judgment are appealable an order of arrest is not enumerated in order 43 rule 1 the right is specifically given by s 104, and being a statutory right given in the body of the Code is not a matter of procedure and cannot be taken away by rules contained in the schedule Its omission from order 43 does not mean that it does not exist A I R 1924 Rang 361=2 Rang 362=3 Bur L J 159=84 Ind Cas 210

matter under a particular rule if

22 Bom L R 1126=59 Ind

XXI, r 66 8 L B R 350=

10 Bur L T 115=36 Ind Cas 402 Order refusing to take action under Order 39, rule 2 (3) is appealable 39 M 907=3 L W 430=30 M L J 523=19 M L T 314=34 Ind Cas 588 No appeal lies from order granting leave to sue receiver for damages A I R 1921 Bom 427=45 F in terms of compromise passed in appeal 309=3 Lah 175=66 Ind Cas 258 Order 23, rule 1, does not amount to a

nd Cas 122

tain value of

d as such not

3 No appeal

result in a

final decree A I R 1924 All 376=46 A 377=22 A L J 345=79 Ind Cas 363, No appeal lies against an order, under the Arbitration Act A I R 1925 Sind 81 See also 81 Ind Cas 759=17 S L P allowing a suit to be withdrawn with lib A I R 1926 Oudh 184=88 Ind Cas 102 Act passed by the District Judge to the provisions of C P Code relating to appeals A I R 1929 Rang 107=118 Ind Cas 401

Order granting interest on mortgage money for period during which sale-proceeds of mortgaged property are lying in Court is not appealable but is open to revision A I R 1929 Rang 127=118 Ind Cas 416 An appeal from an order granting an amendment as such cannot lie unless it be considered as a question of review. A I R 1929 Cal 676=50 C L J 12=33 C W N 958=57 C 549=122 Ind Cas

634 No appeal lies from an order giving or refusing leave to bid at an execution sale A I R 1929 Mad 903=122 Ind Cas 161 The Code does not provide for an appeal from an order passed under s 151 and cannot therefore be maintained A I R 1930 Lah 789=31 P L R 477=12 Lah L J 71=122 Ind Cas 102 No second appeal lies from order confirming the auction sale Non adherence to the  
 the sale  
 326. This  
 r Rule 101  
 R D 160  
 ries to the  
 3 A non  
 is drawn

**Sub-section (2)**—Where a case is remanded on appeal from an order returning  
 plaint for presentation to proper court, no further appeal from the order of remand  
 can lie Nor there c  
 not lie from the result  
 framing order as on  
 not otherwise lie A.  
 Second appeal cannot  
 (j) A I R 1930 Lah  
 An appeal lies from  
 and is the proper pr  
 ground of want of c  
 A I R 1929 Lah 472

the High Court as order dismissing the objection was under order XXI r 92 and  
 the appeal was under order 43 A I R 1929 All 553=115 Ind Cas 636 Where  
 the memorandum of appeal purports to be one under s 96 order 21, r 92 and  
 order 43 rule 1 (j) C P Co  
 provision, second appeal cannot  
 108 Ind Cas 391 Second ap  
 refusing to set aside a sale under  
 Lah 204=91 Ind Cas 215 A  
 A I R 1926 Lah 141=89 Ind Cas 384 A second appeal against an order revers  
 ing order of lower court and setting aside sale under order 21 r, 90 is not competent  
 A I R 1924 Pat 803=5 P L T 443=78 Ind Cas 315

the right  
 1922 Lah  
 but if it  
 R 1922=67 Ind Cas 470  
 mise passed in appeal by the District Court A I R 1922 Lah 309=3 Lah 175=  
 under order 43, rule 1 (a) and  
 Cas 304, see also 62  
 Under section 104 (2) no  
 but it cannot take away  
 Letters Patent A I R  
 order is not appealable  
 1921 Lah 265=82 P L  
 ler in terms of compro

revision lie 43 A 334=19 P  
 P W R 1971 No second  
 auction purchasers to set as  
 interest 45 Ind Cas 701  
 appeal 41 Ind Cas. 121 Alleged fraud in sale proclamation is no ground by  
 itself for second appeal 25 C L J 399=40 Ind Cas 426 Second appeal does  
 not lie under s 10 of Letters Patent from an appellate order dismissing application  
 under order 21, rule 90 39 A. 191=15 A L J 46=39 Ind Cas 460 Order passed  
 under order 21, rule 90 can be interfered with by the High Court where the applica  
 tion is a combined application under order 21, rule 90 and order 21, rule 22, if appeal



lies from the decision under order 21 r 22 A I R 1921 Pat. 145=2 P. L. T 401=6 P. L. J 319=61 Ind Cas 823 Subsection 2 deals with internal appeals within the limits of British India. Section 104 does not take away the general right of appealing to the crown given by section 109 A I R 1024 P C 495=34 M L T 62=51 C 361=51 I A 72=22 A L J 386=46 M L J 628=26 Bom L R 386=28 C W N 977 (P C)=83 Ind Cas 531

105. [S. 591] (1) Save as otherwise expressly provided, no appeal shall

lie from any order made by a Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal

(2) Notwithstanding anything contained in sub section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness

... party aggrieved can impugn it in an appeal from the decree 7 C 148, 9 A 447, 10 A 97, 14 B 232, 12 M I A 185, 14 B 231, 10 M I A 359, 7 M I A 283 An appeal lies against the final decree of a Court within the meaning of this section though the only ground of appeal is the erroneous decision of Court in regard to an interlocutory order 1 is not necessary for a party to appeal from every interlocutory order by which he may feel himself aggrieved Any erroneous interlocutory order may be set aside in the appeal from the final decree 6 Ind Cas 239=8 M L T 72=20 M I J 803=M W N 1910 226, see also 7 N L R 167, 2 Bom L R 649, 24 B 302 Though interlocutory order cannot be appealed against it can be objected to in an appeal from final decree A I R 1930 Mad 988=33 L W 391=60 M L J 79=129 Ind Cas 63 This section applies to all interlocutory orders orders and decrees leading to final decree 4 L W 411=35 Ind Cas 74 An aggrieved party can challenge in appeal from decree any findings on preliminary issues regarding jurisdiction or limitations A I R 1921 Bom 220=23 Bom L R 92=45 B 1 - allowing substitution of heirs or setting aside order cannot be questioned in an appeal from a decree 170=37 C W N 138=A I R 1933 Cal 498 Arbitrators for reconsideration the subsequent order superseding arbitration are not open to challenge in appeal in as much as these orders do not affect the final decision on merits A L R 1933 Lah 1194=A I R 1933 Lah 550=146 Ind Cas 334 But an order setting aside an award is an order affecting the decision of the case within the appeal is preferred therefrom, it can A L R 1934 Oudh 19=11 decree abatement cannot be questioned in an appeal 34 merit 145 however be questioned in second appeal 'if it affects the decision of the case' 144 Ind Cas 133=A I R 1933 All 294=193 A L J 561 An order setting aside abatement is non appealable 14 A L J 610=35 Ind Cas 209

In an appeal from a decree the appellant is entitled to challenge it on the ground of any error, defect or irregularity in any order affecting the decision of the case and it is for the Court to which appeal is referred to consider what points the appellant is entitled to urge in such an appeal The same principle applies to appeal to the Privy Council 35 Bom L R 415=A I R 1933 Bom 251=145 Ind Cas 258 Subsection (1) does not apply to an order passed after decree as the order is not interlocutory order A I R 1933 All 194=76 A I J 166=114 Ind Cas 41 Sections 105 and 99 are not mutually destructive A I R 1927 Kan 132=5 Rang 80=102 Ind Cas 379 This section enables an order superseding an appeal to be a ground of attack in appeal from a final decree A I R 1933 All 916=23 A I J 610=35 Ind Cas 209 In an appeal from the final decree in a suit where there is no appeal from preliminary decree, the duty of

634 No appeal lies from an order giving or refusing leave to bid at an execution sale A I R 1929 Mad 903=122 Ind Cas 161 The Code does not provide for an appeal from an order passed under s 151 and cannot therefore be maintained A I R 1930 Lah 789=31 P L R 477=12 Lah L J 71=122 Ind Cas 102 No second appeal lies from order confirming the auction sale Non adherence to the compromise by which the judgment debtor withdrew his objection to the sale cannot affect the competency of the second appeal A I R 1934 Lah 326 This section read with Order 43 show that no appeal lies against an order under Rule 101 of Order 21 Such an order may however be made subject of revision 16 R D 160  
 e of the parties to the  
 W N 903 A non  
 up in the form of a decree. A I R 1934 Pat 13

Sub-section (2)—Where a case is remanded on appeal from an order returning plaint for presentation to proper court no further appeal from the order of remand can lie Nor there c  
 not lie from the result  
 framing order as on  
 not otherwise lie A  
 Second appeal cannot  
 (j) A I R 1930 Lah  
 An appeal lies from  
 and is the proper pr  
 ground of want of c

reed to purchase at the estimated value  
 art, and therefore, if the sale be said to have  
 greater amount great loss would result to  
 him and the court of first instance dismissed the objection, no second appeal lies to  
 the High Court as order dismissing the objection was under order XXI r 92 and  
 the appeal was under order 43 A I R 1929 All 553=115 Ind Cas 636 Where  
 the memorandum of appeal purpo

Lah 204=91 Ind Cas 213 A second appeal against an order reversing order of lower court and setting aside sale under order 21 r 50 is not competent A I R 1924 Pat 803=5 P L T 443=78 Ind Cas 315

No second appeal lies from an appellate order under order 43, rule 1 (a) and remanding the case for trial on merits 2 Lah 587=68 Ind Cas 304, see also 62 Ind. Cas. 986=3 Lah L J 463=A I R 1911 Lah 156 Under section 104 (2) no second appeal lies from the order specified in sub section (1) but it cannot take away

had no saleable interest 45 Ind Cas 701 So also no second appeal is competent from an appellate order under order 43 rule 1 (a) nor does the remedy by way of  
 Cas 2=7  
 titution by  
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 o second  
 ound by  
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**105. [S. 591]** (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal

(2) Notwithstanding anything contained in sub section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness

(2) Notwithstanding anything contained in sub section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness

**Scope**—There is no law in India which compels a party to appeal from every interlocutory order under the penalty, if he does not do so, of forfeiting the benefit of the consideration of the appellate court and whether the order is subject to appeal or not, the party aggrieved can impugn it in an appeal from the decree 7 C 148, 9 A 447, 10 A 97, 14 B 232, 12 M I A 185, 14 B 232, 10 M I A 359, 7 M I A 283 An appeal lies against the final decree of a Court within the meaning of this section though the only ground of appeal is the erroneous decision of Court in regard to an interlocutory order It is not necessary for a suitor to appeal from every interlocutory order by which he may feel himself aggrieved Any erroneous interlocutory order may be set aside in the appeal from the final decree 6 Ind Cas 39=8 M I T 72=20 M L J 805 M W N 1910 226, see also 7 N L R 167 2 Bom L R 49 4 B 302 The only interlocutory order

d to in an appeal from final decree

L J 79=129 Ind Cas 63 This

and decrees leading to final decree

arty can challenge in appeal from

arding jurisdiction or limitations

627=60 Ind Cas 885 An order

an abatement passed by a trial court

, section 145 Ind Cas

remitting the award to

eding arbitration are not

affect the final decision

on merits A L R 1933 Lah 1194=A I R 1933 Lah 530=146 Ind Cas 334

But an order setting aside an award is an order affecting the decision

of the case within the meaning of this section, and even if no appeal is

preferred therefrom, it can be

A L R 1934 Oudh 19=10 O W

cannot be questioned in appeal

P L R 221=A I R 1933 Lah 152=14 Lah 361=141 Ind Cas 337 It may

however be questioned in second appeal 'if it affects the decision of the case'

144 Ind Cas 133=A I R 1933 All 294=1933 A L J 561 An order setting aside

abatement is non appealable 14 A L J 610=35 Ind Cas 209

In an appeal from a decree the appellant is entitled to challenge it on the ground

of any error, defect or irregularity in any order affecting the decision of the case,

and it is for the Court to which appeal is referred to consider what points the

appellant is entitled to urge in such an appeal The same principle applies to

appeal to the Privy Council 35 Bom L R 415=A I R 1933 Bom 251=145

Ind Cas 258 Sub section (1) does not apply to an order passed after decree as the

order is not interlocutory order A I R 1938 All 194=76 A L J 166=114 Ind

Cas 41 Sections 105 and 99 are not mutually destructive A I R 1927 Rang 150=

5 Rang 80=102 Ind Cas 379 This section enables an order superseding an award

to be a ground of attack in appeal from a final decree A I R 1925 All 566=44

916=23 A I J 556=89 Ind Cas 713 In an appeal from the final decree of a

partition suit, where there is no appeal from preliminary decree, the duty of Appellate

Court is to see whether preliminary decree was capable of enforcement A I R 1924 Cal 80=38 C L J 111=75 Ind Cas 319 This section does not apply to order refusing permission to withdraw with liberty to bring fresh suit as the order is such as does not affect merits A I R 1915 Cal 711=41 C L J 186=86 Ind Cas 1029 Question of custom can be agitated in second appeal from final decree if certificate is obtained A I R 1923 Lah 535=5 L L J 392=73 Ind Cas 650

**Save as otherwise expressly provided**—'Save as otherwise expressly provided' means except as provided in Acts other than the Civil Procedure Code A I R 1924 Rang 237=2 Rang 117=80 Ind Cas 746

**Decree**—The word 'decree' should be construed as meaning a decree passed by the Court which made the order which is alleged to be erroneous, defective or irregular. It is open to a Court of appeal after remand by the appellate court and the subsequent decision by the original court 5 M L T 75=32 M 318=2 Ind Cas 525

**Requirements under this section**—This section contemplates two things, there being a regular appeal about something else, and in that appeal the insertion of a ground of objection 22 A 366=A W N 1900, 109

**Error, defect or irregularity**—These words mean an error, defect or irregularity in procedure of law and not in matters of fact. And even then, where there is any defect etc. in procedure or in law, it should be such as to effect the decision of the case 12 A 209. An error, defect or irregularity in any non appealable interlocutory order, affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal A I R 1922 All 118=44 A 524=20 A L J 349=66 Ind Cas 920, see also A I R 1923 Mad 147=46 M 47=43 M L J 406=74 Ind Cas 804=16 L

a person party in appeal  
appeal under this section  
Ind Cas 493. Error, defect  
form ground of objection in appeal against final order A I R 1915 Mad 199=48  
M 267=47 M L J 710=21 L W 136=85 Ind Cas 333. Error, defect or irregularity in an interlocutory order though partly in favour of an unsuccessful party, can be made a ground of objection in appeal if it affects merits A I R 1927 Cal 733=46 C L J 51=104 Ind Cas 151. Error defect or irregularity mentioned in this section must be of law or procedure and not of fact A I R 1930 Pat 266=9 Pat 102=125 Ind Cas 136, 32 C W N 1020=115 Ind Cas 184=A I R 1919  
order is not the same  
thing as advancing  
the said order 133 h  
I R 1931 All 294 (F B)  
Though interlocutory  
e objected to in an appeal or  
error, defect or irregularity in the final order A I R 1930 Pat 626=9 Pat 102=125 Ind Cas 136. Appeal from an order is different from ground of appeal about error irregularity or defect therein A I R 1931 All 294

**Affecting the Decision of the case**—Affecting the decision of the case arrived at in the decision of the case on merits W N 1020 115 Ind Cas 183, A I R 1918 180 (F B). Order setting aside an award therefore an appeal from the final decree such an order can be questioned A I R 1929 Cal 322=56 C 21=121 Ind Cas 675  
Defect in procedure affecting the decision of the case is a good ground of appeal Ind Cas 304. Decision of a case on and it cannot be set forth A I R 1921 Lah 145=3 Lah

A I R 1921 Lah 145=3 Lah 37 Ind Cas 844. Order of lower Appellate court setting aside abatement is such as affects the merits and can be made ground of appeal as per s 105 (1) A I R 1923 Lah 230=71 Ind Cas 587, see also A I R 1923 All 426=47 A 555=23 A L J 449=87 Ind Cas 211, 85 Ind Cas 100=A I R 1923 Cal 473=40 C L J 588, A I R 1925 Cal 766=52 C 472=29 C W N 675=8, Ind Cas 100 A I R 1923 Lah 230=71 Ind Cas 587. Order setting aside an award is non appealable but can form ground of objection in appeal if it affects merits A I R 1928 Lah 755=110 Ind Cas 748. The word 'affect' predicates that the error, defect or irregularity in the order has influenced the conclusion in such a way that an unjust result has been arrived at in the decision of the case on the merits 1931 A L J 377=A I R 1931 All 294 (F B)

It is not necessary to read into s 195 additional words "on merits". A I R 1927 Rang 150 = 5 Rang 80 = 102 Ind Cas 379

Order setting aside an *ex parte* decree.—Affecting the decision of the case means affecting the decision on the merits. Where an *ex parte* decree was passed and was set aside on an application for review held that the propriety of setting aside the *ex parte* decree could not be questioned in an appeal which was passed ultimately after review. A I R 1931 All 329 = 131 Ind Cas 518, see also A I R 1931 All 294 (F B) = 1931 A L J 377 = 133 Ind Cas 129. This section does not apply to order setting aside *ex parte* decree where such order does not affect merits. A I R 1927 B 455 = 51 B 495 = 29 Bom L R 92 = 103 Ind Cas 262, A I R 1923 Lah 425 = 72 Ind Cas 40, 79 Ind Cas 69 = A I R 1924 All 929, see also 3 O L J, 231 = 34 Ind Cas 713, 31 Ind Cas 914 = 40 P R 1916 = 133 P W R 1916. But this section applies when that order affects merits. A I R 1924 Mad 890 = 47 M L J 641 = 20 L W 954 = 85 Ind Cas 808; A I R 1927 Rang 150 = 5 Rang 80 = 102 Ind Cas 379, A I R 1929 Lah 174 = 118 Ind Cas 434, A I R 1929 Cal 322 = 56 C 21 = 121 Ind Cas 675

and an  
ournment  
105 A

I R 1925 Pat 534 = 7 P L T 381 = 1925 Pat 199 = 91 Ind Cas 167

ler cannot be challenged. Grounds

attack A I R 1928 Rang 297 =

l if not appealed against precludes

disputing its correctness thereafter. A I R 1928 Cal 325 = 55 C 506 = 110 Ind Cas 397, see also A I R 19 6 Nag 164 = 89 Ind Cas 1009, A I R 1923 Nag 283 = 82 Ind Cas 64, A I R 1925 Pat 530 = 6 P L T 805 = 88 Ind Cas 49, A I R 1923 Rang 29 = 1 Bur L J 231 = 70 Ind Cas 893, A I R 1926 Cal 509 = 91 Ind Cas 287, 72 Ind Cas 588. If a party is aggrieved by order of remand from which an appeal lies he must appeal therefrom or else he shall be precluded thereafter from disputing its correctness. A I R 1923 Mad 67 = (1922) M W N 657 = 43 M L J 340 = 31 M L T 465 = 69 Ind Cas 673, see also A I R 1925 Nag 185 = 80 Ind Cas 626, 65 Ind Cas 745, 63 Ind Cas 845, 53 Ind Cas 644 = 1 Lah 51, 46 Ind Cas 816, 46 Ind Cas 922, 20 C W N 43 = 32 Ind Cas 866, A I R 1923 Pat 45 = 2 Pat 207 = 3 P L T 765 = 68 Ind Cas 363, 70 Ind Cas 893 = 1 Bur L J 231 = A I R 1923 Rang 29, 62 Ind Cas 703 = 40 M L J 528 = 14 L W 236, 61 Ind Cas 475 = A I R 1921 Nag 129, 60 Ind Cas 975 = A I R 1921 All 276 = 19 A L J 139 = 43 A 377, 57 Ind Cas 52 = 2 U P L R (Lah) 120, 47 Ind Cas 886, 86 Ind Cas 608 = A I R 1925 Mad 916

Order of remand as to existence or non existence of a custom is not appealable. 76 P W R 1917 = 109 P L R 1917 = 39 Ind Cas 775. Where the defendants have failed to raise the objection as to attestation before the High Court where the case was remanded, s 105 precludes them from raising it at the subsequent stage of the same litigation. 35 Ind Cas 371

1 of full Bench case in 29 C 758

High Court before whom case

, can disregard remand order and

3-2 Pat L W 71 = 41 Ind Cas

ecision on other point also must

be thought to be confirmed by remand order. 739 = 16 L W 447 = 74 Ind Cas 597. Pending suit on undecided issues. The Court can disregard

for  
is  
rem  
is  
Ca

court of co-ordinate jurisdiction

court and laying down law on

Ind Cas 136. Remand order

A I R 1925 Oudh 527 = 85 Ind

s affected on merits. A I R

1923 Oudh 177 = 26 O C 10 = 10 O L J 36 = 73 Ind Cas 591. Section 105 does not control Art 15 Letters Patent. Hence order of remand can be attacked in an appeal under Art 15 against the final decree. A I R 1929 Mad 349 = 30 L W 787 = 118 Ind Cas 291. Section 105 (?) precludes a person from disputing afterwards correctness of remand order which is appealable but against which no appeal

be appealed against in Privy Council A I R 1925 Nag 349=22 N L R 132=88 Ind Cas 69, see also A I R 1925 Rang 147-3 Bur L J 248=84 Ind Cas 519

W 458=78 Ind Cas 938 A person included under s 105 (2) C P Code al lies to the Privy Council against the appeal under s 109 (1) on the ground that the decision of the High Court is not a final order or a decree passed on appeal by the High Court s 105 (2) would have no application A L R 1933 B 352=35 Bom L R 458=144 Ind Cas 916=A I R 1933 B 260

An aggrieved party can dispute correctness of remand order in second appeal if he be otherwise entitled to do so A I R 1926 Mad 900-51 M L J 119-24 L W 630=57 Ind Cas 790=1926 M W N 613 Although a party cannot refer question decided before order of remand court can re open the same if necessary A I R 1926 Mad 830=94 Ind Cas 226 Subsection (1) does not apply to a remand order returning plaint by Appellate court as it does not affect merits A I R 1926 Mad 600=51 M L J 119=(1926) M W N 613=24 L W 630=97 Ind Cas 790 Objection as to amendment of plaint must be taken before order of remand A I R 1922 Cal 255=26 C W N 73=35 C L J 25=65 Ind Cas 39 Order of remand is appealable if Appellate Court confirms dismissal of suit in part and remands the case as to the other part A I R 1921 Lah 154=3 Lah L J 426=2 Lah 252=63 Ind Cas 776

106 [S 589] Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court

#### GENERAL PROVISIONS RELATING TO APPEALS

107 [S. 532] (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- Powers of Appellate Court*
- (a) to determine a case finally
  - (b) to remand a case
  - (c) to frame issues and refer them for trial,
  - (d) to take additional evidence or to require such evidence to be taken
- (2) Subject as aforesaid the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein

**Object of the section**—The provision of this section as elucidated by order 41 rule 27 are clearly not intended to allow a litigant who has been unsuccessful in the lower court to patch up the weak part of his case and fill up omissions in the court of appeal 58 I A 254=A I R 1931 P C 143=1931 A L J 513-33 Bom L R 1015=35 C W N 786=54 C L J 1=(1931) M W N 929=60 M L J 489

**Scope of the section**—Sub-section (1) is new We think it desirable to have in the body of the Code a general provision about the powers of an appellate court—*Report of the Select Committee* An appellate court has no power to order a

nd Cas 39=18 C L J 613  
d memorandum on the last  
reject the memorandum for  
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provided in order 7 rule 11 (c) and s 107 of the C P Code 15 Bom L R 902=21 Ind Cas 337 The appellate court may strike out name of wrong defendant and substitute proper defendant in the memorandum of appeal if the mistake be *bona fide* A I R 1930 All 131=123 Ind Cas 824 Appellate Court can make a respondent an appellant if necessary A I R 1930 All 786=(1930) A L J 36 A I R 1927 Cal 37-44 C L J 43 But the appellate court cannot add a person as respondent who was

m 353=53 B 598=31 Bom L R  
 ss of court by remaining absent  
 indulgence case should not be  
 3=116 Ind Cas 180 Appellate  
 inconsistent  
 C W N  
 1= (1929)  
 party for  
 pleadings A I R  
 430=29 L W 501=  
 P C 104 (P C)-  
 the ends of justice 42 A 48=17 A L J 945=52 Ind Cas 289 The Appellate  
 Court can pass order which the court of first instance might have passed inspite of  
 order 39 r 2 (3) 39 M 907=3 L W 430-30 M L J 523=19 M L T 314=  
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 a party in appeal (1918) Pat 276=5 P L W 216=3 P L J 409=46 Ind Cas  
 398 Appellate Court can revise interlocutory orders though appeals from final  
 decree 5 Pat L J 550=1 P L F 668=58 Ind Cas 281 Appellate court can  
 allow adjustment or withdrawal of suit if it sets aside first court's decree A I R  
 1906 Nag 44=9, Ind Cas 474 Appellate court can return memorandum of  
 appeal for presentation to proper court A I R 1923 Nag 310=8 N L J 63=74  
 Ind Cas 93, see also 74 Ind Cas 33=A I R 1923 Nag 310 Appellate court  
 can grant permission to withdraw or abandon part of a claim with leave to prefer  
 fresh appeal A I R 1921 Bom 278=45 B 206=59 Ind Cas 210 Where the  
 applicant is a party to appeal from the whole decree the Appellate Court can  
 entertain application to have *ex parte* decree set aside S 107 does not confer powers  
 not conferred by order 41 (1917) M W N 808=22 M L T 480-7 L W 10=42  
 Ind Cas 972

Clause (a)—Vide order 41, r 24

Clause (b)—Vide order 41 r 23

Clause (c)—Vide order 41 r 25

Clause (d)—Vide order 41 rr 27 28

Power of appellate Court to remand—Appellate Court has inherent  
 power to remand 37 M L J 536=10 L W 359=53 Ind 417 see also 15 C L J  
 258, 12 C L J 368, 44 C 929=21 C W N 877=26 C L J 49=41 Ind Cas  
 598, 43 C 938=20 C W M 547=32 Ind Cas 791, 15 C L J 6 36 M 492=24  
 M L T 512=15 Ind Cas 859=(1912) M W N 100, 58 Ind Cas 664=5 P L J

(1926) M W N 5 Appellate Court will not insist on deciding suit finally if the  
 party be satisfied with remand order A I R 1926 Lah 6, 7 Lah 179=27 P L R  
 40=8 Lah L J 13=93 Ind Cas 344 Where the original Court held evidence to be  
 irrelevant and the appellate Court held it relevant the remand is on preliminary point  
 A I R 1922 Mad 505 (F B)=45 M 900=16 L W 425=43 M L J 354=31 M  
 L T 208=69 Ind Cas 828 The power of remand may be exercised when impor-  
 tant questions were disallowed during examination of witnesses resulting in a want of  
 trial in the first Court 56 Ind Cas 813

is preferred. But the section, however, does not preclude a person from raising a case comes to the High Court. A I R 1925 Nag 349=22 N L R 132=88 Ind Cas 69, see also A I R 1925 Rang 147=3 Bur L J 248=84 Ind. Cas. 519, A I R 1924 Mad 701=46 M L J 357=19 L W 458=78 Ind Cas 938 A person

if he be otherwise entitled  
L W 630=97 Ind Cas  
question decided before

its A I R 1926  
=97 Ind Cas 790  
remand A I R  
Order of remand  
it and remands the  
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Ind Cas 776

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not a party to the original suit A I R 1929 Bom. 353=53 B 598=31 Bom L R 672=119 Ind Cas 654 Where party abuses process of court by remaining absent and by not adducing evidence inspite of court's indulgence, case should not be remanded A I R 1919 Lah 444=50 P L R 93=116 Ind Cas 180 Appellate court can reverse judgment if a party suppresses evidence or raises inconsistent pleadings A I R 1929 P C 95=1929) A L J 261=49 C L J 308=33 C W N 430=79 L W 501=31 Bom L R 721=57 M L J 565=11 P L T 101= (1929) P C 104 (P C)-114 Ind Cas 592 Appella

the ends of justice 42 A 48=17 A L J 945

Court can pass order which the court of first

order 39 r 2 (3) 39 M 907=3 L W 430=30 M L J 523=19 M L T 314= (1916) M W N 328=34 Ind Cas 588 The Appellate Court is competent to add a party in appeal (1918) Pat 276=5 P L W 216=3 P L J 409=46 Ind Cas 398 Appellate Court can revise interlocutory orders though appeal lies from final decree 5 Pat L J 550=1 P L T 668=58 Ind Cas 281 Appellate court can allow adjustment or withdrawal of suit if it sets aside first court's decree A I R 1926 Nag 44=95 Ind Cas 424 Appellate court can return memorandum of appeal for presentation to proper court A I R 1923 Nag 310=8 N L J 63=74 Ind Cas 93, see also 74 Ind Cas 33=A I R 1913 Nag 310 Appellate court can grant permission to withdraw or abandon part of a claim with leave to prefer

59 Ind Cas 210 Where the  
cree the Appellate Court can

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Power of appellate Court to remand.—Appellate Court has inherent power to remand 37 M L J 536=10 L W 359=53 Ind 417, see also 15 C L J 258, 12 C L J 368, 44 C 929=21 C W N 877=26 C L J 49=41 Ind Cas 598, 43 C 938=20 C W M 547=32 Ind Cas 791, 15 C L J 6, 36 M 492=24 M L J 512=15 Ind Cas 859=(1912) M W N 100, 58 Ind Cas 664=5 P L J 146 0 Ind Cas 790=9 M L T 373=(1911) 2 M W N 199 The powers of the

tant questions were disallowed during examination of witnesses resulting in a want of trial in the first Court 36 Ind Cas 813

To take additional evidence, etc.—Appellate Court can admit additional evidence if justice requires A I R 1916 P C 34=49 M 435=53 I A 84=3 C W N 568=(1926) M W N 495=24 L W 115=44 C L J 67=28 Bom L R 25

the case 8 Q W N 627=A I R 1931 Oudh 298=14 O L J 420=132 Ind Cas 259

**Sub section (2)**—Under s 107(2) an appellate Court is invested with all the powers of original Court and has accordingly, the same powers as are conferred upon the original Court under order 7, rule 13 which says that the rejection of a plaint shall not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Applying this provision *mutatis mutandis* to the case of appeals the rejection of a memorandum of appeal, preclude it from being filed in the proper court fee 59 C 388=1 this section an appellate court 135 Ind Cas 243=A I R 1932 All 270 Order 7, rule 11 read with s 10(2) would

**108 [Ss 587, 590]** The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

(a) from appellate decrees, and

(b) from orders made under the Code or under any special or local law in which a different procedure is not provided

**Scope**—The words 'so far as may be' are no but mean so far as is consistent with the principles of decrees recorded of the with s

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en done by consent and s 96 (3) read  
57 Bom 206=144 Ind Cas 448=

35 Bom L R 127=A I R 1933 Bom 205

#### APPEALS TO THE KING IN COUNCIL

**109. [S 595.]** Subject to such rules as may from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

(a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction,

(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction,

(c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

**Scope**—There is nothing in s 104 to take away the general right of appealing to the crown  
62=34 M  
=83 Ind  
practitioners  
His Majesty can be granted A I R 1922 Pat 603=1 Pat 590=4 P L T 229=70  
Ind Cas 172 Against order  
Relief Act of the Special Be  
A I R. 1921 Bom 378=23 Bom  
Order as to the validity of  
by consent and a certificate can be issued in respect thereof A I R 1922 Pat 256=3 P L T 61=6 P L J 171=62 Ind Cas 235 Where the defendant neither filed written statement nor took any part in defending the suit, or the appeal to High Court he cannot file a separate appeal the Privy Council other than what is filed by the rest of the defendants A I R 1921 Pat 134=2 P L T 173=60 Ind, cas 500 No appeal lies against order dismissing an appeal in default of appellants' compliance with certain court rules A I R 1971 Pat 97=2 P L T 111=5 P L J 719=60 Ind, Cas 285

An order refusing to leave to appeal *in forma pauperis* is not a final order. A I R 1927 Pat 175=6 Pat 67-100 Ind Cas 886. An application *in forma pauperis* for leave to appeal to Privy Council is not maintainable. 1115 Ind Cas 832. Ordinarily an appeal which *prima facie* falls under s 109 (1) cannot be converted into one under s 109 (c) merely because it fails to reach the money value required by s 110. A I R 1933 Oudh 394=10 O W N 394.

from order dismissing application for it not being decree or final order exercise of the original civil jurisdiction. Bur L J 294=79 Ind Cas 504. A y in Council 5 P L J 383-1 P L

T 599=57 Ind Cas 245. 'Any decree or order do not mean any decree or order other than the decree or final order passed on appeal by a High Court or by any other court of final jurisdiction. 6 O L J 664=54 Ind Cas 828. High Court's judgment granting probate is a final decree, and an appeal lies to Privy Council. A I R 1927 Rang 56=5 Rang 119=5 Bur L J 176=99 Ind Cas 759.

**Final order**—The final order within the meaning of s 109 is not confined to a final order passed in the suit itself but may be a final order in any other proceeding or case arising subsequent to the suit. If that order finally terminates that proceeding and determines the rights of the parties so far as the question of controversy between the parties in that proceeding arose it is a final order within the meaning of that section. 1932 A L J 838. An order is a final order when it comprises the decision of the High Court upon the cardinal issue in the suit that issue being one which goes to the foundation of the suit and one which can never while this decision stands be disputed again. *Ibid*. An order is final if it terminates the rights of the parties and interlocutory if it relates to a matter of procedure. An order of remand which determined a cardinal issue in the case, is a final order. 27 N L R 172=A I R 1931 Nag 24=130 Ind Cas 10. see also A I R 1930 Sind 24=131 Ind Cas 231. Where a case is remanded for further proceedings on another issue, the original order is not final. A I R 1925 Nag 349=22 N L R 132. 86 Ind Cas 69. see also A I R 1925 All 263=23 A L J 19-47 A 355=85 Ind Cas 161. Ordinarily order of remand is merely interlocutory if the order in question finally decides cardinal point in the suit, it is a final order from which leave to appeal should be granted. A I R 1925 Rang 147=3 Bur L J 248=84 Ind Cas 519. A matter of procedure can never be treated as a cardinal point in the suit. A I R 1924 Lah 571=5 Lah 329=6 Lah L J 240 (F B)=80 Ind Cas 365, see also A I R 1924 All 119=45 A 741=21 A L J 686=79 Ind Cas 87. The decision of the High Court on cardinal issue in the suit is a decree within s 107. A I R 1921 Cal 177=25 C W N 1896=62 P L R 191=60 Ind

on appeal reverses determining liability is Majesty A I R C W N 94=2, C I

in respect of the rights finally decides the cardinal point in the suit foundation of the suit and therefore is in decision stood be questioned again in the suit, ending that there may be subordinate enquiries to be made. The question has to be decided with reference to the precise relation in which the order stands to the proceeding before the Court. 13 C W N 879=13 C L J 688. Where in a suit for dissolution of partnership and accounts, liability to account is declared such order is final. A I R 1922 Mad 510=16 L W 718=43 M L J 758=31 M I the decision of the court below when the decree reaches the same conclusion on different grounds. 277=70 Ind Cas 283. Final order means termination between the parties. A I R 1912 Bom 383=47 B 105=28 Bom L R 925=69 Ind Cas 80, see also A I R 1922 Pat 611=3 P L T 781=(1922) Pat. (Sup) 296=67 Ind Cas 991, see also A I R 1920 P C 26=56 Ind Cas 302=28 M L T

87 (P C)=39 M L J 27=24 C W N 731=18 A L J 591=49 I A 124=22 Bom. L R 606

Order dismissing an appeal as being abated is final order 14 Lah 609=144 Ind Cas 18=34 P L R 946=A I R 1933 Lah 690 An order directing the dismissal of an appeal for failure to furnish security for the costs of the respondent is a final order passed on appeal 54 A 390=140 Ind Cas 125=1932 A L J 254=A, I R 1932 All 312

Passed on appeal—Orders passed by High Court in the exercise of its revisional jurisdiction under s 115 of the C P Code or of its power of superintendence under section of the Charter Act are orders made or passed on appeal within the meaning of section 39 of the Letters Patent 15 C W N 848=13 C L J 90 In the above case *Mookerjee J* said In other words as put by *Lord Westbury* in *Att Gen v Gillen* 10 H L C 704, the right of appeal is the right of entering a superior Court and invoking its aid and interposition to redress the error of the Court

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*Dinshaw Mulla* in 36 C W N 803 (P C) at p 806=59 I A 283=137 Ind Cas 529=34 Bom. L R 1065=1932 A L J 643=55 C L J 528=33 P L R 621=36 L W 7=1932 M W N 817=A I R 1932 P C 165=63 M L J 389 (P C), see also 13 C L J 681, *contra* A I R 1926 All 202=48 A 226=23 A L J 997=90 Ind Cas 904

Sections 109 a  
distinction betwe  
judgment, decre  
not necessarily  
A I R 1932 B  
appeal as time ba  
1917=42 Ind C  
to extend time ur

1921 Cal 415=33 C L J 128=62 Ind Cas 216 Where a first appeal has been dismissed for default and an application for restoration was also dismissed the latter order though a final order is not one passed on appeal and as such no appeal lies to the Privy Council 1933 A L J 255=A I R 1933 All 453 (1)=145 Ind Cas 534

Order when not final—Order that an alleged compromise should not be recorded and that the suit should proceed in usual way is not a final order A I R

Order that rejects application to  
5 Oudh 518=2 O W N 393=88  
be passed in accordance with the  
not a final decree A I R 1925

Mad 187=20 L W 753 An order of High Court refusing to set aside an order of the Lower Court restoring to file a suit is not a final order A I R 1924 Mad 701=19 L W 458=46 M L J 357=34 M L T 112=78 Ind Cas 938 Where a suit is dismissed due to plaintiff's want of *locus standi* and on appeal a *prima facie* case is held as made and case is remanded for further hearing the order is not final A I R 1925 Cal 574=78 Ind Cas 117 An order granting a review is not a final order A I R 1923 Mad 57=43 M L J 559=(1922) M W N 731=32 M L J 98=69 Ind Cas 977 Order refusing to extend time for deposit of court fees in an appeal

is 79 An order of the  
execute a decree is not a  
P Code 4 P L J 461=

did not finally dispose of the rights of the parties it was not a final order within the meaning of s 109 (a) A I R 1923 Bom 39=79 Ind Cas 210 A refusal to appoint a Receiver is not a final order A I R 1925 Pat 173=6 P L T 119=82 Ind Cas 178

An order refusing to appoint a receiver is not a final order 12 Pat L T 723=114 Ind Cas 457=14 P L T 302=A I R 1933 Pat 293 Where the High Court

41, rule 25  
1 mentions  
decree of

the Lower Court, that order cannot be a 'final order' within the meaning of s 109 C P Code A L R 1933 B 336=35 Bom I R 415=A I R 1933 Bom 251=145

finally dispose of any case, but merely reopens the decree that was originally passed by the Court 54A 471=1932 A I R 235=110 Ind Cas 110=A I R 1932 All 318

According to the decree  
passed on appeal 33

Bom L R 1476=55 B 785

Order of remand—Order of remand deciding only one issue out of several,  
J 30=38 A 150=32 Ind Cas  
844 Order of remand by High  
by lower Court on preliminary  
O C 36=33 Ind Cas 756=43  
342 Order of remand with the  
legatee is not a final decree or  
order 22 C W N 610=46 Ind Cas 631 But an appeal against an order of  
remand is competent when it decides cardinal point in the case 3 P L J 339=5  
P L W 45=45 Ind Cas 192, 49 Ind Cas 520=21 O C 336 An order of remand  
under Order 41 r 23, is not a final order 46 Ind Cas 922

final determination of rights of  
A I R 1924 Oudh 81=10 O L J 289  
P L W 342=45 Ind Cas 290 Where  
as barred by *res judicata* but the decision  
is reversed by the High Court which remanded the case leave to appeal to Privy  
Council should not be given 1 U P L R (All) 168=18 A L J 83=54 Ind Cas 504  
A case having been remand by the High Court on 14 4 30 an application for leave  
to appeal to the Privy Council was made and dismissed on 2-3 31 on the ground  
that as the case was only remanded for fresh decision on certain important issue,  
there was no final order as contemplated by s 109(a) A L R 1933 Lah 23=A  
I R 1933 Lah 82=145 Ind Cas 131 Where the High Court decided the point on  
limitation but remanded the case for decision of the lower court on the other essential  
or cardinal points on the case the order of the High Court is not a final order 144  
Ind Cas 916=35 Bom L R 458=A I R 1933 Bom 263 An order though it  
decided an important and vital issue in the case but did not finally dispose of the  
rights of the parties is not a final order 60 I A 76=11 Rang 58=19, 3 A L J  
244=37 L W 331=142 Ind Cas 328=33 Bom L R 331=57 C L J 136=1903  
M W N 166=37 C W N 405=A I R 1933 P C 58-64 M L J 307 (P C)  
On the face of it when order which remands a case for further consideration *prima*  
*facie* does not purport finally to dispose of the rights of the parties But of the  
effect of the order is that the court has finally determined the cardinal issue in the  
suit and only subsidiary and subordinate issues remain to be decided the remand  
order is a final order 10 Rang 499=A I R 1932 Rang 189, see also 10 Rang  
335=A I R 1932 Rang 137=140 Ind Cas 420, A I R 1931 Lah 556=132 Ind  
Cas 211

Clause (b)—The words 'original jurisdiction' in cl 39 of Letters Patent Bombay  
are used in contradistinction to the words 'made on appeal' A I R 1923 P C

48=21 A L  
jurisdiction  
W N 1207,  
al leave to  
an award  
under s 18

of the Land Acquisition Act 17 C W N 421 (P C), see also 20 Ind Cas 260.  
16 C W N 961 (P C) The Oudh Chief Court is a High Court, within the meaning  
of this clause in as much as it falls within the definition of a High Court in s 3(74) of  
the General Clauses Act A I R 1925 Oudh 173 An order of a single Judge of  
the High Court refusing a writ under s 66 (1) of the Indian Income Tax Act on

the ground that there is no question of law is a final judgment of the High Court passed in the exercise of its original jurisdiction and where the subject matter involved is Rs 10,000 or more in value, gives the applicant an appeal to the Privy Council as of right 32 P L R 234-A I R (1931) Lah 138 (F B)

special cases, such as those in which, though it may be of great benefit, it is not a fit one for appeal to His Majesty in Council 35 Bom L R 458=144 Ind Cas 916=A I R 1933 Bom 260 see also A I R 1930 Nag 91=12 N L J 170=123 Ind Cas 430, A I R 1928 Rang 187=6 Rang 43, A I R 1927 Pat 363=6 Pat 282=107 Ind Cas 313, 1931 M W N 760=A I R 1931 Mad 642

The powers under this clause should be exercised only in exceptional cases of great public and private importance A I R 1927 Cal 431=31 C W N 540=103 Ind Cas 561, see also A I R 1927 Pat 363=6 Pat 282=8 P L T 615 The power of granting leave to appeal to the Privy Council under clause (c), should be sparingly used and in order to entitle a party to the benefit of this section the case should involve not only a question of law but also involve matters of principle which not only affect the parties to the litigation but are likely to concern a large class of persons who are or may be in the same situation as the parties to the appeal in question and in whose case the decision of the Privy Council is sure to be a guiding precedent If the above conditions are satisfied, it will undoubtedly be a fit case for appeal to His Majesty in Council A L R 1933 A 502=54 A 459=A I R 1933 All 4=143 Ind Cas 312, see also A L R 1933 All 8=54 A 431=140 Ind Cas 418=A L R 1933 All 385, see also 18 M L T 366=2 L W 992=31 Ind Cas 46, 38 A 150=14 A L J 50=33 Ind Cas 345, 54 A 459=A I R 1933 A 4, 1 P L T 239=(1920) P 209=56 Ind Cas 615, A I R 1921 Oudh 30=8 O L J 1=61 Ind Cas 131, A I R 1924 Oudh 81=10 O L J 289=71 Ind Cas 339, A I R 1923 Mad 125=(1922) M W N 683=16 L W 517=34 M L T 335=43 M L J 722=69 Ind Cas 365, A I R 1923 Rang 71=11 L B R 335=1 Bur L J 62=68 Ind Cas 690, A I R 1923 Mad 232=44 M L J 217=32 M L T 126=72 Ind Cas 250, A I R 1923 Mad 602=44 M L J 424=73 Ind Cas 217, A I R 1923 Nag 272=73 Ind Cas 221, A I R 1924 Mad 616=46 M L J 259=19 L W 372=78 Ind Cas 165, A I R 1930 All 121=52 A 329=122 Ind Cas 412, A I R 1929 Nag 336=120 Ind Cas 409 A I R 1929 Bom 341=53 B 552=31 Bom L R 632=119 Ind Cas 782 54 A 431=140 Ind Cas 418 A I R 1933 A 8, 116 Ind Cas 208=A I R 1929 Oudh 243=6 O W N 211 The effect of s 109(c) is to restore an unlimited right of appeal to the Privy Council when the case is

Neither the limitations  
the unrestricted right  
s right of appeal sub  
only the provisions of

clauses (a) and (b) 34 Bom L R 398=138 Ind Cas 454=A I R 1932 Bom 218=A L R 1932 Bom 901

No real mischief can arise if s 110 is not liberally construed because such cases if worthy of being tried by a higher tribunal can always be dealt with under sub-section (c) of s 109 A I R 1923 P C 159=22 L W 255=30 C W N 98=27 Bom L R 867=49 M L J 20=52 C 650=52 I A 207=41 C L J 823=88 Ind Cas 445

Where  
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1664=5.

the vital  
16 O L  
could vitiate  
since his mortgage is a substantial  
the Privy Council 2 U P L R (All)  
is involved a matter of real im-  
portance to make an order, the case  
Cas 519=A I R 1922 Cal 130=

26 C W N 819

Special leave cannot be granted where a decision upon the construction of a section of Tenancy Act only incidentally affects the rights of the tenure holders A I R 1921 Pat 33=6 P L J 125=2 P L T 637=61 Ind Cas 663 Certificate under order 45 should show on its face on what grounds it has been granted or that discretion under s 107 was exercised 44 M 293=48 I A 31=19 A I J 161=40 M L J 229=23 Bom L R 718=33 C L J 277=25 C W N

is involved  
pect thereto,  
1924 Pat

468=5 P L T 17=75 Ind Cas 58

Where the High Court in its judgment on a reference under s 66 (2) of the Indian Income tax Act answered the first question in the negative as it considered that the matter admitted of no doubt and in fact the Counsel for the Commissioner had practically conceded that the contention of the assessee was correct, the second question in favour of the assessee having regard to the terms of the award and the third also in his favour in view of the certain decisions of the Privy Council. *Held* in an application by the Commissioner under s 66 (a) of the Act for leave to appeal to His Majesty in Council that the case was not a fit one for appeal to the Privy Council. A I R 1933 Lah 637 S 107 (c) has a very limited scope and must be applied with considerable discrimination and caution. A L R 1933 A 502=54 A 459=A I R 1934 A 4=143 Ind Cas 312

An order directing prosecution for a criminal offence under s 237 Companies Act is more of a criminal nature and it is doubtful whether s 109 (c) and order 45, rule 2 applies to such a case. A I R 1931 Sind 120=132 Ind Cas 474

**Certified to be fit one**—Under section 109 (c) the High Court must be satisfied that the case is a fit one for appeal. A I R 1929 Mad 696=119 Ind Cas 595. Where as regards question of limitation, there is no serious divergence of judicial opinion on the points, it is not a fit case for appeal to the Privy Council. 31 P L R 17=121 Ind Cas 506. Where a question of law involved has been settled definitely by the judgment of the Privy Council the case should not be sent to Privy Council for a fresh decision on the same point. A I R 1929 All 339=(1929) A L J 241=123 Ind Cas 333. 97 Ind Cas 1013. Where High Court ignored rules regarding recitals in an order directing petition for the certificate may be granted. A I R 1929 Mad 87=123 Ind Cas 344. Where point of law has been settled by Full Bench so far as the Court is concerned leave for appeal is prayed, the fact that there is conflict between that Court and some other High Court does not render the case fit one for appeal to Privy Council. A I R 1928 Mad 448=109 Ind Cas 167. The words 'substantial question of law' means questions of general importance and do not include the question of the construction of a document in which the parties alone are interested. 164, see also A I R 1924 Mad 231=45 M. L.

**Leave to appeal to Privy Council from an order** suspending him from practice for being punished for contempt of Court committed personally. *Held* that the Allahabad High Court can grant leave either under s 109 (c) C P Code or s 30 Letters Patent. A I R 1933 All 225=55 A 246=1933 A L J 273=145 Ind Cas 853, 1932 A L J 861. Where the conditions prescribed by this section are fulfilled it is the duty of the High Court to grant leave to appeal. The chance of success of the appellant in the proposed appeal is not material. 139 Ind Cas 54=35 L W 205=A I R 1932 Mad 46. Where even respondent is not opposing the court in granting leave must nevertheless be satisfied about fulfilment of conditions precedent to grant of leave to Rang 499=A I R 1932 Rang 189. The question of consolidation of two appeals will come up for consideration only after the necessary certificate has been granted. A I R 1932 Lah 441=33 P L R 455=140 Ind Cas 70.

**110 [S 596]** In each of the cases mentioned in clauses (a) and (b)

Value of subject matter of section 109, the amount or value of the subject matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

**Scope of the section**—In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject matter of the suit in the court of first instance must be ten thousand rupees or upwards and the amount or value of

the ground that there is no question of law is a final judgment of the High Court passed in the exercise of its original jurisdiction and where the subject matter involved is Rs 10 000 or more in value, gives the applicant an appeal to the Privy Council as of right 32 P L R 234—A I R (1931) Lah 138 (F B)

**Clause (c)**—Clause (c) is only intended to meet special cases, such as those in which the point in dispute is not measurable by money, though it may be of great public importance. It requires that the case must be certified to be a fit one for appeal to His Majesty in Council 35 Bom L R 458=144 Ind Cas 916=A I R 1933 Bom 260, see also A I R 1930 Nag 91=12 N L J 170=123 Ind Cas 430, A I R 1928 Rang 187=6 Rang 43, A I R 1927 Pat 363=6 Pat 282=107 Ind Cas 313, 1931 M W N 760=A I R 1931 Mad 642

The powers under this clause should be exercised only in exceptional cases of great public and private importance A I R 1927 Cal 481=31 C W N 540=103 Ind Cas 561, see also A I R 1927 Pat 363=6 Pat 282=8 P L T 615 The Council under clause (c), should be the benefit of this section the case involve matters of principle which likely to concern a large class of persons who are likely to be guided by the decision.

persons who are likely to be guided by the decision.

appeal to His Majesty in Council A L R 1933 A 502=54 A 459=A I R 1933 All 4=143 Ind Cas 312, see also A L R 1933 All 8=54 A 431=140 Ind Cas 418=A L R 1933 All 385, see also 18 M L T 366=2 L W 992=31 Ind Cas 46, 38 A 150=14 A L J 50=33 Ind Cas 345, 54 A 459=A I R 1933 A 4, 1 P L T 239=(1920) P 209=56 Ind Cas 615, A I R 1921 Oudh 30=8 O L J 1=61 Ind Cas 131, A I R 1924 Oudh 81=10 O L J 289=71 Ind Cas 339, A I R 1923 Mad 125=(1922) M W N 683=16 L W 517=34 M L T 335=43 M L J 722=69 Ind Cas 385, A I R 1923 Rang 71=11 L B R 335=1 Bur L J 62=68 Ind Cas 690, A I R 1923 Mad 232=44 M L J 217=32 M L T 126=72 Ind Cas 250, A I R 1923 Mad 602=44 M L J 424=73 Ind Cas 217, A I R 1923 Nag 272=73 Ind Cas 221, A I R 1924 Mad 616=46 M L J 259=19 L W 372=78 Ind Cas 165, A I R 1930 All 121 52 A 329=122 Ind Cas 412, A I R 1920 Nag 336=120 Ind Cas 409 A I R 1929 Bom 341=53 B 552=31 Bom 1929 A I R 1933 A 8, 116

he effect of s 109 (c) is nil when the case is neither the limitations the unrestricted right of appeal sub-section only the provisions of

clauses (a) and (b) 34 Bom L R 390=130 Ind Cas 434=A I R 1932 Bom 218=A L R 1932 Bom 901

No real mischief can arise if s 110 is not liberally construed because such cases if worthy of being tried by a higher tribunal can always be dealt with under sub-section (c) of s 109. A I R 1927 P C 159=22 L W 255=30 C W N 98=27 Bom L R 867=49 M L J 20=52 C 650=52 I A 207=41 C L J 823=88 Ind Cas 445

Where two Judges have arrived at diametrically opposite conclusions on the vital question on which the suit should be decided the case is a fit one for appeal 6 O L J 664=54 Ind Cas 828 The question whether fraud of the mortgagor would vitiate

26 C W N 819

Special leave cannot be granted where a decision upon the construction of a section of Tenancy Act only incidentally affects the rights of the tenure holders A I R 1921 Pat 33=6 P L J 125=2 P L T 657=61 Ind Cas 663 Certificate under order 45 should show on its face on what grounds it has been granted or that discretion under s 109 was exercised 44 M 293=48 I A 31=19 A I J 161=40 M L J 229=23 Bom L R 718=33 C L J 277=25 C W N

A I R 1922 Cal 130=



is involved  
pect thereto,  
R 1924 Pat

468=5 P L T 17=75 Ind Cas 58

Where the High Court in its judgment on a reference under s 66 (2) of the Indian Income tax Act answered the first question in the negative and it considered that the matter admitted of no doubt and in fact the Counsel for the Commissioner had practically conceded that the contention of the assessee was correct, the second question in favour of the assessee having regard to the terms of the award and the third also in his favour in view of the certain decisions of the Privy Council. *Held* in an application by the Commissioner under s 66 (a) of the Act for leave to appeal to His Majesty in Council that the case was not a fit one for appeal to the Privy Council. A I R 1933 Lah 637 S 109 (c) has  
le discrimination and  
=143 Ind Cas 312  
337 Companies Act  
(c) and order 45 rule

120-132 Ind Cas 471

**Certified to be fit one**—Under section 109 (c) the High Court must be satisfied that the case is a fit one for appeal. A I R 1929 Mad 696-119 Ind Cas 595 Where as regards question of limitation, there is no serious divergence of judicial opinion on the points it is not a fit case for appeal to the Privy Council. 31 P L R 17=121 Ind Cas 506 Where a question of law involved has been settled definitely by the judgment of the Privy Council the case should not be sent to Privy Council for a fresh decision on the same point. A I R 1929 All 339-(1929) A L J 241=123 Ind Cas 333 91 Ind Cas 1013 Where High Court ignored rules regarding recitals in ancient documents petition for the certificate may be granted. A I R 1929 Mad 827=123 Ind Cas 344 Where point of law has been settled by Full Bench so far as the Court in which leave for appeal is prayed the fact that there is conflict between that Court and some other High Court does not render the case fit one  
Cas 167 The words  
ortance and do not  
the parties alone are

interested 3 O W N 841=98 Ind Cas 164, see also A I R 1924 Mad 231=45 M J 514=18 L W 348=76 Ind Cas 811

Council from an order  
t of Court committed  
leave either under s

109 (c) C P Code or s 30 Letters Patent. A I R 1933 All 225=55 A 246=1933 A L J 273=145 Ind Cas 853, 1932 A L J 861 Where the conditions prescribed by this section are fulfilled it is the duty of the High Court to grant leave to appeal. The chance of success of the appellant in the proposed appeal is not material. 159 Ind Cas 54=35 L W 203-A I R 1932 Mad 46 Where even respondent is not  
re must nevertheless be satisfied about fulfilment  
of leave to Ring 499=A I R 1932 Ring 189  
vo appeals will come up for consideration only  
after the necessary certificate has been granted. A I R 1933 Lah 441=33 P L R 455=140 Ind Cas 79

# 110 [S 596] In each of the cases mentioned in clauses (a) and (b)

of section 109, the amount or value of the  
Value of subject matter of the subject matter of the suit in the Court of first  
instance must be ten thousand rupees or upwards, and the amount or value  
of the subject matter in dispute on appeal to His Majesty in Council must be  
the same sum or upwards,  
or the decree or final order must involve, directly or indirectly, some  
claim or question to or  
and where the decree  
the Court immediately  
the appeal must involve

of  
er,  
**Scope of the section**—In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject matter of the suit in the court of first instance must be ten thousand rupees or upwards and the amount or value of

the ground that there is no question of law is a final judgment of the High Court passed in the exercise of its original jurisdiction and where the subject matter involved is Rs 10,000 or more in value, gives the applicant an appeal to the Privy Council as of right 32 P L R 234—A I R (1931) Lah 138 (T B)

special cases, such as those in which though it may be of great benefit to be certified to be a fit one for appeal to His Majesty in Council 35 Bom L R 458=144 Ind Cas 916=A I R 1933 Bom 260, see also A I R 1930 Nag 91=12 N L J 170=123 Ind Cas 430, A I R 1928 Rang 187=6 Rang 43, A I R 1927 Pat 363=6 Pat 282=107 Ind Cas 313, 1931 M W N 760=A I R 1931 Mad 642

The powers under this clause should be exercised only in exceptional cases of great public and private importance A I R 1927 Cal 481=31 C W N 540=103 Ind Cas 461, see also A I R 1927 Pat 363=6 Pat 282=8 P L T 615 The Privy Council under clause (c), should be

party to the benefit of this section the case but also involve matters of principle which not only affect the parties to the litigation but are likely to concern a large class of persons who are or may be in the same situation as the parties to the appeal in question and in whose case the decision of the Privy Council is sure to be a guiding precedent If the above conditions are satisfied, it will undoubtedly be a fit case for appeal to His Majesty in Council A L R 1933 A 502=54 A 459=A I R 1933 All 4=143 Ind Cas 312, see also A L R 1933 All 8=54 A 431=140 Ind Cas 418=A L R 1933 All 385, see also 18 M L T 366=2 L W 992=31 Ind Cas 46, 38 A 150=14 A L J 50=33 Ind Cas 345, 54 A 459=A I R 1933 A 4, 1 P L T 239=(1920) P 209=56 Ind Cas 615, A I R 1921 Oudh 30=8 O L J 1=61 Ind Cas 131, A I R 1924 Oudh 81=10 O L J 289=71 Ind Cas 339, A I R 1923 Mad 125=(1922) M W N 683=16 L W 517=34 M L T 335=43 M L J 722=69 Ind Cas 385, A I R 1923 Rang 71=11 L B R 335=1 Bur L J 62=68 Ind Cas 690, A I R 1923 Mad 232=44 M L J 217=32 M L T 126=72 Ind Cas 250, A I R 1923 Mad 602=44 M L J 424=73 Ind Cas 217, A I R 1923 Nag 272=73 Ind Cas 221, A I R 1924 Mad 616=46 M L J 259=19 L W 372=78 Ind Cas 165, A I R 1930 All 121 52 A 329=122 Ind Cas 412 A I R 1933 A 8, 116 effect of s 109 (c) is when the case is not the limitations of unrestricted right of appeal subject to the provisions of R 1932 Bom 218=

clauses (a) and (b)  
A L R 1932 Bom 907

No real mischief can arise if s 110 is not liberally construed because such cases if worthy of being tried by a higher tribunal can always be dealt with under sub-section (c) of s 109 A I R 1925 P C 159=22 L W 255=50 C W N 98=27 Bom L R 867=49 M L J 20=52 C 650=52 I A 207=41 C L J 823=88 Ind Cas 445

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99=18 A L J 137=54 Ind Cas 578 Where there is involved a matter of real importance namely as to whether the Court has jurisdiction to make an order, the case is a fit one for appeal to the Privy Council 70 Ind Cas 519=A I R 1922 Cal 130=26 C W N 819

Special leave cannot be granted where a decision upon the construction of a section of Tenancy Act only incidentally affects the rights of the tenure holders A I R 1921 Pat 33=6 P L J 12=2 P I T 657=61 Ind Cas 663 Certificate under order 45 should show on its face on what grounds it has been granted or that discretion under s 107 was exercised 44 M 293=48 I A 31=19 A I J 161=40 M L J 229=23 Bom L R 718=33 C L J 277=25 C W N

630 (P C) Where a question of procedure with some unusual character is involved and it is possible that a higher tribunal might take a different view in respect thereto, the High Court ought to certify the case as fit one for appeal A I R 1924 Pat 468=5 P L T 17=75 Ind Cas 58

Where the High Court in its judgment or a reference under s 66 (2) of the Indian Income tax Act answered the first question in the negative as it considered that the matter admitted of no doubt and in fact the Counsel for the Commissioner had practically conceded that the contention of the assessee was correct, the second question in favour of the assessee having regard to the terms of the award and the third also in his favour in view of the certain decisions of the Privy Council *Held* in an application by the Commissioner under s 66 (a) of the Act for leave to appeal to His Majesty in Council that the case was not a fit one for appeal to the Privy Council A I R 1933 Lah 637 S 107(c) has a very limited scope and must be applied with considerable discrimination and caution A L R 1933 A 502=54 A 457=A I R 1934 A 4=143 Ind Cas 312

An order directing prosecution for a criminal offence under s 237 Companies Act is more of a criminal nature and it is doubtful whether s 107 (c) and order 45, rule 2 applies to such a case A I R 1931 Sind 120=132 Ind Cas 474

**Certified to be fit one**—Under section 107 (c) the High Court must be satisfied that the case is a fit one for appeal A I R 1929 Mad 696=119 Ind Cas 595 Where as regards question of limitation, there is no serious divergence of judicial opinion on the points, it is not a fit case for appeal to the Privy Council 311 I R 17=121 Ind Cas 505 Where a question of law involved has been decided definitely by the judgment of the Privy Council the case should not be sent to Privy Council for a fresh decision on the same point A I R 1933 All 339=(122) A L J 241=123 Ind Cas 333 97 Ind Cas 1013 Where H. C. Court ignores rules regarding recitals in ancient documents petition for the certificate may be granted A I R 1929 Mad 827=123 Ind Cas 344 Where point of law has been settled by full Bench so far as the Court in which leave for appeal is prayed, the fact that there is conflict between that Court and some other High Court does not render the case fit one for appeal to Privy Council A I R 1928 Mad 448=109 Ind Cas 167 The words 'substantial question of law' means questions of general importance and do not include the question of the construction of a document in which the parties alone are interested 3 O W N 841=98 Ind Cas 164, see also A I R 1924 Mad 231=45 M.

Council from an order  
of Court committed  
leave either under s

109 (c) C P Code or s 30 Letters Patent A I R 1933 All 225=55 A 246=1933 A L J 273=145 Ind Cas 853, 1932 A L J 861 Where the conditions prescribed by this section are fulfilled it is the duty of the High Court to grant leave to appeal The chance of success of the appellant in the proposed appeal is not material 139 Ind Cas 54=35 L W 205=A I R 1932 Mad 46 Where even respondent is not  
etheless be satisfied about fulfilment  
o Rang 499=A I R 1932 Rang 189  
will come up for consideration only  
A I R 1932 Lah 441=33 P L R

455=140 Ind Cas 70

**110 [S 596]** In each of the cases mentioned in clauses (a) and (b)

Value of subject matter of section 109, the amount or value of the subject matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

**Scope of the section**—In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject matter of the suit in the court of first instance must be ten thousand rupees or upwards and the amount or value of

the subject matter in dispute on appeal to His Majesty in council must be the same sum or upwards" The word 'and' occurring here means 'and' and not 'or' so that for the competency of an appeal to the Privy Council each condition must be separately fulfilled 35 C W N 669=53 C L J 390=132 Ind Cas 605=61 M L J 273=33 Bom L R 57=4 A I R 1031 P C 125=1011 M W N 617 see also 13 C W N 1127, (P C)=33 Bom L R deal with property pte and which would 48=11 L B R 152=66 Ind Cas 606 This para refers to some specific property and do not contemplate property which a party may be desirous of acquiring A I R 1922 Lah 131=26 P L R 1922=2 Lah 297=116 P L R 1921=65 Ind Cas 239 Although subject matter of a suit may be above Rs 10,000 if the decree of the lower court is affirmed by the High Court and there is no variation of any kind in

on appeal must also be Rs 10,000 or upwards or the decree must involve some claim or question to or respecting property of like amount or value The amount for value of the subject matter of a suit is clearly the amount the plaintiff claims together with, at most, interest that had accrued up to the date of decree A I R 1923 Rang

37=33 P L R 647=A I R, 1932 Lah 526

**Valuation**—The valuation of the subject matter of the suit in the trial court must also be 10,000 ru 317=18 M L T subject matter and not 450=2 L W 1057= s 110 A I R 1924 valuation under Suits

Lah 82=6 Lah L J 44=4 Lah 185=75 Ind Cas 520, 58 C 66=132 Ind Cas 910 =A I R 1931 Cal 417 Where a suit for property including pro-notes on their face value amounts to less than Rs 10,000 interest up to date of decree cannot be added to make up the deficiency A I R 1930 P C 44=34 C W N 235=121 Ind Cas 512=58 M L J 184=51 C L J 168=32 Bom L R 517=53 M 167=57

termining the value of Council, the interest

W 240=3 Pat L J

J 596=62 Ind

M L J 496

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Privy Council

39 Ind Cas 911=5 L W 542=(1911) 11 W 422, see also 55 M 106=61 M L J 692=A I R 1932 Mad 125, 1932 A L J 838

When the plaintiff in his plaint alleged the value of the subject matter to be Rs 3,000 but the District Judge on appeal held it to be Rs 24,000 under s 21, N W P and Assam C C Act, an application for leave to appeal to Privy Council cannot be granted (1927) Pat 301=42 Ind Cas, 966 Value of the subject matter of the suit, must be taken to be the amount or value which the plaintiff

have obtained in his suit at the date

Ind Cas 523, see also 22 C W N

valued their suit at Rs 7,500 but for

property at Rs 12,000 Held that

the increase in value *pendente lite* would not be sufficient to bring the case within s 110 51 Ind Cas 975=(1919) Pat 241 The Privy Council does not interfere with any question of valuation unless it is shown that some item has improperly been made the subject of valuation or excluded therefrom or that there is some fundamental principle affecting the valuation which renders it unsound A I R

1921 P C 50=48 C 110=25 C W N 289=22 Bom L R 1370=48 I A 255=18

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—Plaintiff know  
not be allowed

to change that valuation at the time of leave to appeal to Privy Council A I R 108 A party taking advantage of the other party cannot be permitted to A I R 1927 Mad 862=104 Ind

Cas 577, see also A I R 1927 Cal 418=45 C L J 225=101 Ind Cas 901, 14 C W N 872=6 Ind Cas 792, 74 Ind Cas 214=A I R 1923 Oudh 93=9 O L J 531=26 O C 24 For the purpose of valuation for Privy Council appeal, value at date of decree should be considered and not value at the institution of suit 44 C 119=24 C L J 350=21 C W N 530=35 Ind Cas 60, But where the plaintiff deliberately under valued the suit in the lower Court he cannot for purpose of leave to appeal to the Privy Council, be allowed to repudiate the valuation and show the real market value of the subject matter A I R 1923 Mad 125=43 M L J 728=922) M W N 683=69 Ind Cas 385, see also Ind 1223=49 M L J 309 The plaintiff is not that his valuation in the plaint is wrong The strong piece of evidence against him A I R

1927 Mad 862=104 Ind Cas 577, see also A I R 197 Cal 225=44 C L J 572=31 C W N 268=99 Ind Cas 921 Leave to appeal to Privy Council cannot be granted, where valuation of subject matter in trial Court is neither challenged in appeal nor by cross objection is to re open that question A I R 1926 Rang 138=4 R 469=0 Privy the lower he seeks s 910=are not

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The amount of interest to be given by Court in its discretion but not claimable as of right, cannot be included in the value under s 110 A I R 1929 Nag 75=124

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Ind Cas 189, 107 Ind Cas 828 Whether a suit is a partition suit or a partnership suit does not make a difference for valuation for purpose of Privy Council appeal Value of the appellants share and not the value of the whole property determines the value of the subject matter A I R 1925 Bom 137=49 B 149=26 Bom L R 126=8, Ind Cas 191, see also 44 B 104=22 Bom L R 243=55 Ind Cas 972, but see 10 C W N 564, 2 P L T 386 and 138 Ind Cas 670=30 A L J 730, A I R 1932 A L J 730=138 Ind Cas 670 Although for purposes of Court fees the value of suits for redemption is 'the principal money expressed to be secured by the instrument of mortgage', the mortgage money is not the basis of the valuation for the purposes

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as 412 In estimating  
ncil appeal house sites  
only cultivable lands in  
446=109 Ind Cas 167  
unnecessarily recorded

Rs 10,000 it does not make  
I R 1929 Nag 85=110 Ind  
ale must alone determine the  
Majesty in Council A. I. R.

1929 Nag 75=124 Ind Cas 697 Where during the pendency of a suit for specific performance of a contract of sale, new machinery is brought on the premises in suit and not mentioned in the pleadings or in evidence or even at argument, its value cannot be taken into account A I R 1929 Nag 75=124 Ind Cas 697 Where the applicant's interest in the property is less than Rs 10,000 but the property in dispute is worth over Rs 10,000 leave to appeal should be granted A I R 1923 Bom 176=25 Bom L R 77=72 Ind Cas 127, see also A I R 1923 Cal 387=71 Ind Cas 371, A I R 1923 Bom 23=24 Bom L R 350=67 Ind Cas 938, 20 C W N 1279 (P C), but see A I R 1921 Bom 266=23 Bom L R 374 Where in an ejectment suit it was found that the value of the property was Rs 10,000 held that the certificate to appeal to His Majesty from the decree " Bom L R 350=67 Ind the interest not only of the the value of the subject

matter is the value of the property and not that of the plaintiff's share therein A I R 1911 Pat 502=2 Pat L T 38=60 Ind Cas 844

The cost of the suit ought not to be added to the value of the subject matter to bring the valuation up to the appealable amount A I R 1927 Pat 338=8 Pat L T 714=6 Pat 444=104 Ind Cas 267 Where a petitioner prays for leave to appeal to Privy Council in respect of a decision involving a claim of Rs 3,900 the petition cannot be granted A I R 1925 P C 159=22 L W 255=30 C W N 98=27 32 C 6,0=52 I A 707=41 C L J 623 (P C)= claim amounts to over Rs 10,000 against several 1 to 100 Rs 10,000

that the plot has not been the plaintiff for leave to dispute was really the who A I R 1927 Pat 391=10 s 110 the decree has to be estimated at less than the prescribed value and held respecting prop This section does the value of the

by it 1932 A L J 836 see also 56 B 526=34 Bom L R 834=A I R 1930 Bom 543

The subject matter of the suit should be of the value of Rs 10,000 14 P L T 775=A I R 1933 P C 237=12 P 679 (P C) The of appeal are not necessarily identical with the the parties The subject matter in dispute may

3 All 502

value of Rs 10,000 or upwards within reference to the actual circumstances

Ind Cas 612=A I R 1930 Bom 509=32 Bom L R 1189=128 Ind Cas 622 The value of the property should be determined with reference to the date of the decree from which the appeal to His Majesty in Council is to be made A I R 1929 Nag 77=174 Ind Cas 69 see also 44 B 101=77 Bom L R 747=77 Ind Cas 572

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of the subject A I R 1929 Bom 241=53 Bom L R 552=31 Bom L R 632=119 Ind Cas 781 see also A I R 1928 Mad 785=111 Ind Cas 799 Part 2 relates not only to claims to property of Rs 10,000 in value but to questions respecting property of the like amount A I R 1928 Pat 191=106 Ind Cas 338 Section 110 applies to the value of the annuity sought to be recovered and not to the value of the property upon which that annuity is charged A I R 1923 P C 102=6 Bom L R 731=(193) M W N 590=45 M L J 253=18 L 116=26 O C 216=28 C W N 289=75 Ind Cas 502

Mesne profits subsequent to the date of the High Court decree, and awarded to the decree holders cannot be taken into consideration in making an estimate of the value and

Cas 755

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3 L W 946-122 Ind Cas 648 Two decrees of the same Court between the same

parties but opposite in characters may be joined for granting certificate to appeal 23

C W N 582=50 Ind Cas 760, but see A I R 1926 Mad 1024=51 M L J 295=

97 Ind Cas 592, A I R 1923 Mad 603=44 M L J 424=73 Ind Cas 217, 13 A

L J 1075=33 Ind Cas 369 'Directly or indirectly' do not cover a claim distinct

in its character and to which there is an irrelevant reference in the plaint A I R

1926 Rang 128=5 Bur L J 45-45 Ind Cas 577, see also A I R 1922 Mad 134=

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which might be made the basis of a prosecution 54 A 431 140 Ind Cas 418

see also 50 I A 29=59 C 1012=56 C W N 221=55 C L J 177=34 Bom L R

481=36 M L J 336=A I R 1932 P C 28

**Subject-matter and property**—Subject-matter and property used respectively in cls 1 and 2 cannot be treated as synonymous terms 'Property' in cl (2) indicates property not in suit or dispute which may be directly or indirectly involved A I R 1929 Nag 75=124 Ind Cas 697

**Immediately below**—A single judge of the High Court is a Court immediately below the Division Bench of the High Court 32 P L R 833=13 L W 338-135 Ind Cas 605=A I R 1932 Lah 121=A L R 1932 Lah 859 (Civ)

**Affirm the decision**—To affirm the decision of the lower court it is sufficient for the Appellate court to affirm the decree A I R 1927 Oudh 535 4 O W N 613=102 Ind Cas 433 see also A I R 1929 Nag 85=110 Ind Cas 855 A I R 1930 Lah 102=10 Lah 688=30 P L R 722=122 Ind Cas 90 26 P L R 614=92 Ind Cas 476 The decision of the Appellate Court affirms the decisions of the Court below if the decree is affirmed though on different grounds A I R 1923 Oudh 49=25 O C 277=70 Ind Cas 283 A I R 1925 Oudh 219 85 Ind Cas 90, A I R 1929 Mad 50=16 L W 263=30 M L T 337 A I R 1921 Oudh 111=24 O C 164=63 Ind Cas 292 A I R 1922 All 89=44 A 200=20 A L J 9=64 Ind Cas 916 Where the High Court entirely confirms the decision of the lower court on the merits of the case except as to costs its decree merely affirms the decision of the court below within the meaning of this section A I R 1922 Cal 316=34 C L J 299=66 Ind Cas 407 A decree of the High Court dismissing an appeal on account of insufficiency of court fee is one of affirmance 2 U P L R 27=1 P L R 19 0=16 P W R 1920=54 Ind Cas 400 Decree which affirms

not a decree of affirmance A I R

A I R 1921 All 2 0=19 A L J

Cas 19 A I R 10 S Pat 609=9

at 552=3 P L T 550=63 Ind

Cas 700 A I R 1922 Al 243=66

Ind Cas 721 5 C W N 715=66 Ind Cas 621 No appeal lies against a decree

decree to the Privy Council and leave to appeal cannot be granted (1920) P 345

1929 Nag 75=124 Ind. Cas 697 Where during the pendency of a suit for specific performance of a contract of sale, new machinery is brought on the premises in suit and not mentioned in the pleadings or in evidence or even at argument, its value cannot be taken into account A I R 1929 Nag 75=124 Ind. Cas 697 Where the applicant's interest in the property is less than Rs 10000 but the property in dispute is worth over Rs 10000 leave to appeal should be granted A I R 1923 Bom 176=75 Bom L R 77=72 Ind Cas 127, see also A I R 1923 Cal 387=71 Ind Cas 371, A I R 1923 Bom 23=24 Bom L R 350=67 Ind Cas 938, 20 C W N 1279 (P C) but see A I R 1921 Bom 266=23 Bom L R 374 Where in an ejectment suit it was found that the value of the property was Rs 1000 held that the certificate to appeal to His Majesty from the decree in the suit must be granted A I R 1923 Bom 23=24 Bom L R 350=67 Ind Cas 938 When in a partition suit the decree affects the interest not only of the plaintiffs who are appealing but of some of the defendants the value of the subject matter is the value of the property and not that of the plaintiff's share therein A I R 1921 Pat 502=2 Pat L T 386=60 Ind Cas 844

The cost of the suit ought not to be added to the value of the subject matter to bring the valuation up to the appealable amount. A I R 1927 Pat 338=8 Pat L T 714=6 Pat 444=104 Ind Cas 267. Where a petitioner prays for leave to appeal to Privy Council in respect of a decision involving a claim of Rs 3,900 the petition cannot be granted. A I R 1925 P C 159=22 L W 255=30 C W N 98=27 Bom L R 867=49 M L J 20=52 C 650=52 I A 207=41 C L J 623 (P C)=88 Ind Cas 445. Mortgage against several properties. Subsequent denial that it was covered by the mortgage. Held on appeal that the plot has not been the subject of the dispute. A I R 1910 110th estimate.

by it 1932 A. L. J. 836 see also 56 B 520=34 110 11 L 34  
Dom 543

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725 = A I R 1933 P C 237 = 12 P 679 (P C) The subject matter of a suit and of appeal are not necessarily identical with the subject matter in dispute between the parties. The subject matter in dispute may not always be capable of being divided into two distinct parts. In cases where the subject matter of the suit is indivisible, the subject matter of the suit is the same as the subject matter of the appeal. A L R 1933 All 502

involve directly or indirectly, etc —

The question whether a decree involves indirectly or claim respecting property of the value of Rs 10000 or upwards within paragraph (2) must be determined with reference to the actual circumstances at the time and not to be mere possibility 128 Ind Cas 672 = A I R 1930 Bom 509 = 32 Bom L R 1189 = 128 Ind Cas 622 The value of the property should be determined with reference to the date of the decree from which the appeal to His Majesty in Council is to be made A I R 1919 Nag 24 Ind Cas 69 see also 44 B 101 = 72 Bom L R 243 = 55 Ind Cas 572 R 649 T valuation L J 23 the value of the element A I R 1927 Bom. 241 = 33 Bom L R 552 = 31 Bom L R 632 = 119 Ind Cas 782 see also A I R 1928 Mad 785 = 111 Ind Cas 793 Para 2 relates not only to claims to property of Rs 10000 in value but to questions respecting property of the like amount A I R 1918 Pat 191 = 106 Ind Cas 538 Section 110 applies to the value of the annuity sought to be recovered and not to the value of the property upon which that annuity is charged A I R 1923 P C 102 = 6 Bom. L R 731 = (1923) M W N 590 = 4, M L J 253 = 18 L W 1,6 = 26 O C 216 = 28 C W N 289 = 7, Ind Cas 502



Mesne profits subsequent to it the decree holders cannot be taken value under para 2 A I R 1926 1 Cas 755 Where the matter in dispute tenancy of the site, buildings on site should not be taken into account involving subject-matter The second paragraph means that the suit must to satisfy its conditions, involve rights and claims to property which rights and claims are worth value is 654, see 1921 L, because thing in the same province A I R 1929 Mad 780=(1929) M W N 602=57 M L J 477=3 L W 946=122 Ind Cys 648 Two decrees of the same Court between the same parties but opposite in characters may be joined for granting certificate to appeal 23 C W N 582=50 Ind Cys 760, but see A I R 1926 Mad 104=51 M L J 295=97 Ind Cas 59 A I R 1923 Mad 603=44 M L J 424=73 Ind Cas 217, 13 A L J 107,=33 Ind Cas 369 'Directly or indirectly' do not cover a claim distinct in its character and to which there is an irrelevant reference in the plaint A I R 1926 Rang 128=5 Bur L J 45=45 Ind Cas 377, see also A I R 1922 Mad 34=15 L W 140=30 M L T (H C) 42=42 M L J 78=(1922) M W N 46=66 Ind Cas 686 On two connected suits where the points are identical but one only exceeds Rs 10,000 in value and is certified as fit for appeal to the Privy Council the other suit should also be certified though its subject matter is less than Rs 10,000 in value 43 A 223=18 A L J 1119=59 Ind Cas 794 The mere possibility of similar litigation in the same presidency will not entitle the petitioner to add to the value in one case that of the other cases as 'indirectly involved' unless the other litigation will be affected by the doctrine of *res judicata* 34 L W 817=61 M L J 69 The expression involving directly or upwards refers to suits in existence and not to suits in *germinis futuri* The words refer to questions arising between parties to a pending suit and not to questions relating to the title of one only of the parties which might be made the basis of a prosecution 54 A 431=140 Ind Cas 418, see also 59 I A 29=59 C 1012=36 C W N 221=55 C L J 17-34 Bom L R 481=36 M L J 336=A I R 1932 P C 28

**Subject-matter and property**—'Subject-matter' and 'property' used respectively in cls 1 and 2 cannot be treated as synonymous terms 'Property' in cl (2) indicates property not in suit or dispute, which may be directly or indirectly involved A I R 1929 Nag 75=124 Ind Cys 677

**Immediately below**—A single judge of the High Court is a Court immediately below the Division Bench of the High Court 32 P L R 833=13 L W 338=135 Ind Cas 605=A I R 1932 Lah 121=1 L R 1932 Lah 859 (Civ)

**Affirm the decision**—To affirm the decision of the lower court it is sufficient for the Appellate court to affirm the decree A I R 1927 Oudh 535=4 O W N 613=102 Ind 855, A I R 1930 Lah P L R 614=92 Ind Cas Court below : Oudh 49=25 90, A I R 111=24 O C 9=64 Ind Ca

lower court on the merits of the case except as to costs its decree merely affirms the decision of the court below within the meaning of this section A I R 1922 Cal. 316=34 C L J 299=66 Ind Cys 407 A decree of the High Court dismissing an appeal on account of insufficiency of court fee is one of affirmance 2 U P L R. 27=1 P L R 19.0=16 P W R 1920=54 Ind Cas 400 Decree which affirms not a decree of affirmance A I R. A I R 1921 All 270=19 A L J Cas 19, A I R 1928 Pat 600=9 at 555=3 P L T 350=68 I J Cas 200 A I R 1922 Al 243=60 Ind Cys 721, 25 C W N 715=66 Ind Cas 621 No appeal lies against a consent decree to the Privy Council and leave to appeal cannot be granted. (1920) Pat 347

= 5 Pat L J 383 = 1 P L T 599 = 57 Ind Cas 245 Partial reversal of decree does not mean confirming of a decree 18 M L 1 387 = (1916) 1 M W N 122 = 31 Ind Cas 272, Reve er cl 15 of Letters Patent of judgment of single lower Appellate Court decree affirms decision 745 A decree which substantially alters decree of the court below cannot be said to be a decree affirming that decision A I R 1929 Pat 561 = 117 Ind Cas 193, see also A I R 1927 Pat 579 = 103 Ind Cas 703

For purposes of appeal to Privy Council no substantial question of law need be involved if there is a small variation by the Appellate court in the lower court's decree A I R 1925 P C 60 = 51 C 969 = 51 I A 319 (P C) = 86 Ind Cas 504. The word "decision," in s 109 (a) means *in* and not judgment Hence in order to affirm the meaning of this section it is sufficient for 14 Lah 609 = 144 Ind Cas 18 = 34 P L the value of the subject matter exceeds R Council can be granted in the case of the court below, unless there is a substantial question of law involved or it is shown that the case is otherwise fit to be certified 32 P L R 860, see also 9 Rang 360 = 133 Ind Cas 494 = A I R 1931 Rang 283, 61 M L J 456 (P C), A I R 1931 P C 173 = 131 Ind Cas 781 = 14 O L J 357, see also 35 L W 206 = 139 Ind Cas 54 = A I R 1932 M 279, 32 P L R 833 = A I R 1932 Lah 121

Where an appeal was dismissed and a cross objection was allowed with the result that the decree was varied, held an appeal to Privy Council by a person whose appeal was dismissed will lie as

Cas 234 = A I R 1932 are separately numbered

In such cases it may missed the decision of it

in that decree 54 A 146 = (1931) A L J 968 = 135 Ind Cas 234 = A I R 1932 All 65 (F B) This section merely says "affirm the decision of the court" and does not say "affirms the decision of the decree on merits" An order rejecting an appeal for failure to furnish security for costs is an order affirming the decision of the court below within the meaning of this section 54 All 390 = 140 Ind Cas 125 = 1932 A L J 254 = A I R 1932 All 312 Where in a suit for account a decree is not entirely affirmed it is not affirming the decree A I R 1932 Mad 46 = 25 L W 206 139 Ind Cas 54, see also 28 N L R 142 = A I R 1933 Nag 118 = 140 Ind Cas 68

an affirming judgment

matter of discretion and

whether the judgment

R 1933 Pat 703 (S B)

judgment of affirmance

or not does not depend upon whether the appellant is the plaintiff or defendant 144 Ind Cas 320 = A I R 1933 Pat 262

**Substantial question of law**—A substantial question of law does not mean a substantial question of general importance but a substantial question of law as between the parties in the case involved A I R 1930 Bom 509 = 32 Bom L R 1189 = 128 Ind Cas 622, A I R 1928 P C 172 = 55 C 944 = 55 I A 235 = 32 C W N 817 = 29 P L R 429 = 48 C L J 119 = 26 A L J 1215 = 55 M L J 651 = 30 Bom L R 1381 = 5 O W N 663 = 109 Ind Cas 723, A I R 1928 Nag 114 = 105 Ind Cas 531, A I R 1928 Nag 76 = 23 N L R 156 = 106 Ind Cas 366, A I R 1927 P C 110 = 2 Luck 93 = 34 I A 126 = 31 C W N 495 = 102 Ind Cas 889 (P C) A question of law is not said to be involved in an appeal under s 110 if it need not be decided for disposal of appeal or if such question may arise in certain contingencies The word involved implies a considerable degree of necessity 19 O C 131 = 36 Ind Cas 807, see also 41 Ind Cas 781 = 129 P W R 1917 = 133 Pat L R 1917, A I R 1923 Mad 50 = 30 M L T 337, A I R 1921 Oudh 30 = 8 O L J 1 = 61 Ind Cas 131 Substantial question of law are those that affect a large number of persons A I R 1923 Nag 272 = 73 Ind Cas 221, A I R 1928 All 19 = 103 Ind Cas 654, A I R 1923 Mad 443 = 17 L W 445 = 72 Ind Cas 918 Construction of particular document cannot be treated as a question of general importance or a substantial question of law A I R 1922 Oudh 214 = 73 Ind Cas 407, 40 Ind Cas 182, A I R 1925 Oudh 219 = 83 Ind Cas 90 Where

the only question of law raised by the application for leave to appeal to Privy Council, is concluded by a decision of the Privy Council or a long series of decisions there is no substantial question of law involved, and leave should not be granted A I R 1931 Rang 283=133 Ind Cas 494=9 Rang 363, 51 C L J 270=A I R 1931 Cal 17=126 Ind Cas 719, 132 Ind Cas 2, 32 P L R 559=A I R 1931 substantial should be such as to v of the authorities or that the A I R 1933 Pat 703 (S B)= 146 Ind Cas 744 The word 'substantial question of law' in the last clause of section 110 C P Code mean a substantial question of law as between the parties in the case involved and not a question of general importance A L R 1933 Oudh 4 P L R 946=A I R 1933 Lah 71 A point decided by uniform course law A I R 1933 Lah 1044 In not the construction of a document Cas 549=1933 A L J 172=A I R 1933 All 461

Where the decree of the High Court is one of affirmation except as regards a variation made in the lower Court's decree with the consent of the person trying to appeal to the Privy Council, those persons have to show that a substantial question of law is involved A I R 1921 Cal 81=25 C W N 775=66 Ind Cas 621, see also A I R 1921 Cal 94=33 C L J 131=62 Ind Cas 20, A I R 1924 Pat 468=5 P L T 17=75 Ind Cas 58 A I R 1924 All 66=45 A 667=21 A L J 665=75 Ind Cas 100, A I R 1926 Nag 5=89 Ind Cas 941 A I R 1926 Oudh 17=2 O W N 860-91 Ind Cas 93 426=31 C V N 572=10, Ind Cas 65 A I R 114 Ind Cas 320 A I R 1929 Bom 341=5 Ind Cas 782 A I R 1929 Bom 359=31 Bom L R 1930 Lah 54-31 P L R 236=123 Ind Cas 523 A I R 1928 All 280=50 A 640=26 A L J 336=108 Ind Cas 238 A I R 1927 Mad 413=53 M L J 375=103 Ind Cas 3, 10 L B R 307-67 Ind Cas 71 A I R 1929 Nag 85=110 Ind Cas 855

Where authoritative decisions of the Privy Council exists on a matter that matter does not remain a substantial question of law A I R 1926 Oudh 381 (F B)-1 Luck 265=29 O C 215=3 O W N 557=95 Ind Cas 193 A substantial question of law is a question of law in respect of which there may be a difference of opinion 26 P L R 614=92 Ind Cas 479, A I R 1929 Lah 55=9 Lah 581=29 P L R 529, A I R 1924 Lah 473=78 Ind Cas 417 A I R 1926 Nag 215=90 Ind Cas 270 Particular law point is not laid down by Privy Council. It is still material question of law though cases involving somewhat similar point has been dealt with by the Privy Council A I R 1929 Rang 280=7 Rang 271=119 Ind Cas 218

Whether the inheritance of the cash allowances known comprehensively in Berar as *lasajan* is governed by the *Inam* Rules or by the law relating to ordinary pensions, is a

96 Ind Cas 751

set of facts is

25 A L J 970=107 Ind Cas 33, see also

156=106 Ind Cas 366 The Court can grant

deficit Court fee, and whether a Court has

case is a substantial question of law 63 Ind Cas 722 Construction of an indemnity

bond is a mixed question of law and fact and as regards the law it is substantial

question A I R 1927 Mad 443=(1927) M W N 213=53 M L J 375=39 M L

J 15=103 Ind Cas 31, see also A I R 1929 Pat 561=117 Ind Cas 193 Point

not directly decided by any Courts in India but well established upon principles

laid down in such cases is not a substantial question of law A I R 1928 Pat

reasonable

the right of

instruments of

Whether the

a substan

3 Cas 305

for a court

= 5 Pat L J 383 = 1 P L T 599-57 Ind Cas 245 Partial reversal of decree does  
(1916) 1 M W N 122 = 31 Ind  
order cl 15 of Letters Patent of  
lower Appellate Court decree  
s 745 A decree which substan-  
to be a decree affirming that  
decision A I R 1929 Pat 561 = 117 Ind Cas 193, see also A. I R 1927 Pat 579  
= 103 Ind Cas 703

For purposes of appeal to Privy Council no substantial question of law need be  
involved if there is a small variation by the Appellate court in the lower court's  
decree A I R 1925 P C 60 = 51 C 969 = 51 I A 319 (P C) = 86 Ind Cas 504  
on of the suit by the court  
the court below within  
court to affirm the decree  
14 Lah 609 = 144 Ind Cas 18 = 34 P L R 946 = A I R 1933 Lah 690 Though

Ind Cas 494 = A I R 1931 Rang 283, 61 M L J 456 (P C), A I R 1931 P C  
173 = 131 Ind Cas 781 = 14 O L J 357, see also 35 L W 206 = 139 Ind Cas 54 =  
A I R 1932 M 279, 32 P L R 833 = A I R 1932 Lah 121

and a cross objection was allowed with the result  
appeal to Privy Council by a person whose appeal  
right (1931) A L J 968 = 54 A 146 = 135 Ind  
Cas 234 = A I R 1932 All 65 Separate appeals which are filed in the High Court  
are separately numbered

In such cases it may  
missed the decision of the  
in that decree 54 A 146 = (1931) A L J 968 = 135 Ind Cas 234 = A I R 1932 All  
65 (F B) This section merely says "affirm the decision of the court and does not  
say affirms the decision of the decree on merits An order rejecting an appeal  
for failure to furnish security for costs is an order affirming the decision of the  
court below within the meaning of this section 54 All 390 = 140 Ind Cas 125 =  
1932 A L J 254 = A I R 1932 All 312 Where in a suit for account a decree  
is not entirely affirmed it is not affirming the decree A I R 1932 Mad 46 =  
25 L W 206 = 139 Ind Cas 54, see also 28 N L R 142 = A I R 1933 Nag 118  
= 140 Ind Cas 68

an affirming judgment  
matter of discretion and  
whether the judgment  
of the High Court is or is not one of affirmance A I R 1933 Pat 703 (S B)  
The question whether the judgment of the High Court is a judgment of affirmance  
or not does not depend upon whether the appellant is the plaintiff or defendant  
144 Ind Cas 320 = A I R 1933 Pat 262

Substantial question of law—A substantial question of law does not  
mean a substantial question of general importance but a substantial question of law  
arising between the parties in the case involved A I R 1930 Bom 509 = 32 Bom L  
R 1189 = 128 Ind Cas 622, A I R 1928 P C 172 = 55 C 944 = 55 I A 235 = 32  
C W N 817 = 29 P L R 429 = 48 C L J 119 = 26 A L J 1215 = 55 M L J  
651 = 30 Bom L R 1381 = 5 O W N 668 = 109 Ind Cas 723, A I R 1928 Nag  
114 = 105 Ind Cas 531, A I R 1928 Nag 76 = 23 N L R 156 = 106 Ind Cas 366,  
A I R 1927 P C 110 = 2 Luck 93 = 54 I A 126 = 31 C W N 495 = 102 Ind Cas  
889 (P C) A question of law is not said to be involved in an appeal under s 110  
if it need not be decided for disposal of appeal or if such question may arise in  
certain contingencies The word involved implies a considerable degree of  
necessity 19 O C 131 = 36 Ind Cas 807, see also 41 Ind Cas 781 = 129 P W R  
1917 = 133 Pat L R 1917, A I R 1923 Mad 30 = 30 M L T 337, A I R 1921  
Oudh 30 = 8 O L J 1 = 61 Ind Cas 131 Substantial question of law are those  
that affect a large number of persons A I R 1933 Pat 272 = 73 Ind Cas 221,  
A I R 1933 Pat 43 = 17 L W 445 = 72  
Ind Cas 407, 40 Ind Cas 182, A I R 1925 Oudh 219 = 83 Ind Cas 90 Where  
treated as a question  
R 1922 Oudh 214 = 73

P C 22=12 P L T 1—35 C W N 33=32 Bom I R 1576=59 N L J 444=57  
 I A 279=130 Ind Cas 612 (P C) Where a party transfers his interest in subject

suit in the court of first instance or of the projected appeal to the Privy Council was Rs 10,000 or upwards a certificate for leave to appeal cannot be granted as a matter of right A I R 1933 All 4=143 Ind Cas 317=54 A 459 But where the decree involves property of Rs 10,000 or upwards, leave can be properly given A I R 1933 Oudh 597=10 O W N 880

111 [S 597] Notwithstanding anything contained in section 109,  
 no appeal shall lie to His Majesty in Council—  
 Bar of certain appeals

(a) from the decree or order of one Judge of a High Court established under the Indian High Courts Act, 1861,\* [or the Government of India Act, 1915,† or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being, or

(b) from any decree from which under section 102 no second appeal lies

Scope—This section is applicable to a single Judge of a High Court established under the Charter Act 1861 127 P W R 1917 131 P L R 1917=42 Ind Cas 893 No appeal to Privy Council from decree or order of High Court Judge A I R 194 Mal 99 46 N appeal lies to the Privy Council under 1 Judge of the High Court or in appeal R 1106 is not =A I R (1931) Bom 503 see A High Court within the meaning of this section A I R 1932 Oudh 163

Savings

112 [S 616] (1) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council and for the time being in force for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts

Privy Council Rules—Vide A I R 1931 Bom 278=132 Ind Cas 458=A I R 1931 Bom 278

## PART VIII

### REFERENCE, REVIEW AND REVISION

113 [S 617] Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

\* 24 & 25 Vict c 104

† 5 & 6 Geo 5 c 61

† These words were inserted by s 2 and Sch of the Amendment Act, 1916 (13 of 1916)

is substantial question of law 45 Ind Cas 182 Where the point is not of general importance a certificate for leave to appeal to Privy Council should not be granted 54 Ind Cas 463, 56 Ind Cas 526 Question of  
*in second appeal is not a substantial question of law*  
 granted in such a case A I R 1923 All 463=70  
 granted where the interpretation of documents invl  
 A I R 1924 All 559=46 A 227=79 Ind Cas 213 Refusal to grant leave under  
 cl 12 of the Letters Patent to file an additional written statement is not a substantial  
 question of law A I R 1922 Bom 11=24 Bom L R 196=77 Ind Cas 941  
 Where the trial Court in its discretion refuses to extend the time for putting in  
 Court fees, it can hardly  
 arising between the parties  
 and the plaintiff A I  
 documents executed by a  
 is not a substantial question of law A I R 1928 All 19=103 Ind Cas 654

The principle that although the point of law may be obviously untenable, if the  
 decision in the case turns upon it that point would be a substantial point of law,  
 is not tenable A I R 15=107 Ind Cas 643  
 Whether mistakes which  
 re open a settle  
 752 Where it  
 were for exact  
 questions of wide public importance A I R 1923 Cal 451=27 C W N 204=64

Ind Cas 581 Whether a Hindu widow *qua* executrix can compromise is not a  
 substantial question of law A I R 1926 Cal 711=43 C L J 206 Whether the  
 legatee signing the will as witness did not sign to attest the will does not amount to  
 a substantial question of law A I R 1925 Oudh 541=2 O W N 394=88 Ind  
*before 1871 is not*

of opinion Where the question is one of the application of the law to the facts  
 of the case, the case does not comply with the requirements of s 110. 33 P L R  
 299=132 Ind Cas 2=A I R 1932 Lah 56, see also A I R 1932 Oudh 134=9  
 O W N 103=138 Ind Cas 630, 1932 A L J 730=138 Ind Cas 670, 32 P L R  
 599=A I R 1931 Lah 753

When leave can be granted  
 prosecution of his own appeal until he  
 not proper to keep the other party  
 be dismissed A petition, therefore, for  
 dismissal cannot be maintained A  
 117 Ind Cas 724 High Court cannot  
*proprio* especially when the petition for leave is on behalf of a whole community  
 115 Ind Cas 832, see also 44 Ind Cas 781, 47 Ind Cas 646=42 M 32 Leave  
 cannot be granted if the appellant takes up a new position while appealing to Privy  
 Council 2 U P L R (A) 402=38 Ind Cas 179. Certificates should make plain  
 upon their face that the discretion has in fact been exercised A I R 1921 P. C  
 128=2 P L T 132=29 M L T 156=13 L W 365=62 Ind Cas 320 Leave  
 cannot be granted where the applicant's appeal to the High Court is dismissed for  
 want of prosecution  
 leave to appeal to  
 from practice, which  
 440=43 M L J 38  
 decree involves a  
 is filed and there is no counter affidavit the High Court may assume that the peti-  
 tioner's affidavit is correct A I R 1926 Lah 416=6 P L R 123=94 Ind Cas  
 554 A defendant having no interest in the prosecution of the suit and leaving it  
 entirely to his co-defendant cannot separately prefer an appeal to His Majesty in  
 Council A I R 1921 Pat 129=2 P L T 173=60 Ind Cas 500 Where special  
 leave to appeal is granted on *ex parte* application the Board is not precluded from  
 going into question of competency on appeal of facts being known A I R 1931

111 [S 597] Notwithstanding anything contained in section 109,  
no appeal shall lie to His Majesty in Coun-  
cil—

(b) from any decree from which under section 102 no second appeal lies.

un: Judge of a High Court established  
893 17=131 P L R 1917=42 Ind Cas  
A or order of High Court Judge  
hes 117=75 Ind Cas 604 No appeal  
of the High Court either in appeal or on revision or application 33 Hon 1 R 1106  
= A I R (1931) Bom 503, see also 56 C 512, 46 M 938 Oudh Chief Court is not  
High Court within the meaning of this section A I R 1932 Oudh 163

Savings 112 [S 010] (i) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals, or for the conduct of business before it.

(2) Nothing herein shall be construed to limit the jurisdiction of the Prize Courts in cases of piracy or of crimes committed on board of vessels, or in cases of criminal or administrative orders and decrees of the Prize Courts.

Privy Council Rules—Vide A I R 1931 Bom 278—132 Ind Cw 438—A I R 1931 Bom 278

## PART VIII

### REFERENCE, RLVLW AND RLVISION.

113 [S 617] Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit

\* 24 & 25 Vict c 104

\* 24 & 25 Vict c 104 + 5 & 6 Geo 5, c. 61  
† These words were inserted by s 2 and Sch of the Amendment Act, 1916 (13 of 1916)

is substantial question of law 45 Ind Cas 182 Where the point is not of general importance a certificate for leave to appeal to Privy Council should not be granted 54 Ind Cas 463, 56 Ind Cas 526 Question of procedure disallowing a new plea in second appeal is not granted in such a case granted where the

A I R 1924 All 559=46 A 227=79 Ind Cas 213 Refusal to grant leave under cl. 12 of the Letters Patent to file an additional written statement is not a substantial question of law A I R 1922 Bom 11=24 Bom L R 196=77 Ind Cas 941 Where the trial Court in its discretion refuses to extend the time for putting in Court fees, it can hardly be said that the question is a substantial question of law arising between the parties to the case It is more a question between the Court and the plaintiff A I R 1928 Lah 560=110 Ind Cas 179 Whether certain documents executed by a Hindu widow were binding on the estate and the reversioner is not a substantial question of law A I R

The principle that although the point decision in the case turns upon it that is not tenable A I R 1923 Mad 233=39 M L T 655=107 Ind Cas 643 Whether mistakes which though not material, are sufficient to entitle the Court to reopen a settled account is a question of law A I R 1927 Pat 311=102 Ind Cas 753 Where it is not clear from the record whether presumptions by several strangers were for exactly the same grounds as those in the suit, the case does not involve questions of wide public importance A I R 1923 Cal 451=27 C W N 204=84 Ind Cas 581 Whether a Hindu widow *qua* executrix can compromise is not a question of law 206 Whether the compromise does not amount to a sale W N 394=88 Ind Cas 1000 Whether the compromise is before 1871 is not

of opinion Where the question is one of the application of the law to the facts of the case, the case does not comply with the requirements of s. 110 33 P L R 299=132 Ind Cas 2=A I R 1932 Lah 56, see also A I R 1932 Oudh 134=9 O W N 103=138 Ind Cas 630, 1932 A L J 730=138 Ind Cas 670, 32 P L R, 599=A I R 1931 Lah 753

When leave can be granted.—A person in contempt cannot be heard in prosecution of his own appeal until he purges his contempt, and his appeal, as it is not proper to keep the other party before the court for an indefinite period, can be dismissed A petition therefore, for leave to appeal cannot be maintained

117 Ind Cas 724 of a whole community  
*pupus* especial 16=42 M 32 Leave  
 115 Ind Cas 832 to appeal to Privy  
 cannot be granted Council 2 U P cases should make plain  
 upon their face that the discretion has in fact been exercised A I R 1921 P. C.  
 128=2 P L T 133=29 M L T 136=13 L W 365=62 Ind Cas 320 Leave  
 cannot be granted where the applicant's appeal to the High Court is dismissed for  
 want of prosecution 464 No  
 leave to appeal ing a vakil  
 from practice, 1922 Mad  
 440=43 M L J 11 an affidavit that the  
 decree involves a claim respecting property exceeding ten thousand rupees in value  
 is filed and there is no counter affidavit 554 A defendant having no interest  
 naturally to his co-defendant can  
 Council A L R 1921 Pat 129=129  
 leave to appeal is granted on  
 going into question of competency on appeal on facts being known. A I R, 1931



suit in the court of first instance or of the projected appeal to the Privy Council was Rs 10,000 or upwards a certificate for leave to appeal cannot be granted as a matter of right A I R 1933 All 4=143 Ind Cas 317=54 A 459 But where the decree involves property of Rs 10,000 or upwards, leave can be properly given A I R 1933 Oudh 597=10 O W N 880

111 [S 597] Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—  
Bar of certain appeals

(a) from the decree or order of one Judge of a High Court established under the Indian High Courts Act, 1861,\* [or the Government of India Act, 1915†,‡ or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being, or

(b) from any decree from which under section 102 no second appeal lies

Scope—This section is applicable to a single Judge of a High Court established under the Charter Act 1861 127 P W R 1917=131 P L R 1917=42 Ind Cas 893 No appeal lies to Privy Council from decree or order of High Court Judge Cas 604 No appeal by a single Judge 33 Bom L R 1106 11 Chief Court is not Oudh 163

Savings

112 [S 616] (1) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts

Privy Council Rules—Vide A I R 1931 Bom 278=132 Ind Cas 458=A I R 1931 Bom 278

## PART VIII

### REFERENCE, REVIEW AND REVISION.

113 [S 617] Subject to such conditions and limits prescribed, any Court may state the same for the opinion of the High Court and the High Court may make such order thereon as it thinks

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\* 24 & 25 Vict c 104

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‡ These words were inserted by s 2 and Sch. of the Amendment of 1916)

section must distinctly set out the legal point or points in the case as to the decision of which the Judge entertain a reasonable doubt 93 P L R 1902 There is no analogy between a reference and an appeal An appeal is made by an aggrieved party where as a reference is made not by a party but by a Court The decision of the subject matter of appeal is by the Court entertaining the appeal whereas the decision of the matter about which a reference is made is not necessarily by the Court deciding the reference 1932 A L J 816=140 Ind Cas 123=A I R 1932 All 651=A L R 1932 All 1083 Reference made by a Deputy Commissioner as to the legality of actions of Subordinate Judge in issuing a temporary injunction is not a reference made by a Court within the meaning of the Code A I R 1928 Oudh 485=5 O W N 891=113 Ind Cas 800 A reference can be allowed where it is doubtful, if Court had any reasonable doubt but where the parties do not object to the reference being made 76 Ind Cas 519=A I R 1923 Rang 193=76 Ind Cas 519, see also 61 P R 1913=123 P L R 1913, 8 P R 1914 The Collector while hearing an application under s 23 of the Bombay Munsif's Act is not a Court and his order is not a decree section became inoperative by the amendment of 1908 Act  
decree 14 Ind Cas 23  
entertain an appeal 14 Ind Cas 23

## Review

114 [S 622] Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit

Scope—An application for a review of a decree or order made by a Court of Small Causes is not an appeal from the decision of the Court 1931 A L J 187 (F B)=13

Cal 91 The decree is not a decree and therefore no appeal 8=107 Ind Cas 751 a decree in any appeal 3 171=101 Ind Cas 71

is not open to revision A I R 1924 Lah 400=71 Ind Cas 160 Where the Privy Council reversed the decree of the High Court, it is no ground for review of the judgment passed prior to the decision of the Privy Council This section does not authorise the review of a decree which was right when it was made on the ground of happening of some subsequent event A I R 1922 Mad 227=(1922) M W N 304=15 L W 593=43 M L J 33=31 M L J 473=70 Ind Cas 741 There is no provision in the Letters Patent appeal from review which must be expressly conferred (1911) A L J 187=A I R 1931 A 244=132 Ind Cas 24 (F B), see also A I R (1931) Lah 409=12 L T 652=134 Ind Cas 630 It is a wrong procedure for a lower Court to review its former order merely on the ground that at a ruling of the High Court had not been brought to its notice on the previous occasion 132 Ind Cas 815=1931 A L J 887=A I R 1931 All 91

The Revenue Court has no power to review a judgment 138 Ind Cas 465=A. I R 1932 All 293=1932 A L J 437 (F B)

A review proceeding commences ordinarily with an *ex parte* application. The Court then may grant a rule calling for the appearance of the parties, and the hearing of this

may involve to some extent an investigation into the merits. If the rule is discharged then the case ends. If on the other hand the rule is made absolute, then the third stage is reached, the case is reheard on the merits and may result in a repetition of the former decree or in some variation of it. Though in one case the rule is discharged or on the re-hearing the decree is varied, there is a material difference, for, in the latter case there is a fresh decree, in the former case the case is reheard on the old decree 35 M 871=139

Ind Cas 436=1932 M W N 1124=36 L W 242=A I R 1932 Mad 669=63 M L J 357. An obvious and patent error of law might be a good ground for a review, but where there is no such blunder no review lies 146 Ind Cas 946=A. I R 1933 Rang 85

115. [S 622] The High Court may call for the record of any case

Revision

which has been decided by any court subordinate to such High Court and in which no

appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

Scope — The 115th section of the Civil Procedure Code enables the High Court, in a case in which no appeal lies, to call for the record of any case if the Court by

the exercise of a jurisdiction not vested in it, or with material irregularity, and further enables it to make such order as it thinks fit. It will be observed that the section does not require the exercise, or non exercise of it or the exercise of it against conclusions of law or

when the question of jurisdiction is not involved. *Per Lord Atkin* in *Balakrishna v Vasudeva*, 40 Ind Cas 650=15 A L J 645=2 P L W 101=33 M L J 69=26 C L J 143=19 Bom L R 715=40 M 793 (P C), see also A I R 1930 Lah 468=127 Ind Cas 159, A I R 1930 All 158=(1929) A L J 1157=124 Ind Cas 478, A I R 1929 Nag 317=120 Ind Cas 401, 115 Ind Cas 176, A I R 1929 Rang 21=6 Rang 667=114 Ind Cas 543, A I R 1924 Sind 49=75 Ind Cas 1041, A I R 1923 Lah 506=75 Ind Cas 437, A I R 1923 All 392=21 A L J 313=45 A 425=74 Ind Cas 778, 20 C W N 1080=1 P L J 465=3 P L W 55=37 Ind Cas 129. This section ought to receive a liberal interpretation 40 B 86=17 Bom L R 1097=33 Ind Cas 358, 13 N L R 203=42 Ind Cas 746. The section must be read as a whole A I R 1921 U B 27=4 U B R 16=63 Ind

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J 769=51 A 910=119 Ind Cas 103. The exercise of revisional power is entirely

discretionary 54 C L J 253=36 C W N 16, 55 C 1084=113 Ind Cas 833 Wrong exercise of jurisdiction is no ground for interference A I R 1922 Mad 3=41 M L J 378=64 Ind Cas 493 Dismissing stay of execution on sole ground of delay is irregularity and revision lies A I R 1925 Cal 254=82 Ind Cas 435 Where rule was wrongly interpreted in the exercise of jurisdiction order is revisable A I R 1925 Mad 1201=48 M 676=49 M L J 366=22 L W 606-92 Ird Crs 300 Where the Legislature states that the decision of a particular Court shall be final such decision is open to revision A I R 1924 Mad 561=47 M 363=46 M L J 201=19 L W 402=34 M L

Where the court for revision 120 P V 21 rule 89 regarding sale cannot be revised Cas 778 An order not revisable A I R 1924 Pat 1 does or does not constitute m 13 S L R 98=52 Ind Cas 854 s 105 B T Act by a court revision, on the ground that the rent fixed is not fair or equitable 53 Ind Cas 411 Conditional order for adjournment cannot be interfered in revision A I R 1924 Pat 529=1 Pat L R 270=34 Ind Cas 1013 Order of returning appeal for proper presentation cannot be interfered in revision A I R 1925 Pat 488=6 P L T 448=90 Ind Cas 321=(1925) Pat 167 If a court has jurisdiction to decide the matter before it the High Court will not interfere with its order however wrong it may be on facts or law A I R 1930 Nag 136=120 Ind Cas 332, see also A I R 1929 Oudh 26=5 O W N 873=4 Luck 93=115 Ind Cas 105, A I R 1930 All 122=1930 A L J 464=127 Ind Cas 545, 49 M L J 381=90 Ind Cas 771

A Court can construe its own order and the High Court would not interfere if there is no irregularity A I R 1925 Pat 318=3 Pat L R 100=6 P L T 481=96 Ind Cas 107

Decision based on error of law and on misunderstood and inadmissible evidence does not involve any question of jurisdiction and no revision lies against it (1918) Pat 347=48 Ird Cas 930 31 Ind Cas 209, 51 Ind Cas 873=4 P L J 340 A person who applies for revision relying upon want of jurisdiction must substantiate the plea by affidavit or production of record 1 U P L R (H C) 18=52 Ind Cas 32 Where the right of appeal is barred if the order of the Court below involves a question of jurisdiction the High Court will interfere in revision 4 Pat L J 57=49 Ind Cas 442 Order of a court trying a suit without jurisdiction but without objection by any party is not open to revision A I R 1924 Nag 17=19 N L R 179=75 Ind Cas 769 Fresh objection regarding jurisdiction cannot be raised A I R 1927 Cal 338=45 C L J 218=101 Ind Cas 688 Although objection as to jurisdiction is taken in lower court at a late stage in the proceedings it ought to be entertained in revision There can be no estoppel as to the question of jurisdiction by conduct of parties But delay can be taken into account in awarding costs A I R 1930 All 873=1930 A L J 997=52 A 947=132 Ind Cas 33

Revisional Courts is not a Court of appeal and every decision on a point of law or fact cannot be corrected by the High Court in its revisional jurisdiction A I R 1929 All 593=(1929) A L J 769=51 A 910=119 Ind Cas 103 The refusal to issue a commission for the examination of a witness does not constitute a question in which jurisdiction was involved therefore no revision lies A I R 1926 Sind 92=23 S L R 403=116 Ind Cas 97 Remedy by revision is discretionary and revision may be granted though other remedy is open 4 N L J 55=63 Ind Cas 46 The powers under s 115 should be interpreted liberally, specially upon the applicant has no other remedy A I R 1921 Sind 80=15 S L R 135=65 Ind Cas 37, A I R 1924 Sind 49=75 Ind Cas 1041 If appeal is allowed there is no revision but revision is allowed even in presence of other remedies A I R 1928 All 388=51 A 338=(1929) A L J 62=114 Ind Cas 741

Powers under s 25 of Provincial Small Cause Courts are wider than those under s 115 L R 3 A 17 s Ind Cas 362 A I R 1928 Lah (1930) A L J 1020=128 Ind C A I R 1927 Mad 859=103 Ind Rule 61 of Order 21 is revisable A I R 1927 Nag 286=10 N L J 155=103 Ind. J 154=85 All 832= extensive 5 or 6 or

Cas 12 A Court cannot refuse to exercise his jurisdiction and act at the same moment in the exercise of it with material irregularity A I R 1926 Cal 773=53 C 679=30 C W N 570=96 Ind Cas 705 High Court can interfere and correct gross and palpable errors of Subordinate Courts A I R 1926 Cal 530=91 Ind of the Court is the very basis and foundation of the is distinguished from the powers it has got, scope of s 115 A I R 1924 Pat 506=75 Ind Cas 856=5 P L T 107=83 Ind Cas 599. An order purporting to be passed under Order XXIII, Rule 1 but made in disregard of the procedure presented therein is irregular exercise of jurisdiction and deserves revision A I R 1925 Oudh 291=27 O C 231=11 O L J 613-79 Ind Cas 1033

The Court is reluctant to exercise its extraordinary powers of revision unless it is satisfied that either grave injustice or great inconvenience would otherwise be the result. The section is not directed against conclusion of law or fact in which jurisdiction is not involved. It applies to jurisdiction alone the regular exercise or non exercise of it or the illegal assumption of it 134 Ind Cas 144=1021 A I R 1921 All 72, see also 8 O W N

R 190=A I R 1933 Sind  
ie the High Court may refuse to inter-  
138 Ind Cas 277, 1932 M W N

The interference by the High Court result in parties to 206=A Where the it all the is no right N 31=A. the dismis- the Court,

it can be rectified in revision 8 Luck 496, 10 O W N 293 In the absence of question of jurisdiction no ground for interference in revision under s 115 of the C P Code exists 8 O W N 1235, see also 27 N L R 251=A I R 1931 Nag 17=130 Ind Cas 145 The powers under s 115 can be exercised to subserve the ends of justice and to prevent the denial of justice A I R 1933 All 154=144 Ind Cas 904, see also 35 Bom L R 388=A I R 1933 Bom 245, A L R 1933 Rang 64=144 Ind Cas 163=11 Rang 134 A wrong order passed with jurisdiction can be revised 146 Ind Cas 258=A I R 1933 Lah 327 An order passed under order 9, rule 9 even though made without jurisdiction is not subject to interference by the High Court in revision 143 Ind Cas 222=A I R 1933 Oudh 331 An erroneous decision as regards res judicata can not be interfered in revision 32 P L R 130 The mere fact that the decision of the Lower Court is erroneous is no ground for a revision 8 O W N 1235=12 L R 380 (Rev), see also A I R 1931 Rang 111=132 Ind Cas 832

**Power of High Court to revise**—The powers of the High Court under s 115 are strictly limited to those matters mentioned therein 35 C W N 775=134 Ind Cas 1063=A I R 1931 Cal 604 Where no appeal is possible to High Court it has jurisdiction in a fit case to deal with the matter under s 115 even without an application on that behalf 23 C L J 235=31 Ind Cas 812, A I R 1922 Pat 525=1 Pat 232=3 P L T 445=65 Ind Cas 122 In exercising its powers under s 115 of the Code the High Court has power to make such order as the justice of the case requires 42 A 18=17 A L J 868=52 Ind Cas 263 The civil revisional jurisdiction is in reality an aspect of the civil appellate jurisdiction 20 C W N 1071=17 C I 1 2 0=43 C 1143=17 Ind Cas 517 Powers of revision should be

unnecess  
Cas 311  
Appellate  
revisional  
under  
The Chief  
damages

for some other pressing cause 50 Ind Cas. 797 Mere technical defect will not justify interference in revision unless some injustice is caused A I R 1925 Oudh

discretionary 54 C L J 255=56 C W N 16, 55 C 1084=113 Ind Cas 833  
 Wrong exercise of jurisdiction is no ground for interference A I R 1922 Mad 3=  
 Dismissing stay of execution on sole ground of  
 es A I R 1925 Cal 254=82 Ind Cas 435 Where  
 exercise of jurisdiction order is revisable A I R  
 1925 Mad 1201=48 M 67 606=92 Ind Cas 300  
 Court shall be final such  
 197=46 M L J 201=19

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 of court under order

Cas 778 An order based  
 not revisable A I R 1924 Pat 11=11 Ind Cas 11  
 does or does not constitute mis  
 13 S L R 98=52 Ind Cas 84  
 8 105 B T Act by a court  
 revision, on the ground that the rent fixed is not fair or equitable 53 Ind Cas 411  
 Conditional order for adjournment cannot be interfered in revision A I R 1924  
 Pat 529=1 Pat L R 270=84 Ind Cas 1013 Order of returning appeal for proper  
 presentation cannot be interfered in revision A I R 1925 Pat 48=6 P L T  
 448=90 Ind Cas 321=(1925) Pat 167 If a court has jurisdiction to decide the  
 matter before it the High Court will not interfere with its order however wrong it  
 may be on facts or law A I R 1930 Nag 136=120 Ind Cas 332, see also A I R  
 1929 Oudh 26=5 O W N 873=4 Luck 93=115 Ind Cas 105, A I R 1930 All  
 122=1930 A L J 464=121 Ind Cas 545, 49 M L J 381=90 Ind Cas 771

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 there is no irregularity A I R 1925 Pat 318=3 Pat L R 100=6 P L T 481=  
 96 Ind Cas 107

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 does not involve any question of jurisdiction and no revision lies against it  
 (1918) Pat 347=48 Ind Cas 920 31 Ind Cas 209, 51 Ind Cas 873=4 P  
 L J 340 A person w  
 diction must substantiate  
 (H C) 18=52 Ind Cas 3  
 Court below involves a  
 in revision 4 Pat L J 5  
 jurisdiction but without  
 1924 Nag 17=19 N L R 179=75 Ind Cas 769 Fresh objection regarding  
 jurisdiction cannot be raised A I R 1927 Cal 338=45 C L J 218=101 Ind Cas  
 688 Although objection is to jurisdiction is taken in lower court at a late stage in  
 the proceedings it ought to be entertained in revision There can be no estoppel  
 as to the question of jurisdiction by conduct of parties But delay can be taken  
 into account in awarding costs A I R 1930 All 873=1930 A L J 997=52 A  
 947=132 Ind Cas 35

Revisional Courts is not a Court of appeal and every decision on a point of  
 or fact cannot be corrected by the High Court  
 1929 All 593=(1929) A L J 769=51 A  
 issue a commission for the examination of  
 in which jurisdiction was involved therefo  
 92=23 S L R 403=116 Ind Cas 97 Re  
 revision may be granted though other remedy is open 4 N L J 55=63 Ind Cas  
 46 The powers under s 115 should be interpreted liberally specially upon the  
 applicant has no other remedy A I R 1921 Sind 80=15 S L R 135=65 Ind  
 Cas 37, A I R 1924 Sind 49=75 Ind Cas 1041 If appeal is allowed there is  
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 under s 115 L R 3 A. 17 see also A I R 1924 Rang 54=2 Bur L J 154=85  
 Ind Cas 362 A I R 1928 Lah 274=115 Ind Cas 757, A I R 1930 All 832=  
 (1930) A L J 1090=128 Ind Cas 766 Scope of appeal and order is co extensive  
 A I R 1927 Mad 859=103 Ind Cas 670 Unappealable order under s 60 or  
 Rule 61 of Order 21 is revisable A I R 1927 Nag 286=10 N L J 155=103 Ind.

Cas 12 A Court cannot refuse to exercise his jurisdiction and act at the same moment in the exercise of it with material irregularity A I R 1926 Cal 773=53 C 679=30 C W N 570=96 Ind Cas 705 High Court can interfere and correct gross and palpable errors of Subordinate Courts A I R 1926 Cal 530=91 Ind Cas 839 Where the decision of the Court is the very basis and foundation of the jurisdiction in its limited sense is distinguished from the powers it has got, held that the case comes within the scope of s 115 A I R 1924 Pat 506=75 Ind Cas 856=5 P L T 107=83 Ind Cas 599 An order purporting to be passed under Order XXIII, Rule 1 but made in disregard of the procedure presented therein is irregular exercise of jurisdiction and deserves revision A I R 1925 Oudh 291=27 O C 231=11 O L J 613=79 Ind Cas 1033

The Court is reluctant to exercise its extraordinary powers of revision unless it is satisfied that either grave injustice or great inconvenience would otherwise be the result The section is not directed against conclusion of law or fact in which jurisdiction is not involved It applies to jurisdiction alone the regular exercise or non exercise of it or the illegal assumption of it 134 Ind Cas 454=1931 A I J 13=A I R 1931 All 72, see also 8 O W N 999=A I R (1931) Oudh 408, 27 S L R 190=A I R 1933 Sind 379 Where substantial justice has been done the High Court may refuse to interfere 33 P L R 116=A I R 1932 Lah 305=138 Ind Cas 277, 1932 M W N 72=138 Ind Cas 121=A I R 1932 Mad 223 The interference by the High Court is justified when the view of the lower Court if allowed to prevail would result in confusion and subvert the result of past litigation or would allow the parties to embark on long and expensive litigation 137 Ind Cas 603=34 Bom L R 206=A I R 1932 All 441 Where the Court entertained it all the assuming there was no right vision 35 C W N 2

no ground for interference in revision under s 115 of the C P Code exists 8 O W N 1235, see also 7 N L R 251=A I R 1931 Nag 17=130 Ind Cas 145 The powers under s 115 can be exercised to subvert the

1933 All 154=144  
1245, A I R 1933  
issued with jurisdiction  
7 An order passed  
not subject to inter-  
1933 Oudh 331  
ferred in revision  
Court is erroneous is

no ground for a revision 8 O W N 1235=12 L R 330 (Rev), see also A I R 1931 Rang 111=132 Ind Cas 832

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In exercising its powers under  
such order as the justice of  
1 Cas 263 The civil revisional  
the jurisdiction 20 C W N

1071=17 C L J 339=43 C 1143=35 Ind Cas 515 Powers of revision should be exercised in cases where there would be multiplicity of proceedings u-ccs-

Cal 311  
A. 220  
1913-14  
C. W. N.  
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for some other pressing cause 50 Ind Cas 797 Mere technical defect  
justify interference in revision unless some injustice is caused A I

28=12 O L J. 626=2 O W N 543=89 Ind Cas 225 High Court will interfere in proper cases in matters of amendments and court fees A I R 1927 Mad 212=38 M. L. R. 33=98 Ind Cas 458 Where the lower Court has decided the case on a totally incorrect and inequitable view and injustice has resulted and a further remand appears to be undesirable it is open to the High Court in revision to go through the record and decide the case on the merits. 32 P L R 710=A I R 1931 Lah 748

No revision lies on any matter decided under Agra Tenancy Act. A I R 1925 All 800=87 Ind Cas 351; but see A I R 1926 All 113=48 A. 104=23 A. L. J. 955=92 Ind. Cas. 288 Power of decision should not be exercised except in aid of justice. A I R 1925 Pat 123=80 Ind. out just grounds is a ground Bom L. R. 744=47 B 11=6.

jurisdiction interfere under s 115 with an order under 21 Cr. L. J. 449=13 S. L. R. 212=56 Ind Cas 433. 188=16 L. W. 795=23 Cr L J 705=44 M L the lower Court acts in a way amounting to a den interfere in revision. A I R 1930 Rang 142=1. competent from order refusing to make ref 699=25 Bom L R 391 Orders disall distribution are not revisable except in Cas. 371 (Lah) The High Court can refuses party leave to adduce evidence 1931 Cal 59=130 Ind Cas 449 The High Court will interfere in revision to prevent multiplicity of proceedings. A I R 1931 Mad 511=34 L. W. 531=131 Ind. Cas 14 Where the lower Court has found a different case for the petitioner from that set up by them in their petitions, and allowed their claim, it is an irregularity

rather than on terms of s 144 the section is inapplicable and no appeal lies from such an order But when the order is one refusing restitution, a revision will lie

320=39 L W 574 jurisdiction A I

ve possession and

not questions of

it is not bound to exercise

doing so will cause grave

W 586 A wrong decision

rence of the High Court

135 Ind Cas 815=33 Bom L R 1596=A I R 1932 Bom 81

An application to restore a suit dismissed for default under order 9, rule 3 would lie A L R 1934 Pesh 13=A I R 1934 Pesh 13 It is so manifestly improper that one party to a suit should be given a commission and the advantage of a report on opposite party that this alone

nowledge of the interference of a

to the matter

ler 23 and gives its decision

fulfil the requirements of

and the High Court will interfere in revision A I R 1934 All 137 Where the Court in which a suit was instituted returned the plaint for presentation to the proper Court, held that no revision lay to the High Court against the order of the appellate Court A L R 1934 Lah 161 Where there in the case, no revision lies against an

h 55=A I R 1934 Lah

- if great deal of money



can be saved to parties A I R 1934 Cal 503 Question of construction of letters cannot be examined in revision A I R 1934 All 550 Interlocutory order can be revised by High Court 50 Ind Cas 470 But the High Court cannot in exercising the special powers given by s 115 enter into the question whether upon the facts a particular order is right or wrong and it is doubtful if it can extend to time fixed by the lower court for the doing of a particular act 50 C L J 64=52 Ind Cas 4 The powers of High Court under s 23 of the Small Cause Courts Act are wider than under s 115 A I R 1921 All 325=19 A L J 555=63 Ind Cas 435 Where the Small Cause Judge returned a plaint which had been first presented to, and returned by the Munsif to be presented before the former, High Court can make such an order as would enable the plaintiff to have his action tried A I R 1922 Pat 368=2 P L T 739=64 Ind Cas 891 No revision lies to the High Court from an order of remand passed by District Judge as a Court of appeal from the order of Assistant Collector under Agra Tenancy Act A I R 1921 All 236=19 A L J 566=63 Ind Cas 891, see also 72 Ind Cas 1073=A I R 1924 Oudh 16=10 O L J 240 using payment of money in revision 41 Ind Cas 240 before being based on evidence before 115 34 Ind Cas 521

It is the privilege and prerogative of the High Court when once a record is brought before it which is so erroneous as manifestly to amount to an injustice, to exercise its powers of superintendence to revise such order or set it aside and direct such further proceedings to be taken as justice may require A I R 1920 Pat 56=1 P L T 467=56 Ind Cas 155 Putting the plaintiff to election regarding two causes of action joined in his plaint can be revised A I R 1922 Mad 456=16 L W 175= (1922) M W N 453=43 M L J 218=69 Ind Cas 966

Wrong procedure is no ground for revision where substantial justice has been done A I R 1926 Cal 245 86 Ind Cas 756, A I R 1925 Cal 1223=85 Ind Cas 750 A I R 1915 Pat 56=3 Pat 778=6 P L T 309, A I R 1925 Pat 674=7 P L T 82=89 Ind Cas 814 A I R 1924 Mad 586=19 L W 532, A I R 1926 Mal 1059=74 I W 443=97 Ind Cas 795 A I R 1928 Mad 234=107 Ind 815, 120 Ind, Cas 174 (Lah)

Where a case is transferred the High Court in revision has authority to re transfer it to the original Court even before the plaint is filed in the Court to which it was transferred, A I R 1923 All 249=21 A L J 86=75 Ind Cas 495 Where a subordinate Court in spite of an express jurisdiction to pass an appealable order High Cas 10 the tance Cas 111 oring 581=

(1929) A L J 911=51 A 957=121 Ind Cas 267, A I R 1929 All 683=1929 A L J 961=119 Ind Cas 859

The acts of a District Judge under Act XIV of 1920 are open to correction by the High Court under its revisional jurisdiction exercisable under s. 115 A I R 1929 All 581=1929 A L J 911=51 pleader was authorized to state that High Court in another suit, is one of Mad 416=120 Ind Cas 742 Or open to revision A I R 1927 Mad 935=103 Ind, Cas 821, see also A I R 1929 Nag 282=12 N L J 82=119 Ind Cas 682, but see A I R 1930 Mad 225=126 Ind Cas 97

Where the execution application is time barred but the executing court entertains it but the same is thrown out in appeal assuming there is right of appeal, it is a Ind Cas 561 An without specific notice where facts and law are open to revision and the purchaser who has no right to the property is not bound by the order of the court in the execution application 1 P L T 465=

P L W 78=38 Ind Cas 56 Where the High Court is satisfied that the subordinate Court has failed to exercise its inherent power to restore a suit for default, in a proper case it may interfere in revision 122 Ind Cas 385 Revision lies against an improper order of remand A I R 1923 Mad 113=50 M L J 314=16 L W 593=70 Ind Cas 665 In cases where no suit lies it is the practice of the High Court to interfere in revision A I R 1922 Cal 19=26 C W N 167=70 Ind Cas 539 A revision lies where the finding is vitiated by an obvious error A I R 1922 Nag 111=5 N L J 1 Misconstruction of a material document and omission to consider other evidence on record are sufficient grounds for interference in revision L R 4 A 248 Rev A revision lies where the lower court held a suit bad for misjoinder of cause of action and directed the plaintiff to elect which cause of action he would proceed with in the suit A I R 1922 Mad 436=43 M L J 318=(1922) M W N 453=16 L W 175=67 Ind Cas 956 A decision omitting to take into consideration a material point which arises in the case is revisible 10 L B R 332=64 Ind Cas 361 An order refusing to set aside an execution sale after refusing to go into evidence adduced by the applicant on the ground that it was unnecessary can be revised (1919) Pat 65=49 Ind Cas 389 Suppression of an issue of limitation and refusal on the part of the court to follow a statute of Legislature justify revision under s 115 27 P W R 1920=116 P L R 1920=55 Ind Cas 55 Where substantial justice has been done no revision will lie even though the decision be erroneous 49 Ind Cas 311, see also 67 Ind Cas 742 Where a court finds the loss of a document not proved and refuses to admit secondary evidence it cannot be said that it has refused to exercise jurisdiction or has exercised jurisdiction with material irregularity nor is there any gross or palpable error to justify interference in revision A I R 1929 Nag 288=121 Ind Cas 33 Revision lies where the lower court's finding is obviously incorrect A I R 1922 Nag 104=19 N L J 131=5 N L J 1=67 Ind Cas 806

not arising in the case, a  
 1h 80=120 Ind Cas 689

work against the interest

of justice such a course should not be taken A I R 1937 Lah 417=127 Ind Cas 215 An erroneous decision on an issue is no ground for revision when the suit is pending A I R 1929 Rang 270=126 Ind Cas 538 Error of law or error of fact is no ground for interfering in revision A I R 1929 Cal 831=125 Ind Cas 774 Failure to mention importance of fresh evidence in review is no ground for revision A I R 1927 Mad 611=50 M 891=52 M L J 682=39 M L T 11=26 L W 277=(1927) M W N 806=103 Ind Cas 377 Dismissal of petition for revision does not bar fresh application A I R 1928 Lah 550=110 Ind Cas 833 Where finding of fact is not based on due consideration of law it is open to revision A I R 1928 Mad 484=109 Ind Cas 696 An order for transfer made without notice to the other party can be set aside in revision A I R 1925 Lah 189=79 Ind Cas 614 Failure to examine to ascertain real points in dispute justifies the lower court disregards the pleadings High N L J 13=21 N L R e even in second appeal Ind Cas 133

An application in revision is matter of discretion for the High Court and it will not interfere with an order though made without jurisdiction when interference with such order amounts to doing grave injustice. A I R 1930 Pat 279=12 P L T 249=126 Ind. Cas 910. The High Court can interfere in revision if an application under order XXI, rule 89 has been wrongly admitted. A I R 1923 Mad 659=17 L W 680=76 Ind Cas 853. No revision lies where suit of Small Cause nature is tried on. M L J 11 52=47. prejudice a 66 Ind C is no 66 Ind C terests of his just 1 R 105 W deprived 1 P L refuse postal notices, and at the same time gives a finding that there is no due service the High Court can direct the lower Court to reconsider and come to a consistent conclusion. (1930) M W N 1227. If the lower Court's method of arriving at the conclusion is irregular and the point at issue is misconceived there is sufficient ground for High Court's interference in revision. A. I R 1929 Rang 244=7 Rang





Bom. L. R. 1596=135, 111 Cas. 815=A. I. R. 1932 Bom. 81=A. L. R. 1932 B. 155  
 An order setting aside an arbitration award disposes of a proceeding during the  
 pendency of the suit and the decision of the question whether the award is valid or  
 not does not amount to the decision of a case within the meaning of this section 53  
 A. 1006=136 Ind. Cas. 568=A. I. R. 1932 All. 452

An order under s. 104 cl. (1) is a case decided in which no appeal lies within  
 this section and is revisable 17 Bom. L. R. 1097=40 B. 86=33 Ind. Cas. 358 Order  
 resuming proceedings is "case decided" under this section A. I. R. 1928 Oudh. 355  
 =5 O. W. N. 604=3 Luck. 650 (F. B.)=111 Ind. Cas. 161 Proceedings under order  
 IV r. 13 C. P. Code is a case and revision lies A. I. R. 1925 All. 610=48 A. 175=  
 24 A. L. J. 56=90 Ind. Cas. 180 Interlocutory orders of deciding case on prelimi-  
 nary issue or a finding of evidence are not revisable A. I. R. 1926 Oudh. 185=  
 89 Ind. Cas. 72 No application under s. 10 (Act XV of 1863) and Court's adjudica-  
 tion thereon constitutes a case 40 Ind. Cas. 630 see also 40 M. 793=44 A. 261  
 =15 A. L. J. 615=Pat. I. W. 103=33 M. L. J. 67=19 Bom. L. R. 715=(1917) M.  
 W. N. 678=6 L. W. 501=22 C. W. N. 50=11 Bur. L. 48=26 C. L. J. 143 (P. C.)  
 =40 Ind. Cas. 650 Application under s. 10 for the stay of a suit is not a case and an  
 order for stay passed therein is not revisable A. I. R. 1922 Lah. 54=4 Lah. L. J.  
 425=67 Ind. Cas. 870, 18 A. L. J. 131=42 A. 407=58 Ind. Cas. 60 An order under  
 s. 10 of Act XIV of 1910 asking defendant to deposit money "Case decided" and  
 to

of a preliminary issue as to jurisdiction of Court to entertain a suit. A. I. R.  
 1921 Lah. 487 An order

fixed on his  
 205=45 A. 218  
 of jurisdiction  
 =59 Ind. Cas.

ent to suit and  
 decision is open to revision A. I. R. 1929 Lah. 257=30 P. L. R. 17=11 Lah. L. J.  
 130=113 Ind. Cas. 901 Appellate Court's order striking out relief as not tenable is  
 decision and order not being necessary in the ends of justice can be interfered in  
 revision A. I. R. 1915 Oudh. 604=85 Ind. Cas. 703 An incidental order fixing

nts cannot be  
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 A. I. R. 165=  
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 R. 1923  
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 R. 1921

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 and no

revision lies therefrom. 24 O. C. 215=64 Ind. Cas. 211

ring the case to be when it had no  
 62=A. I. R. 1931 All. 761 Where  
 to supersede the reference is allowed  
 reference is an order deciding a case

931 Lah. 318, see also A. L. R.  
 to stay, under order 19 of the  
 tied first and separately and a  
 that order A. L. R. 1931 Lah.

644=132 Ind. Cas. 850 An order setting aside an award disposed of during the  
 pendency of a suit and the decision of the question whether the award is valid or  
 invalid do not amount to the decision of a case 1931 A. L. J. 242.

A finding on an interlocutory matter followed by an order setting a "case decided".  
 33 Bom. L. R. 1596=A. I. R. 1932 Bom. 81=135 Ind. Cas. 815 The term case is no  
 doubt wider than a suit but the decision of the lower court is not a case.

think, include an *ex-parte* appli  
persons in the position of trustees  
their official duties" *Per Lord*

650=15 A L J 645=2 P L

R. 715=40 M 793 (P C)=

Act XX of 1863 *Ibid* The

om L  
s 10 of  
order

1910=6 Ind Cas

=17 Bom L R

suit" in s 115

not suits in the

P. Code A I R

1930 Cal 744=34 C W. N 730=129 Ind Cas 367 'Case' is more comprehensive  
than 'suit'. Whereas all cases are not suits, every suit is at least a case. Case in  
section 115 is a case which has been decided. A I R 1930 All 750=1930 A L J  
901=52 A. 927=126 Ind Cas 1, see also 9 O W N. 339; A I R 1931 Lab. 644=  
132 I C. 850 "Case" can mean a proceeding. If any proceeding in a suit has  
terminated, it is a case decided. A I R 1929 All 743=1929 A L J 918=51 A.  
1010=122 Ind Cas 685

'Case decided by a court' means a matter disposed of effectually by the court  
and not merely for the time being. A purely *ad interim* order that does not  
effectually dispose of the matter before the court would not be case decided. A I R

-121 Ind Cas 267 Where the court

a suit, it does not decide a case within

the question whether that a trial of a

be stayed, is no question on the merits

of the case but relates to a matter of procedure. A I R 1929 All 957=(1930) A L

J 235=121 Ind Cas 97. Refusal to issue a commission is not a case decided

within the meaning of this section. A I R 1929 Sind 92=23 S L R 403=116

Ind Cas 97. The word 'decided' in s 622 of the old code, is similar in its purport

to the word 'decided' in section 115. A I R 1922 Cal 58=70 Ind Cas 484. An

order setting aside an *ex-parte* decree is a case and is not an interlocutory order

during the pendency of the suit. A I R 1921 All 294=(1931) A L J 377, see also

A I R 1926 Lah 379=7 Lah 161=8 Lah L J 267=27 P L R 321=95 Ind Cas

124, A I R 1926 Lah 344=8 Lah L J 870=27 P L R 710=94 Ind Cas 117

Where in a suit against a firm an order refusing permission to a partner to file a

written statement to resist the claim was passed. Held that as the order passed

was not appealable and the partner would have no right of appeal from decree passed

against the firm in his absence, the case is 'case decided' within this section.

A I R 1930

the original court

the parties on

with respect to

be revised. A I R 1930 Lah 418=127 Ind Cas 215

ali 189=78 Ind Cas

Court deciding it is a

293=133 Ind Cas 129

res judicata is not a

case decided within the meaning of this section. 33 Bom L R 1596 {18 B

35, 22 Bom L R 801, 26 B 550, 47 A 721, 5 Lah 288 (F B) 11 I A,

237, 44 I A 261, 47 A 916, 43 A 564 (F B) Foll. 40 B 86, 5 R 742,

48 B 43, 25 A 509, 29 Bom L R 1551 Dist.] Refusal of a court to try

the plea of *res judicata* as a preliminary issue cannot be revised. A I R 1925

Oudh 129=80 Ind Cas 628. An order granting or refusing leave to sue *informa*

*pauperis* is capable of revision. A I R 1924 Nag 44=19 N L R 165=75 Ind

Cas 993, A I R 1931 Rang 318, but see A I R 1931 All 659=1931 A L J

659

An order staying a suit under s 10 of the C P Code is not a decision of a case.

73 Ind Cas 247=A I R 1923 Lah 615. But proceedings relating to question of

stay can be treated as a case. A I R 1931 Lah 503=132 Ind Cas 222

Finding on an interlocutory matter followed by an order is not a case decided, 33

Bom. L. R. 1,96=133 Ind. Cas. 815=A. I. R. 1932 Bom. 81=1 L. R. 1932 B. 155  
 An order setting aside an arbitration award disposes of a proceeding during the  
 pendency of the suit and the decision of the question whether the award is valid or  
 not does not amount to the decision of a case within the meaning of this section 53  
 A. 1005=136 Ind. Cas. 568=A. I. R. 1932 All. 452

- decided in which no appeal lies within  
 R. 1097=40 B. 85=33 Ind. Cas. 338 Order  
 in this section A. I. R. 1928 Oudh. 355  
 11 Ind. Cas. 161 Proceedings under order  
 13 C. P. Code's a case and revision lies A. I. R. 1925 All. (10)=48 A. 175=  
 24 A. L. J. 56=90 Ind. Cas. 180 Interlocutory orders of deciding case on prelimi-  
 nary issue or a dismissal of a suit are not revisable A. I. R. 1926 Oudh. 185=  
 89 Ind. Cas. 772 No application under s. 10 (Act XX of 1863) and Court's judi-  
 cation thereon constitutes a case 40 Ind. Cas. 650 see also 40 M. 793=44 I. A. 261  
 -15 A. L. J. 615=7 Pat. I. W. 108 33 M. L. J. 69=19 Bom. L. R. 715=(1917) M.  
 50=11 Bur. L. 1 48=26 C. I. J. 143 (P. C.)  
 10 for the stay of a suit is not a case and is  
 not revisable A. I. R. 1922 Lah. 54=4 Lah. L. J.  
 425=67 Ind. Cas. 870 18 A. I. R. 1922 Lah. 54=4 Lah. L. J.  
 s. 10 of Act  
 revision lies  
 gatories for  
 s. 115 A. I. R. 1923 Lah. 282=69 Ind. Cas. 417 Revision does not lie against deci-  
 sion of a preliminary issue as to jurisdiction of Court to entertain a suit A. I. R.  
 1923 I. A. 261  
 71 Ind. Cas. 487 An order  
 pay Court fee fixed on his  
 A. L. J. 1005=45 A. 218  
 is question of jurisdiction  
 is not a decision of a case A. I. R. 1921 Lah. 184=45 P. L. R. 1921=59 Ind. Cas.  
 680 Capability of person for appointment of next friend is subservient to suit and  
 decision is open to revision A. I. R. 1929 Lah. 257=30 P. L. R. 17=11 Lah. L. J.  
 130=113 Ind. Cas. 901 Appellate Court's order striking out relief as not tenable is  
 decision and order not being necessary in the ends of justice can be interfered in  
 revision A. I. R. 1925 Oudh. 604=85 Ind. Cas. 703 An incidental order fixing  
 the remuneration of a commissioner appointed to examine accounts cannot be  
 revised A. I. R. 1924 Oudh. 348=76 Ind. Cas. 503 An order refusing leave to sue  
 in form *pauperis* is capable of revision A. I. R. 1924 Nag. 44=19 N. L. R. 165=  
 under s.  
 case does  
 which an  
 R. 1923  
 al juris-  
 decided  
 R. 1921  
 requiring  
 with an  
 and no

revision lies therefrom 24 O. C. 215=64 Ind. Cas. 211

ring the case to him when it had no  
 682=A. I. R. 1931 All. 761 Where  
 to supersede the reference is allowed,  
 reference is an order deciding a case  
 R. 1931 Lah. 318, see also A. I. R.

1931 All. 721=133 Ind. Cas. 416 An order refusing to stay under order 19 of the  
 Arbitration Act may properly be held to have decided finally and separately and a  
 revision can be preferred to the High Court against that order A. I. R. 1931 Lah.  
 644=132 Ind. Cas. 850 An order setting aside an award disposed of during the  
 pendency of a suit and the decision of the question whether the award was valid or  
 invalid do not amount to the decision of a case 1931 A. L. J. 842

A finding on an interlocutory matter followed by an order is not a "case decided"  
 33 Bom. L. R. 1,96=A. I. R. 1932 Bom. 81=133 Ind. Cas. 815 The term case is no  
 doubt wider than a suit but the decision of the lower courts on a preliminary issue

relating to the maintainability of a claim for mesne profits cannot be regarded as a case 138 Ind Cas 30=9 O W N 339=A I R 1932 Oudh 271

The dismissal of an application by the defendant to have the issue relating to jurisdiction of the Court decided in the first instance amounts to a case decided A I R 1933 All 753=1933 A I J 707=146 Ind Cas 792 The order of the trial Court asking the plaintiff to pay additional court fee amounts to a decision of the case 55A 274=1933 A I J 311=A I R 1933 All 350 Effect of the order refusing amendment of plaint is to 1933 A L J 268=

(1933) A L J 268=

146 Ind Cas 777

A case is decided

An application for permission to sue is a proper is a case 141 Ind Cas 570=34

1 L R 557 but see 55 A 216=145 Ind Cas 436=A I R 1933 All 295 An

order allowing the plaintiff in a suit against his commission agent to amend his plaint

from one for the recovery of sums due on three specified transactions into one for

a general rendition of accounts is not a case 55 A 169=A I R 1933 All 189=

1933 A L J 27=146 Ind Cas 491 Order ref

pending appeal 1933 A L J 50

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86=A I R

to be a case 1933 A L J 50

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In any Court Subordinate to High Court—The Civil Procedure Code is

applicable only to Courts of Civil jurisdiction and section 3 enumerates the Courts

which

power

76 (79)

High C

688=(1916) 2 M W N 348=4 L W 535=36 Ind Cas 621, see also A I R 1930

Lah 242=31 P L R 158=127 Ind Cas 711 It must be an essential characteristic

of a 'Court' within the meaning of s 115 that it should have power to determine

questions in d

1932 A 568 W

the Resident's

revision under s

a reference un

Ind Cas 407

A I R 1927 M

An order p

is open to revision 34 Ind Cas 503 Under s 10, Bengal and Madras Courts Act

Religious Endowments Act, Civil Court Acts as a Court of law subordinate to

High Court and revision lies from its order 40 Ind Cas 650 Order of District

Judge under s 4 of the Public Accountants Default Act is not by Court subordinate

to the High Court and therefore not open to revision 40 B 119=19 Bom L R

926=43 Ind Cas 465 A Court holding an election enquiry is a court subordinate to

the High Court A I R 1923 Mad 254=44 M L J 69=46 M 123=16 L W

898=(1922) M W N 813=72 Ind Cas 902, see also A I R 1923 Mad 192=

16 L W 848=1923 M W N 133=44 M L J 1=46 M 536=71 Ind Cas 1039,

A I R 1927 Mad 921=54 M L J 269=(1927) M W N 646=26 L W 323=105

Ind Cas 216, But see A I R 1 23 Mad 169=44 M L J 39=(1922) M W N.



818=16 L W 327=70 Ind Cas 780, A I R 1926 Bom 344=50 B 357=94 Ind Cas 660 No decision of a simple Judge of the High Court, sitting alone can be revised under s 115 43 C 90=33 Ind Cas 745, see also A I R 1927 Oudh 59=2 Luck 1=99 Ind Cas 547 The High Court cannot revise matters coming under Agra Tenancy Act 41 A 28=16 A L J 859=46 Ind Cas 338 High Court has Board of Revenue passed under Chapter A I R 1928 Mad 1032=55 M L J R 1926 Mad 1047=51 M L J 500=4 Mad 119=45 M L J 735=18 L W s 372, A I R 1922 Mad 337=14 L 77=66 Ind Cas 566, 61 Ind Cas 890 f the Cr P. Code is open to revision under s 115 A I R 1921 Pat 240=6 P L J 178=2 P L T 609=61 Ind Cas 643 An order by the collector refusing to make a reference on the ground that the applicant has no interest under s 18 of the Land Acquisition Act is open to revision under s 115 56 M L J 95=42 M 231=49 Ind Cas 659, but see A I R 1923 Bom 290=47 B 699=25 Bom L R 398=73 Ind Cas 354 A revision against interlocutory orders passed by Revenue courts in suit from which no appeal lies of Revenue 42 M nd Cas 11 A rent to High Court is a A I R 1923 Oudh 18=9 O L J 543=72 Ind Cas 394, A I R 1926 Cal 708=30 C W N 236=93 Ind Cas 56, 80 Ind Cas 327=27 O C 89=11 O L J 77

Orders of District Magistrate under part 2 of the Lunacy Act with respect to reception care and treatment of the lunatic are not revisable by the High Court A I R 1924 Lah 55=4 Lah 1=24 Cr L J 664=73 Ind Cas 696 Controller of Rents under Rangoon Rent Act is not a 410 (F B)=91 Ind Cas 627 Decisio cipal Act is not open to revision under 463=73 Ind Cas 133 High Court of l hribd High Court for purpose of revision A I R 1923 All 291=45 A 383=71 Ind Cas 991 Where a collector in a land acquisition proceeding refuses to make of the apportionment of the com fere with the order in the exercise 290=47 B 699=25 Bom L R 398 =73 Ind Cas 354 The Madras High Court has no jurisdiction to entertain a revision against the order of the Chief Judge of the Small Cause Court acting under the Madras City Municipal Act and rules framed under it A I R 1927 Mad 93=50 M 121=51 M L J 728=24 L W 773=(1926) M W N 986 (F B)=99 Ind Cas 148, see also A I R 1927 Rang 1=4 Rang 304=5 Bur L J 117 (F B)=98 Ind Cas 902, A I R 1926 Rang 25=3 Rang 560=4 Bur L J 203 (F B)=91 Ind Cas 550, A I R 1928 Mad 475=54 M L J 595=51 M 245=27 L W 346=(1928) M W N 101=109 Ind Cas 180 The following courts are subordinate to the Huj Trust Tribunal (139 Ind Cas 180=36 C W of the District Court acting under s 198 of 25 (55 Bom 544=134 Ind Cas 1240=33 Bo the Judicial Assistant at Aden (35 Bom L R 271=A I R 1933 Bom 194=144 Ind Cas 705) and District Judge acting under s 79 Burma Rural Self Government Act, 1921 A collector when he acts under s 18 of the Land Acquisition Act is not subordinate to High Court 54 A. nue acting under s 172 of the to High Court 56 M 883=140 450 (F B) This section does not 3=A I R 1932 All 389, see also =A I R 1932 Mad 529. Where on in the capacity of an election 138 Ind Cas 459=1932 M W agistrate acting under s. 318 U. ordinate Court 140 Ind Cas. 173=1932 A L J 816=1 I R 1932 All 631 Collector executing duty under s 68 of the O P Code is not a court 37 Bom L R 761=1 I R 1933 Bom 369. So also the District Jude leaving an election petition is not a Civil Court and his decision is not revisable by the High Court.

1933 A L J 971, see also A I R 1933 Rang 41=11 Rang 1; 35 Bom L R 89=A I R 1933 Bom 105=142 Ind Cas 378

In which no appeal lies—Revision is not entertainable where an appeal lies either in the form of a first appeal or a second appeal from a decree or from an interlocutory order under s 104 and order V L III A I R 1931 All 294=1931 A L J 377, see also A I R 1923 Pat 223=4 P L T 46=73 Ind Cas 373, 71 Ind Cas 911, 19 Ind Cas 736, 10 Ind Cas 471, 7 A 681, 7 A 914, 14 A 520, 7 A 42, 8 A 108, 12 C L R 449, 12 C L R 148, 11 C W N 112, 16 M 20, 20 M 155 A I R 1933 Lah 509=34 P L R 262, A I R 1936 All 58, A I R 1929 All 129, J 81= in the appeal s 409, 14=112

Ind Cas 231, A I R 1926 Bom 139=50 B 32=27 Bom L R 1460=92 Ind Cas 367, A I R 1925 Cal 1237=85 Ind Cas 760, 49 Ind Cas 382 But the High Court may interfere in revision where an appeal or regular suit is open to party, if a party can obtain complete and effective relief in revision 31 M L J 827=5 L W 472=38 Ind Cas 373, 5 A 256=14, Ind Cas 859=1933 A L J 268=A I R 1933 All 374

Appeal can be converted into an application for revision—Where no appeal lies but court's error is one specified in s 115 High Court can treat memorandum of appeal as petition for revision A I R 1929 Mad 205=119 Ind Cas 705, see also A I R 1927 Cal 850=55 C 219=47 C L J 69=103 Ind Cas 864, A I R 1927 All 563=49 A 812=25 A L J 606=102 Ind Cas 236, A I R 1923 Cal 612=37 C L J 395=27 C W N 720=74 Ind Cas 575 A I R 1923 Oudh 177=26 13 Ind Cas Unless facts are a lower court treat it as appeal from 9 L W 81=49 Ind Cas 629 a revision under s 115 espe 41 M 554=34 M L J 309 =23 M L T 251=7 L W 508=(1918) M W N 327=45 Ind Cas 471, 9 C W N 504

may be treated as a memorandum of

converting it into a  
inverted into second  
of revision second  
The High Court in a  
33 Bom L R 1593  
cation—Application

235=31 Ind Cas 812 see also 5 A 42 28 A 72=2 A L J 749, 9 Ind Cas 806, 3 A 208 (F B), 28 C 680=6 C W N 114, 4 C W N 695, 7 C L R 191, 21 B 806, 38 B 638 A I R 1933 Sind 200=144 Ind Cas 883 A I R 1933 Lah 327=146 Ind Cas 258, 139 Ind Cas 167=36 L W 646=1932 M W N 1244=A I R 1932 Mad 714

Revisional Court whether can go into question of facts—An erroneous finding of facts will not be interfered with in revision unless it has been caused by not taking into account a material fact in evidence 39 Ind Cas 494, see also 22 C W N 677=27 C L J 418=44 Ind Cas 763 A I R, 1930 All 531=125

Ind Cas 578, 22 P L R 1919=50 Ind Cas 805, 33 C W N, 569, 94 Ind Cas 85 An error of judgment in exercise of jurisdiction vested in Court is not a matter upon which revision can lie A I R 1922 All 441=66 Ind Cas 509, Lah 290=3 Lah 79 Where lower court Court will not interfere with decision on A I R 1931 Mad 83=60 M L J 191= posed to evidence justifies interference in A I R 1924 Nag 44=19 N L R 165

In 19 C W N 84=20 C L J 213, Mr *Moorkerjee* J said 'We may in this connection observe that it is competent to the Court to investigate the facts in the revision, if the was done in

C W N 67

in a matter like this, in the exercise of its revisional jurisdiction assume appellate powers One aspect of the fundamental distinction between the exercise of appellate and revisional powers was explained in the case of *Shivanath v Jooma Kasinath* 7 B 341 A court in the exercise of its appellate jurisdiction investigates the facts and if necessary substitute its own appreciation of the evidence for that of the primary court But when the court as a court of revision looks into the evidence, it does so with a view to determine whether the subordinate Court has assumed jurisdiction which it did not possess, or declined a jurisdiction which it did possess or has in the exercise of its jurisdiction acted illegally or with material irregularity If this distinction were overlooked the superior court might, in the name of revisional jurisdiction exercise appellate powers

High Court will not interfere where another remedy is open—High Court will not interfere in revision when a remedy by suit is open A I R 1930

Cal 48=34 C W N 577=177 I

R 619=54 B 479=125 Ind Cas

should not be invoked without

which may give him all he wants

A I R 1929 Nag 66=115 In

appeal only A I R 1928 Mad 794=117 Ind Cas 231 In the presence of other

remedies application for revision is barred 9 P L J 659=108 Ind Cas 804, see

also A I R 1926 Cal 1149=53 C 767=30 C W N 907=98 Ind Cas 615, 31

C W N 615=A I R 1927 Cal 114=45 C L J 213=98 Ind Cas 89, 94 Ind.

Cas 70=A I R 1926 Nag 90=22 N L R 30, 93 Ind Cas 868 (Lah), A I R

1926 Mad 18=50 M L J 102=92 Ind Cas 20, 91 Ind Cas 647=A I R 1925

Oudh 665, 91 Ind Cas 334, A I R 1925 All 267=47 A 140=85 Ind Cas 370,

80 Ind Cas 178=A I R 1923 Bom 395, 78 Ind Cas 604=A I R 1924 Lah

191, A I R 1924 Lah 471=6 Lah L J 137=78 Ind Cas 350, A I R 1930

Pat 394=125 Ind Cas 575, A I R 1929 Cal 777=122 Ind Cas 477

In especial cases a revision will lie even in presence of other remedies A I R 1927

Lah 911=28 P L R 136=9 Lah L J 19=103 Ind Cas 59, A I R 1927 Mad

799=26 L W 76=104 Ind. Cas 371, A I R 1927 Cal 578=31 C W N 739=10,

Ind Cas 644, A I R 1928 Mad 416=55 M L J 34=51 M 664=27 M L W

286=108 Ind Cas 539, A I R 1929 Nag 356=120 Ind Cas 73, A I R 1929

Cal 513=49 C L J 425=33 C W N 572=119 Ind Cas 371, A I R 1929 Lah

175=118 Ind Cas 393 A I R 1928 All 588=51 A 338=(1929) A L J 6=114

Ind Cas 741, A I R 1928 Mad 794=112 Ind Cas 231, A I R 1927 Pat 316

=100 Ind Cas 32=8 P L T 677, A I R 1926 Lah 612=8 Lah L J 42=27

P L R 644=96 Ind Cas 359, A I R 1926 All 58=48 A 162=90 Ind Cas 353,

A I R 1925 All 610=48 A 175=24 A L J 56=90 Ind Cas 180 (F B), A I R

1924 Nag 298=79 Ind Cas 123 A I R 1923 Mad. 663=18 L W 105=(1923)

M W N 354=72 Ind Cas 688, A I R 1924 Pat 176=71 Ind Cas 911, A I R

1924 Nag 38=69 Ind Cas 719, A I R 1924 Lah 63=4 Lah L J 71=67 Ind.

Cas 945, 65 Ind Cas 476 (Cal), A I R 1922 Nag 115=5 N L J 151=65 Ind.

Cas 351 The exercise of revisional powers is discretionary and High Court will

be unwilling or slow to interfere where an aggrieved party has other remedy open

to him A I R 1922 Pat 315=1 Pat 63=3 P L T 406=65 Ind. Cas 135,

see also A I R 1924 Pat 134=4 P L T 718=74 Ind Cas 474, A I R 1925 Nag

31=76 Ind Cas 46, A I R 1924 Lah 400=71 Ind. Cas. 160, A I R. 1922 Sind

1=15 S L R 165=6, Ind Cas 50, A I R 1922 Mad 3=41 M L J 3=10=(1921)

M W N 507=15 L W 24=64 Ind Cas 493, 64 Ind Cas 469, 63 Ind

809, 99 P R. 1915=207 P W R 1915=32 Ind Cas 250, 19 M L J 34=30

M L J 486=(1916) 1 M W N 301, 37 Ind Cas 348, 38 Ind Cas 297. High Court has his remedy by 44 Ind Cas 763. As the circumstances of each particular case and where necessary interference may be made even though other remedy is available. A I R 1925 Nag 17=79 Ind Cas 903.

High Court will not interfere ordinarily in revision with orders passed under order XXI, r 63. A I R 1929 Rang 297=7 Rang 466=120 Ind Cas 231. Where a plaint presented to the Subordinate Judge first class is returned for presentation to the District Judge, the District Judge affirms the order a revision does not lie. 178=128 Ind Cas 51. The order in appeal from that order that no revision lies is a decree and is not a judgment. Even such order is a decree and is not a judgment. A I R 1929 Cal 226=49 C L J 81=115 Ind Cas 368, see also 118 Ind Cas 193. In the absence of any great injustice or inconvenience that would follow from refusal to interfere, High Court will not interfere in revision whether another remedy by suit is open to aggrieved party. 48 Ind Cas 415, 49 Ind Cas 150=4 P L J 94=(1919) Pat 1 (F B)=49 Ind Cas 150, 47 Ind Cas 190, A I R 1921 Nag 17=4 N L J 55=63 Ind Cas 46, A I R 1921 Pat 204=57 Ind Cas 432, 57 Ind Cas 421=A I R 1921 Pat 401=(1921) Pat 204, 1 P L T 296=5 P L J 415=57 Ind Cas 421, A I R 1929 Pat 141=8 Pat 717=10 P L T 95=115 Ind Cas 675, 134 Ind Cas 160=12 P L T 613, 53 A 466=A I R 1931 All 333=1931 A L J 181=131 Ind Cas 548, 1931 M W N 1012, A I R 1933 Sind 329=27 S L R 190, A I R 1933 Pat 625, A I R 1933 Pat 604, 14 Lab 51=142 Ind Cas 738=34 P L R 289=A I R 1933 Lah 317.

It is not the invariable rule of the Court to refuse to give relief in the exercise of its revisional powers under s 115 when there is another legal remedy by way of regular suit. Whether the High Court should interfere or not depends upon the circumstances of each case. 58 C 55=132 Ind Cas 631=A I R 1931 Cal 385, 132 Ind Cas 666=A I R 1931 Lah 666, 53 A 532=132 Ind Cas 501=A I R 1931 All 663, 55 Bom 411=1931 Bom 319=131 Ind Cas 895=33 Bom L R 476=A I R 1931 Bom 284, 132 Ind Cas 311=33 L W 210=A I R 1931 Mad 1=60 M L J 713, 1931 A L J 974, 33 P L R 975, 33 P L R 53=A I R 1932 Lah 176=135 Ind Cas 199, 143 Ind Cas 87=A I R 1933 Pesh 52, 55 A 256=145 Ind Cas 859=1933 A L J 268=A I R 1933 All 374. A I R 1933 Rang 259 142 Ind Cas 628=14 Pat L T 70=A I R 1933 Pat 158, 11 Rang 134=144 Ind Lah 119.

It is not the invariable rule of the Court to refuse to give relief in the exercise of its revisional powers under s 115 when there is another legal remedy by way of regular suit. Whether the High Court should interfere or not depends upon the circumstances of each case. 58 C 55=132 Ind Cas 631=A I R 1931 Cal 385, 132 Ind Cas 666=A I R 1931 Lah 666, 53 A 532=132 Ind Cas 501=A I R 1931 All 663, 55 Bom 411=1931 Bom 319=131 Ind Cas 895=33 Bom L R 476=A I R 1931 Bom 284, 132 Ind Cas 311=33 L W 210=A I R 1931 Mad 1=60 M L J 713, 1931 A L J 974, 33 P L R 975, 33 P L R 53=A I R 1932 Lah 176=135 Ind Cas 199, 143 Ind Cas 87=A I R 1933 Pesh 52, 55 A 256=145 Ind Cas 859=1933 A L J 268=A I R 1933 All 374. A I R 1933 Rang 259 142 Ind Cas 628=14 Pat L T 70=A I R 1933 Pat 158, 11 Rang 134=144 Ind Lah 119.

vested — The particular events which have occurred in this case have exercised a jurisdiction not vested in it by law, and thirdly, where the court has acted in the exercise of its jurisdiction illegally or with material irregularity. *Per Jenkins C J* in *Shew Prosad v Ranchindar* 41 C 323=23 Ind Cas 977 {79}. 'There is no doubt there is some variance of opinion as to the meaning of the term jurisdiction'. According to one view the term 'jurisdiction' is here

al pecuniary, personal or with reference to another view the term means certain things namely, to make a decree in the sense stated. Accord is preferable one. *Per Woodroff* A 345, *Mahmood J* observed of the Privy Council in *Amir* A 237 in its broad legal sense may according to the means which

the law has given to the judicial authority. The Court for erroneously assuming jurisdiction has acted wrongly. 97=55 Ind Cas 15. The Court wrongly assumes jurisdiction. 23 O C 281=56 Ind Cas 3. barred ignoring s 3 of the Code of Civil Procedure so as to call for plaintiff the revisional powers of the High Court.

11 Bur L T 73=39 Ind Cas 154, A I R 1931 Cal 319=52 C L J 23. But in



693 Fixing valuation is sale proclamation in date earlier than that fixed for hearing parties in that respect without hearing the parties amounts to acting without jurisdiction. A I R 1923 Pat 102=3 P L T 342=65 Ind. Cas 362. An order refusing decree-holder's application for withdrawal of execution application and proceeding to sell properties notwithstanding such application can be set aside in revision. A I R. 1922 Pat. 525=65 Ind. Cas 122. Extension of time for payment after decree for same is passed is against S 63 (3).  
 revision only. A I R 1929 Cal 140=11  
 compromise the plaintiff should have been  
 assets of a deceased person in the hands of A  
 made A personally liable if the decree could n  
 Court has no jurisdiction to pass such a decree its order is revisable. A. I. R. 1929  
 Lah 254=116 Ind Cas 705. Where execution is taken out one year after decree  
 and arrest is ordered without complying with the provisions of order 41, Rule 22, the  
 whole of the proceedings are without jurisdiction and the High Court will interfere  
 by way of revision even when the aggrieved party had only filed an appeal from  
 the order from which no appeal was in fact maintainable. A I R 1929 Rang 161=  
 7 R 110=117 Ind Cas 245

Admission, application after it is barred is without and hence open to revision. A.  
 I R 1927 Lah 347=100 Ind Cas 936.  
 making enquiry for the same can be upset.  
 L W 839=97 Ind Cas 383. Where application is made after time barred, the  
 appealable order. High Court should interfere in revision. A. I. R. 1926 Cal 123=97  
 Ind Cas 305. Court  
 with illegal assumption  
 326=7 Lah 161=8 L  
 dismissed for default  
 Court under Section 11. Held that the case was a proper one for revision as the  
 question was whether the Court has  
 Nag 48=26 N L R 30=121 Ind C  
 mistake of law assumed jurisdiction  
 order of reversal of decision is open to  
 131=(1927) M W N 420=39 M L 4. 23=34 A. I. R. 1927 Pat 102=65 Ind. Cas 362.  
 decision that the application is time barred, Court decides in favour of the applicant  
 treating the application as one within time, the Court assumes jurisdiction illegally. A.  
 I R 1916 Lah 344=8 Lah L J 170=27 P L R 710=94 Ind Cas 117.

Admission of appeal in non appealable cases is revisable. A. I. R. 1926 All 55=  
 48 A 27=23 A L J 891=89 Ind Cas 404, A I R 1925 Pat 525=4 Pat 718=6  
 P L F 79=94 Ind Cas 217, A I R 1923 Bom 214=25 Bom. L. R. 147=72 Ind.  
 Cas 256, L R 2 A 166 Rev.)

By entertaining, in objection under order 21, rule 38, in execution of a mortgage  
 Court is open  
 Ind Cas 986  
 by the Courts  
 with confirma-  
 tion or setting aside of auction sale. 67 Ind Cas 286 (Cal). Where an order is  
 made illegally or with material  
 revision would be to deprive  
 revision. A I R 1921 Oudh  
 a wrong decision on  
 a question of *res judicata*. A I R 1921 Oudh 5

As to revision in case of decision as to

s 20, each case  
 is inadmissible  
 an injustice  
 Tenancy Act  
 in suits  
 jurisdic-

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revision lies from the decision on a preliminary issue, regarding the jurisdiction of the trying Court to entertain the suit A I R 1921 Oudh 176=24 O C 231=64 Ind Cas 92 Where the lower Appellate Court has not exceeded its jurisdiction High Court would not revise its decision 4 L W 411=35 Ind Cas 74 A declaration not necessary for the suit and made beyond what is prayed for, can be expanded in revision A I R 1923 Cal 321=63 Ind Cas 626

When after passing of a preliminary decree for accounts the case is transferred proceedings of the case, the former Court the amount founded due, the latter Court of a *de novo* trial, but the preliminary is into consideration as it cannot be set an appellate court) and the latter Court a *de novo* trial only from the stage after the passing of the preliminary decree, but can not go behind it Order holding trial *de novo* from the commencement is revisable A I R 1929 Lah 107=118 Ind Cas 537

in such a case revision will lie A I R 1925 Oudh 402=12 O L J 83=86 Ind Cas 759 Reopening of time barred *exparte* decree by lower Court can be interfered in revision 144 Ind Cas 980=A I R 1933 Rang 110 Facts ousting jurisdiction must be patent on the face of the record before it can be predicated of a Court that it has exercised a jurisdiction not vested in it by law 27 S L R 261=A I R 1933 Sind 229 Where a Court appoints a fresh arbitrator without complying with the formalities prescribed in Sch II para 5 (2), the appointment is without jurisdiction or at least tainted with material irregularity and the order appointing the arbitrator can be set aside 146 Ind Cas. 493=A I R 1933 Oudh 540

Where no appeal lies against an order the erroneous order of the appellate Court can be interfered 33 P L R 4(3)=A I R 1932 Lah 416=140 Ind Cas 48, see also 36 L W 636=A I R 1932 Mad 714=1932 M W N 1244 Decree passed against wrong person can be set aside in revision 53 C L J 415=A I R 1931 Cal 673=134 Ind Cas 305

Clause (6)—Failure or decline to exercise the subordinate refusing to accept the decision of the court confirming the decision of the court A I R 1929 Lah 58=48 A 168=24 A I J 83 90 111 Cas 353 Erroneous order of returning plaint where suit ought to be dismissed is ground for revision A I R 1926 All 58=48 A 168=24 A I J 83 90 111 Cas 353 Refusing to admit application R 1927 Lah 134=99 Ind Cas 690 Code is open to revision A I R 650 Failure to exercise jurisdiction by this section A I R 1922 Cal 514=26 C W N 711=49 C 928=86 Ind Cas 77 Whereon an erroneous view of law a Court refuses to exercise powers vested in it or exercise powers not vested in it under wrong assumption that it has got them High Court can interfere in revision A I R 1923 Mad 230=44 M L J 80=72 Ind Cas 850 see also 11, Ind Cas 862, A I R 1928 Lah 811 A revision lies against an order of an Appellate Court rejecting a suit on the erroneous ground of its not being maintainable A I R Failure to decide the claim as laid in deciding irregularly and hence revision lies A I R 1921 B) Interlocutory order in matter of Court Fees R 1923 Cal 320 29 C W N 76=35 C 123=85 Ind Cas 870 Refusal to exercise inherent powers vested in it under 192 and 192 amounts to a refusal to exercise jurisdiction A I R 1923 Cal 400=1 Ind Cas 586 Refusal to receive evidence in support of application for revision of a suit dismissed under order XVII, rule 2 is a refusal to exercise jurisdiction A I R 1923 Pat 550=1 Pat L R 281=74 Ind Cas 675 Failure to exercise jurisdiction of illegality *suo moti* amounts to failure to exercise jurisdiction A I R 1924 Mad 169=1923 M W N 56=45 M L J 311=1 Ind Cas 50 A refusal to accept deposit tendered for the purpose of suit is a refusal to exercise jurisdiction A I R 1924 Cal 100=21 Ind Cas 715=77

693 Fixing valuation is sole proclamation in date earlier than that fixed for hearing parties in that respect without hearing the parties amounts to acting without jurisdiction. . . . =65 Ind Cas 365 An order refusing execution application and proceeding location can be set aside in revision.

A I R 1922 Pat. 525=65 Ind Cas 122 Extension of time for payment after decree for same is passed is against S 63 (3) B T. Act and can be set aside in revision only A I R. 1929 Cal 140=112 Ind Cas 124 According to the compromise the plaintiff should have been

of A

could not

decree its order is revisable. A I R 1929

Lah

and 1

whole of the order on by way of revision even when the aggrieved party had only filed an appeal from the order from which no appeal was in fact maintainable. A I R. 1929 Rang. 161=7 R 110=117 Ind Cas 245

barred is without and hence open to revision A. 936 Order, where jurisdiction is assumed without

L W. 839=99 Ind Cas  
appealable order High C

application acts

I R 1926 Lah

Where a suit

powers of the

Court under Section 115, held that the case was a proper one for revision as the question was whether the Court has jurisdiction to make the order. A I R 1930 Nag 48=26 N L R 30=121 Ind Cas 659 Where Lower Appellate Court through mistake of law assumed jurisdiction and upsets decision of the Lower Court, the order of reversal of decision is open to revision A I R 1927 Mad 786=53 M L J.

Where in spite of the  
vour of the applicant  
jurisdiction illegally A

I R 1926 Lah 344=8 Lah L J 170=27 P L R 710=94 Ind Cas 117

Admission of appeal in non appealable cases is revisable A I R 1926 All 55=48 A 27=23 A L J 891=89 Ind Cas 404, A I R 1925 Pat 525=4 Pat 718=6 P L T 793=94 Ind Cas 217, A I R 1923 Bom 214=25 Bom L R 147=72 Ind Cas 256, L R 2 A 166 (Rev)

of a mortgage

Court is open

Ind Cas 986

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sion A I R 1921 Oudh

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Court that the Court of first instance has or has not jurisdiction to entertain a suit, High Court can revise the order A I R 1923 Bom 412=76 Ind Cas 1010 No



revision lies from the decision on a preliminary issue, regarding the jurisdiction of the trying Court to entertain the suit A I R 1921 Oudh. 176=24 O C 231=64 Ind Cas. 92 Where the lower Appellate Court has not exceeded its jurisdiction, High Court would not revise its decision 4 L W 411=35 Ind Cas 74 A declaration not necessary for the suit and made beyond what is prayed for, can be expunged in revision A I R 1923 Cal 321=68 Ind Cas 626

When after passing of a preliminary decree for accounts the case is transferred to another Court to deal with further proceedings of the case, the former Court having no jurisdiction to pass a decree for the amount founded due, the latter Court can by its discretion consider the question of a *de novo* trial, but the preliminary decree that has been passed must be taken into consideration as it cannot be set aside except in due course of law (i.e. by an appellate court) and the latter Court can exercise its discretion to hold a *de novo* trial only from the stage after the passing of the preliminary decree, but can not go behind it Order holding trial *de novo* from the commencement is revisible A I R 1929 Lah 107=118 Ind Cas 537

Where security has been filed but there is a clerical error as to the description of the property and the appellant has applied for its correction, the Court cannot by rejecting the application, reject the appeal In such a case revision will lie A I R 1925 Oudh. 402=12 O L J 83=86 Ind Cas 759 Reopening of time barred *exparte* decree by lower Court can be interfered in revision 144 Ind Cas 980=A I R 1933 Rang 110 Facts ousting jurisdiction must be patent on the face of the record before it can be predicated of a Court that it has exercised a jurisdiction not vested in it by law 27 S L R 261=A I R 1933 Sind fresh arbitrator without complying with the para 5 (2), the appointment is without jurisdiction irregularly and the order appointing the arbitrator can be set aside 146 Ind Cas 493=A I R 1933 Oudh 540

Where no appeal lies against an order the erroneous order of the appellate Court can be interfered 33 P L R 463=A I R 1932 Lah 416=140 Ind Cas 48, see also 36 L W 636=A I R 1932 Mad 714 1932 M W N 1244 Decree passed against wrong person can be set aside in revision 53 C I J 415=A I R 1931 Cal 673=134 Ind Cas 305

**Clause (b)—Failure or decline to exercise jurisdiction**—Where the subordinate Judge has failed to exercise jurisdiction vested in him by law by refusing to accept the plaint, and the District Judge on appeal has erred in law in confirming the decision of the first Court the High Court should interfere in revision A I R 1929 Lah 605=11 Lah L J 282=119 Ind Cas 481 Erroneous order of returning plaint where suit ought to be dismissed is ground for revision A I R 1926 All 58=48 A 168=24 A L J 83=90 Ind Cas 353 Refusing to admit application for wrong reasons is open to revision A I R 1927 Lah 134=99 Ind Cas 690 Refusal to exercise jurisdiction under s 10 C P Code is open to revision A I R 1928 Oudh 355=5 O W N 604=3 Luck 650 Failure to exercise jurisdiction vested by the Calcutta Rent Act is contemplated by this section A I R 1922 Cal 514=26 C W N 711=49 C 928=86 Ind Cas 727 Whereon in erroneous view of law a Court refuses to exercise powers vested in it or exercise powers not vested in it under wrong assumption that it has got them High Court can interfere in revision A I R 1923 Mad 230=44 M L J 80=72 Ind Cas 839, see also 115 Ind Cas 862, A I R 1928 Lah 811 A revision lies against an order of an Appellate Court rejecting a suit on the erroneous ground of its not being maintainable A I R 1925 Lah 174=78 Ind Cas 444 Failure to decide the claims and deciding it on other grounds not laid is irregularity and hence revision lies A I R 1921 Sind 159=16 S L R 207 (F B) Interlocutory order in matter of Court Fees and jurisdiction is revisible A I R 1925 Cal 320=29 C W N 76=52 C 128=85 Ind Cas 870 Refusal to exercise inherent powers vested under ss 151 and 152 amounts to a refusal to exercise jurisdiction A I R 1925 Cal 420=79 Ind Cas 586 Refusal to receive evidence in support of application for restoration of a suit dismissed under order XVII, rule 2 is a refusal to exercise jurisdiction A I R 1923 Pat 530=1 Pat L R 281=74 Ind Cas 693 Failure to entertain a plea of illegality *suo motu* amounts to failure to exercise jurisdiction vested A I R 1924 Mad 169=(1923) M W N 566=45 M L J 551=76 Ind Cas 306 A refusal to accept deposit tendered for the purpose of setting aside a sale under order 21 r 89, is a refusal to exercise jurisdiction A I R 1923 Pat 490=2 Pat. 715=741

Ind Crs 102 An erroneous order based on misconstruction of the provisions of the law amounts to refusal to exercise jurisdiction and is revisable A I R 1924 Pat 506=83 Ind Cas 599=5 P L T 107=75 Ind Crs 8,6, see also 70 Ind Cas 888=A I R 1923 Mad 435=44 M L J 100=17 L W 705=46 M 938 A palpably erroneous decision amounts to improper refusal to exercise jurisdiction prejudicing the party can be revised A I R 1924 All 263=46 A 73=21 A L J 861=79 Ind Crs 605

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is 765

which is not warranted by facts, a revision lies A I R 1930 All 477=(1930) A L J 1166=126 Ind Crs 14 Staying execution proceedings by wrongly applying Civil Procedure Code s 10, is refusing to exercise jurisdiction and a revision will lie A I R 1929 Lrb 694=119 Ind Cas 488 Revision will lie where the Judge thinks an appeal is untenable A I R 1930 Nag 207=13 N L J 4=121 Ind Crs 668 Where a Court refuses to exercise a jurisdiction vested in law or an erroneous construction of statute 31 C W N, 733, see also 47 A 140=70 But holding that certain piece of evidence to exercise jurisdiction A I R 1929 Pat 633=11 P L T 581=122 Ind Cas 581

barle decree under Order 34,  
not maintainable, amounts  
by law and a revision will lie

A I R 1930 All 841=(1930, A L J 1700=52 A 879=124 Ind Crs 729 In a suit by a co sharer and lord for his share of the rent or in the consider whether the plaintiff was entitled to refusal to exercise a jurisdiction vested in Pat 41-4 P L T 39 jurisdiction means admission of application that it does not lie is I R 1927 Cal 928=46 C L J 182=31 C W 818=103 Ind Cas 468 Remanding a case under LXI r 23 instead of under LXI, r 25 does not create a point of jurisdiction as to justify revision 64 Ind Cas 436

The failure to decide a plea amounts to a refusal to exercise a jurisdiction justifying a revision 34 Ind Cas 662 The refusal by a Court having jurisdiction to entertain an application for review on the ground that an appeal has been filed subsequently amounts to a refusal to exercise jurisdiction and the order is open to interference by High Court in revision 43 A 288=19 A L J 24=61 Ind Cas 334 Revision lies against a general order of remand by an appellate court which misunderstands its own duties and in of a Court to entertain presented amounts to 674=48 Ind Cas 14 to exercise a jurisdiction vested in him by law so as to justify a revision 18 Cr L J 303=15 A L J 161=39 A 297=38 Ind Cas 335 A wrong order under s 10 staying a suit is a refusal to exercise jurisdiction and is open to revision under s 115 6 O L J 96=50 Ind Crs 212 Declining to accept a deposit by the is sold his interest to a slyng revision 52 Ind the ground that it did can be revised 38 M Where a day is fixed for evidence under order XXIII, rule 6, but court dispose of application thinking the case to be too weak on merits before date for production of evidence the order of court amounts to refusal to exercise jurisdiction A I R 1930 All 758=(1930)

o amend the  
the plaint as  
4 Pat L J  
dismissing the execution  
is made to a court not  
in the meaning of s 115  
23) M W. N 406=73  
charge of certain jewels  
that some jewels were  
file suit in that behalf,  
action of the court in  
8 L W 436=48 Ind Cas 139  
dition of account when it has  
with further proceedings i c  
o court is to transfer the case  
to return the plaint for pre-  
A I R 1929  
alleges that certain  
that they are trust  
therefore be excluded  
ase to go into the  
jurisdiction in him  
of a parti-  
procedure  
1929 Nag  
tion under order 1, rule 8  
15 145 Ind Cas 387=  
e refuses to consider the  
to exercise a jurisdiction  
38 Refusal to proceed  
e A I R 1933 Oudh  
re-open a suit decreed  
to revision A I R 1933  
e when the lower court  
applying its mind to the  
1933 Pat 132=144 Ind  
ourt has failed to exercise  
2 Nag 70=137 Ind Cas  
88, see also 133 Ind Cas 407=A I R 1931 All 756, 131 Ind Cas 303=32 P  
L R 737, 31 P L R 984=132 Ind Cas 203=12 L L J 167=A I R 1930 Lah  
1017, A I R 1931 All 332=130 Ind Cas 299

Clause (c) Exercise of jurisdiction illegally or with material  
irregularity—Exercise of jurisdiction in a proper manner bars a revision  
19 A L J 47=60 Ind Cas 879, see also A I R 1928 Mad 984  
=112 Ind Cas 710, A I R 1922 Pat 38 This section applies to jurisdic-  
tion unless a grave injustice  
=(1931) A L J 13 Where  
gh Court decree through an  
se of jurisdiction within the  
111=34 C W N 515=129  
informed that the suit was  
i thinking it to be pending  
th the suit acts improperly.  
A party aggrieved can ask the court below reconsider its order, although no revision  
is maintainable A I R 1929 All 957=1950 A L J 235=121 Ind Cas 97  
Judgment not properly expressed due to inexperience is no ground for revision.  
A I R 1926 Oudh 183=88 Ind Cas 577 Mere defect of jurisdiction is not a ground  
for revision unless failure of justice has directly resulted from such a defect A I R  
1921 Lah 263=82 P L R 1922=67 Ind Cas 278 Erroneous decisions by the  
lower courts on points of law and fact are not open to revision if no question of  
jurisdiction is involved 116 Ind Cas 640, see also A I R 1930 Sind 170=24 S.  
L R 145=121 Ind Cas 161, A I R 1926 Lah 47=26 P L R. 756=90 Ind Cas.  
1042

In considering whether to consider whether the irregularity may be a basis for revising the order of the lower court and it is left entirely to the Revision Court to determine whether there has been such illegality or

If a question of jurisdiction is in 1932 A L J 801 (805, 807), Per not be said to be an illegal or incompetent to determine the question of law and determines if the High Court cannot interfere in revision because it considers that decision to be erroneous in point of law Per Niamatulla J in *Ibid*. Where there is a wilful disregard or conscious violation by a Judge of a rule of law or procedure the High Court will have jurisdiction to interfere in revision 34 Bom L R 1273 = A I R 1932 Bom 581 = 140 Ind Cas 381 = A L R 1933 Bom 23, see also A I R 1932 Mad 217 = 138 Ind Cas 136 = 1932 M W N 53, 11 Pat 616 = 140 Ind Cas 572 = A I R 1932 Pat 346, 54 A 394, 1 R 1931 Lah 646, 13 P L T 726, 14 C L J 55, = A I R 1932 Cal 349 = 137 Ind. Cas 474, A I R 1932 Mad 603 = 1932 M W N 290, 140 Ind Cas 325 = 1932 M W N 1338

**Acting illegally**—When a Judge delivers a perverse judgment he is exercising his jurisdiction illegally A I R 1930 Rang 324 = 128 Ind Cas 848 What is illegal or materially irregular act must be decided on the merits of each case A I R 1921 (U B) 27 = 4 U B R 16 = 63 Ind Cas 838 Refusal to issue a certificate on remand is illegal and open to revision 42 B 363 = 20 Bom L R 348 = 45 Ind 6 each other under an order of 57 Ind Cas 784 An order

P L R 1922 = 67 Ind Cas 256 Where appeal fact not at all raised in the trial Court, the decision is revisable A I R 1926 Rang 214 = 4 Rang 203 = 98 Ind Cas 1029 Where the decision is not based on merits but on question not supported by law, it shows illegal exercise of jurisdiction 44 C L J 565 = 99 Ind Cas 946 The contravention of a rule of procedure is an illegality but is an illegality of the lower Court, not act illegally

or with material irregularity 59 M L J 314 = 32 L W 317 = 120 Ind Cas 875 Lower Court has not acted illegally or with violation of law rather than another and the A I R 19 9 Bom 198 = 31 Bom L about admissibility or otherwise of document Rang 212 = 2 Bur L J 275 = 83 Ind Cas 554 ship though the order of the lower Court may be illegal it can not be revised A I R 1924 Nag 293 = 78 Ind Cas 746

**Acting illegally** such as acting in excess of jurisdiction, correct or not 1924 Cal 633 = 85 Ind Cas 438 = 51 C 690 = 28 C W N 559 = 39 C L J 431 = 78 Ind Cas 958, See also 61 Ind Cas 967 = 29 M L J 95, A I R 1921 U B 27 = 4 U B R 16 = 63 Ind Cas 838, 76 Ind Cas 125, A I R 1924 Lah 662 = 76 Ind Cas 139, A I R 1925 Nag 236 = 83 Ind Cas 257, 97 Ind Cas 1025 = A I R 1926 Rang 205 = 4 Rang 221 90 Ind Cas 285 = 23 A L J 948 A I R 1926 Cal 530 = 91 Ind Cas 839 A I R 1930 All 843 = 128 Ind Cas 818 A I R 1929 All 593 = (1929) A L J 769 = 51 A 910 = 119 Ind Cas 103 A I R 19 9 Rang 115 = 7 Rang 339 = 120 Ind Cas 899

The contravention of an express provision of law is not merely an erroneous decision but is an illegality A I R 1930 Oudh 9 = 118 Ind Cas 805 10 Bur L T 29 = 35 Ind Cas 426 Error caused by appeal disposed of by the inferior Court where parties are prejudiced can be corrected in revision 114 Ind Cas 440 If there is misinterpretation of the document the concurrent findings of the lower Courts are open to revision by High Court A I R 1933 Pes 67 = 146 Ind Cas 363

Order passed by illegal procedure consented by the opposite party cannot be interfered in revision 135 Ind Cas 230 = 1931 A L J 1087 = A I R. 1932 All 154



46 A 73=79 Ind. Cas 605, see also A I R 1930 Lah 112=123 Ind Cas 571 If limitation for setting aside abatement is not considered it is ground for interference A I R 1926 Cal 444=87 Ind Cas 173 Where the order of the lower Appellate Court overlooks the question of limitation in deciding the appeal a revision will lie A I R 1929 Rang 304=124 Ind Cas 260.

Where a Court with jurisdiction to hear an appeal hears it and while disposing of the appeal comes to a wrong conclusion on point of law, it does not amount to acting in the exercise of jurisdiction illegally or with material irregularity, A I R 1929 Pat 633=11 P L J 581=122 Ind Cas 581, see also A I R 1930 Nag 88=120 Ind Cas 414 So a revision does not lie against a mistake of law apart from a question of jurisdiction A I R 1929 Lah 26=116 Ind Cas 221, 117 Ind Cas 727, A I R 1928 Lah 284=107 Ind Cas 273, A I R 1927 Cal 965=46 C L J 527=106 Ind Cas 851, A I R 1928 Lah 102=106 Ind Cas 829, A I R 1927 All 358=49 A 454=25 A L J 399=100 Ind Cas 638, 100 Ind Cas 76, A I R 1927 Rang 90=5 Bur L J 206=100 Ind Cas 327, A I R 1927 Lah 573=100 Ind Cas 3, A I R 1926 Nag 472=96 Ind Cas 251, 93 Ind Cas 855= A I R 1926 Lah 355, 26 P L R 783=92 Ind Cas 46, 75 Ind Cas 472= A I R 1923 All 465, A I R 1923 Oudh 18=9 O L J 543=72 Ind Cas 394

or any ille-  
16=41 Ind  
12 O L J  
be ground  
734 This  
section to  
5 Cal 1112

=30 C W N 928=98 Ind Cas 751

A revision is competent where there has been an entire misapprehension as to the law on the subject in courts below A I R 1930 Lah 572=31 P L R 284=128 Ind Cas 56 Where a court has overlooked the cannon of interpretation that any statutory provision in the nature of taxation clause should be interpreted literally

A I R 1929  
cludes the  
regularity  
R 1930

Lah 177-119 Ind Cas 417 An error of law amounting to an usurpation of authority in the act of rejection of a petition for review of order confirming auction sale calls for interference under s 115 A I R 1929 Nag 305=116 Ind Cas 65 Decision without implicating necessary party on mistaken notion of law is subject to revision A I R 1928 Lah 414=10 Lah L J 161=108 Ind Cas 391 Decision

without reference to article or its  
6=52 M L J 357=100 Ind Cas  
ie pleas of jurisdiction and limi  
inding arrived independently of  
36 Pat 29-90 Ind Cas 329 Sec-

exercise of non exercise or it or  
the illegal assumption of it A I R 1929 Oudh 142 Ind Cas 616=10 O W N 259=A I R 1933 Oudh 240 But the wrong application of the section of an Act can be revised 34 P L R 440=A I R 1933 Lah 335 Wrong finding on a question of law cannot be upset in revision 13 L L T 12

**Material irregularity**—Material irregularity consists in mistake of fact or law occasioned by wrong assumption or refusal of jurisdiction or in refusal to exercise of jurisdiction or exercising it illegally and irregularly, decision is to what is material irregularity depends upon fact of each case A I R 1923 Mad 254=44 M L J 69=44 M 123-(1922) M W N 813-16 L W 898=72 Ind Cas 902 To show that there has been irregularity which can be remedied in revision the applicant should show that either the procedure for sale is entirely illegal, or he damage of a serious kind to his interest A I R 1931 Pat 63=130 Ind Cas 265 An error in arriving at the conclusion can not be set right by taking up the matter in revision for error is not irregularity A I R 1930 All 702=(1930) A L J 1043=132 Ind Cas 33 see also A I R 1930 All 831=125 Ind Cas 578, A

I R 1923 Pat 93=3 P L R 314=65 Ind Cas 355 Failure of Appellate Court to adjudicate upon a plea of limitation not pressed before it is not a material irregularity justifying revision 42 Ind Cas 332, see also 32 Ind Cas 785=3 L W 176

An error of procedure resulting in a failure of justice amounts to material irregularity in the exercise of jurisdiction, under section 11, 2 U P L R Pat 29=1 P L R 185=55 Ind Cas 445, see also 24 C W N 255=46 C 952=54 Ind Cas 459, A I R 1922 Mad 63=1922 M W N 150=16 L W 760=6, Ind Cas 75. Decision without impleading necessary party is material irregularity and revision lies A I R 1926 P C 142=34 C 338=33 A 271=25 A L J 61=25 L W 90=3 O W N 987=1927 M W N 84=29 Bom L R 755=45 C L J 274=31 C W N 413=33 P L R 113=52 M L J 368 (P C)=97 Ind Cas 749, A I R 1929 All 61 1930 A L J 73=12 Ind Cas 733 Where permission is given to withdraw a suit with liberty to bring a fresh suit without adopting proper procedure, the order is tainted with material irregularity and as such should be vitiated 130 Ind Cas 147=A I R 1931 Cil 107=34 C W N 912

Where decree once made in a suit the suit cannot be dismissed unless reversed in appeal And if a trial court having fixed a date for further proceedings under directions of appellate court modifying the preliminary decree dismiss the suit on that date, under order IX, rule 9, such a dismissal is wrong and a revision will lie over it A I R 1930 Mad 158=30 L W 979=12 Ind Cas 351 Revision lies on findings of facts when not properly arrived at, that is scrutiny of all relevant evidence It is material irregularity A I R 1929 Cal 736=33 C W N 569=120 Ind Cas 451, see also A I R 1928 Mad 815=51 M 860=55 M L J 565=(1928) M W N 49=28 L W 513=110 Ind Cas 490 A I R 1927 Rang 283=6 Bur L J 152=104 Ind Cas 316 A finding no based on the evidence on record amounts to material irregularity and is revisable A I R 1926 Lah 566=96 Ind Cas 247 Not considering material evidence being material irregularity is open to revision A I R 1927 Rang 502 6 Lour L J 147=104 Ind Cas 321

Decision under serious error of procedure is material irregularity A I R 1927

thout consider  
revisable A I R  
being material  
ation of evidence  
36 Failure to  
I R 1928 Lah  
ous and various  
21 L W 624=

87 Ind Cas 216

Where a Judge arrived at a decision by following an obsolete ruling acts with material irregularity A I R 1929 Lah 824=11 Lah L J 491=117 Ind Cas 96 High Court should not interfere in revision with decision however erroneous it may be, when it has no far rea 600=115 Ind Cas 351 Ignoring 1921 Sind 159=16 S L R 40 of pleading is irregularity and 16 S L R 207=81 Ind Cas 36 interference in revision on ground of material irregularity A I R 1924 Nag 44=19 N L R 165=75 Ind Cas 993 Order of refusal to confirm a sale without application under r 89 or r 91 is revisable A I R 1927 Lah 71=98 Ind Cas 866 Setting aside sale as being illegal under S 90 without substantial injury owing to irregularity is revisable A I R 1924 All 698=22 A L J 413=83 Ind Cas 1023 If the lower Courts have thrown out the plaintiffs' suit on a question not arising in the case and having referred to certain provisions of law which had no application to it, revision will lie A I R 1929 Lah 294=117 Ind Cas 229

Overruling an objection as to the judicial misconduct on the part of an arbitrator without enquiry and without admitting proper evidence material to the issue is material irregularity 22 C L J 237=31 Ind Cas 33 Wrong allocation of the onus of proof amounts to material irregularity, justifying interference in revision A I R 1921 Lah 166=3 Lah L J 417=64 Ind Cas 91 Entirely altering a judgment after once it has been delivered in court even though orally amounts to material irregularity A I R 1923 Mad 663=(1923) M W N 354=18 L W 105=72 Ind Cas 688 An order of a Sub-Judge or an election petition can be revised if he has acted with material irregularity or illegality A I R

1021 M L T 60=11 M L T 161=12 M L T 114=(1923) M W N 78=17 L W  
 requiring written  
 which is open to  
 273=10, Ind  
 its jurisdiction  
 question before  
 it, or (4) if the materials before it, were not such as could reasonably be held to be  
 materials on which the court might, rightly or wrongly hold that there was a  
 formal defect or other sufficient reason *en d m generis* with formal defects under  
 Order XIII rule 2 A I R 1929 All 683=(1929) A L J 961=119 Ind Cas 8,9  
 Where a court imports into a case its alleged knowledge of witnesses as habitual  
 givers of false evidence etc Court acts improperly and with material irregularity  
 39 Ind Cas 424

giv  
 Ind  
 justifying a revision A I R 1921 Lah 60=3 Lah L J 181=60 Ind Cas 716  
 A premature order discharging a surety can be revised under this section 41 B  
 402=19 Bom L R 112=39 Ind Cas 88  
 under Order XII, Rule 1, without  
 fying revision 14 A L J 425=33  
 of estoppel is a material irregularity

Misapprehension as to the nature of the contract entered into by the plaintiff  
 will lie 56 Ind Cas. 489 Arriving at a  
 material part of  
 the statement,  
 er has suffered  
 injustice thereby 9 L B R 263=12 Bur L T 5=47 Ind Cas 781, see also 56  
 Ind Cas 982, A I R 1915 Mad 456=21 L W 21=86 Ind Cas 178 Where  
 appellate Court sets up a new case a revision lies from its decision A I R 1927  
 Lah 73-98 Ind Cas 866 Where decree has once been made in a suit a suit  
 cannot be dismissed unless reversed in appeal And if a trial Court, having  
 fixed a date for further proceedings under directions of Appellate Court modifying  
 the preliminary deci  
 such a dismissal is v  
 30 L W 979=53 M  
 aside election on me  
 It must further find that its result would have been different had that irregularity  
 not occurred Failure of the Court to come to this finding is material irregularity  
 and therefore revisable A I R 1929 Mad 257=119 Ind Cas 145

Decision of suit on grounds not raised by parties and to which no evidence is  
 directed amounts to substantial error or defect of procedure and revision lies A I R  
 1924 Pat 341=73 Ind Cas 41 A decision based not merely on a forced and im  
 proper construction of the facts but on importation of facts admitted by both parties  
 1923 Nag 108=65 Ind Cas 881  
 auction purchaser without notice to  
 irregularity A I R 1922 Mad  
 63=63 L W 760=65 Ind Cas 737=111 W N 130 Remand of the whole  
 case by an appellate court after a finding on one issue only amounts to material  
 irregularity A I R 1923 Mad 113=16 L W 593=30 M L T 314=70 Ind Cas  
 it acts with  
 93 Ind Cas  
 and refused to  
 irregularity  
 is committed A I R 1920 A 305=40 A 100=24 A L J 280=92 Ind Cas  
 567 An order refusing to set aside an order of dismissal of suit for default without  
 alleging the existence of sufficient cause for non appearance of the plaintiff is  
 M W N 822=18 L W 837=70  
 of unsound mind but the plaintiff  
 of the defendant only after an  
 material irregularity and the order is  
 revisable A I R 1922 Cal 86=70 Ind Cas 307

Reversing judgment of a lower court on a new question not raised by the parties  
 and without sufficient material for so doing amounts to acting with material irregu



sal of suit for A I R 1925 court acts on ice, it does not ity in exercising its jurisdiction A I R 1926 All 161=23 A L J 961=89 Ind Cas 72 Where the lower appellate court has misread entirely the findings submitted to it by remand, court acts with material irregularity A I R 1925 Oudh 933=2 O W N 432=89 Ind Cas 418 Where the defendant objects to the valuation of the plaint it is a material irregularity for the court to refuse to frame an issue and decide it The High Court can set aside the order in revision A I R 1923 Mad 134=(1922) M nning 75 the value for pur e suit instead of that at the A, I R 1924 Lah 380= proceedings for sale amounts 1923 Mad 144=43 M L J 90=47 M 47=71 Ind Cas omitting to consider point of law required by law to decide, amounts to material irregularity A I R 1923 M L J 409=72 Ind Cas evidence which is legally in- A L J 399=24 Cr L J 900 =75 Ind Cas 148 An order to furnish security for mesne profits is not without jurisdiction but passing such an order amounts to material irregularity within s 115 A I R 1927 Oudh 11=10 O L J 209=74 Ind Cas 335

Where a Court does not purport to act under s 115 an order for sale without a prayer can be revised A I R 1924 Mal 911=20 L W 488=1924 M W N 547 An improper order passed after investigation or failure to investigate a claim under order 21 rule 63 amounts to material irregularity and revision lies A I R 1923 Rang 19,=2 Bur L J 134=76 Ind Cas 677 Transfer by a District Judge of cross suits pending in two different Courts on application of one party without O C 216= put in by acts with 35 M sion of order 33=60 dence offered it, acts with material irregularity justifying revision A I R 1921 Cal 251= 48 C 119=60 Ind Cas 801 A Court deciding objections to an order without notice to the objector of the date of hearing, acts with material irregularity and its order is liable to be revised 64 Ind Cas 394 But where instead of allowing a judicial evidence under order XLI rule 27 C I Code a appellate Court reminds the case for retrial the irregularity of procedure is so such as to justify interference in revision 31 M L T 182 (M C) 16 f W 51,=65 f f Cas 86 An order directing further evidence to be taken by trial court on appeal is a dismissal of suit under order XVII rule 3 though expressly set aside by the lower Court amounts to acting with material irregularity A I R 194 Ra 117=1 Rang 656=79 Ind Cas 487, see also A I R 193 Cal 15 311 Cas 149 Where both the plaintiff and defendant are residents of one place outside the jurisdiction and the plaintiff is examined on commission but left in the country, though he is served with summons at that place, it is irregular to examine him amounts to material irregularity A I R 194 Mal 41=46 I L J 11= 34 M L T 314=(194) M W N 191=3 Ind Cas 407

Where in disposing of an objection under Order 21 rule 59 in case of sale to decide the question of possession it acts with material irregularity A I R 1921 Lah 666=132 Ind Cas 666 The judge is to deal with the facts and not under order 20 rule 4 but if he does so and has referred to the facts he is to consider a material portion of the evidence the High Court is to be left in revision 35 C W 1742 In a proceeding under order 21 rule 59 to distribute shares among pre-emptors of a company, the court is not to be disturbed on the ground of irregularity 35 C W 107 Order 21 rule 59 is not illegal in charging the mortgagee defendant can be set aside and a new order made

W N 1143=A I R 1931 Oudh 410 Where a court sets aside an order of dismissal without by the parties and without any revision order in question is vitiated by a  
 =1931 A L J 962=A I R 1931 All 452 Where the application for leave to sue *in forma pauperis* was rejected by the lower court on mere conjecture that the applicant is not a pauper, the order can be revised A I R 1931 Rang 318 If the result of the amendment allowed by the lower court to convert the suit into one of another and different character by the  
 at the date of the plaint, it is by revision 133 Ind Cas 49  
 316 Where lower court re 152, but the decree was not in accordance with the intention of the judge who passed it a revision lay against such an order 8 O W N 1121=A I R 1931 Oudh 422  
 Where in a petition under order 21 rule 100, the lower court asked the decree holder to begin his case and examine his witnesses before the examination of the claimant's witnesses, is a serious irregularity A I R 1931 Mad 534=132 Ind Cas 301  
 Where the appeal is out of time and the lower Court dismissed it without considering extension of time it acts with material irregularity A I R 1933 Lah 260=145 Ind Cas 153 Where the Court confirms the sale before adjudicating upon applications under order 21, rule 90 it acts with material irregularity A I R 1933 All 137=145 Ind Cas 732 If the Court refuses a party a right to lead evidence on a matter on which the parties are at issue, it exercises its jurisdiction with such an exercise of jurisdiction,  
 L T 300=f ce 144 Ind  
 Cas 834=29 N L R 164=A I R 1933 Nag 188 see also 14 P L T 338=A I R 1933 Pat 284 The conclusion of the Court that there has been an unnecessary delay for the claim would not, of course, be open to revision by the High Court But the Court cannot come to the conclusion whether there without considering any explanation that might be  
 145 Ind Cas 444=1933 A L J 1177=A I R 1933 Court to allow an amendment in order to enable the parties to be settled once for all amounts to failure to exercise a jurisdiction vested in it by law 55 A 256=145 Ind Cas 859=1933 A L J 268=A I R 1933 All 374

**Revision from interlocutory orders**—It is not the practice of High Courts to allow revision of interlocutory orders which can not be questioned in appeal and revision will lie in such cases only when great inconvenience or injustice would otherwise result A I R 1930 Nag 51, 121 Ind Cas 672 No revision lies from an order under s 10 C P Code A I R 1929 Lah 662, 113 Ind  
 revision with R 1930 Sind  
 265=24 S L High Court  
 11 A 127=112 Ind Cas 646 But High Court will interfere with an Interlocutory irreparable injury to party A I R  
 so A I R 1926 Mad 1047 (F B)=51  
 4 Mad 846=47 M 934=47 M L J  
 o Ind Cas 604 An interlocutory order representative of a deceased plaintiff is  
 reject<sup>b</sup> A I R 1924 Mad 813=47 M L J 370=35 M L T 82=(1924) M W N  
 763=80 Ind Cas 942 The court will also interfere in revision with an interlocutory  
 elow has acted perversely or in a  
 A I R 1923 Mad 690=45 M L J  
 Cas 207 Where there is no direction  
 order of the Court directing com  
 decree cannot be revised A I R  
 1933 Mad 43=16 L W 312=(1922) M W N 562=31 M L T 180=74 Ind Cas  
 591 In the case of a witness not under the control of the party asking for the  
 commission who resides beyond the jurisdiction fixed under order XVI rule 19  
 (b), a commission should issue as a matter of right unless the Court is satisfied that  
 a party is merely abusing its authority to issue process, and any order refusing  
 issue of commission as above is liable to be set aside in revision A I R 1923 Mad

321=4

530

1922 N

202=71 Ind Cas  
injunction AIR  
713

The use of the revisional power would be justified where the lower Court has decided that the suit is not bad for misjoinder of parties and causes of action = (1922) M W N 316=16 L W 186-70 stay a suit where the same question is in issue is revisable A I R 1923 Mad 88=16 L W 607 So also an order refusing to stay the suit where the same question is in issue between the parties in two different suits is revisable *Ibid* But the High Court has the power in revision to interfere with an interlocutory order only in extreme cases A I R 1922 Mad 321=15 L W 667=(1922) M W N 521=68 Ind Cas 167

High Court will not interfere in revision with interlocutory orders except in special circumstances A I R 1929 Cal 831=125 Ind Cas 112 Where the lower Court decided wrongly the question of jurisdiction and on such wrong decision gave itself jurisdiction the High Court will interfere A I R 1929 Cal 159=116 Ind Cas 172 High Court will interfere in revision only when irreparable injury would be caused if revision is refused A I R 1927 Cal 1149=53 C 767=30 C W N 907=98 Ind Cas 615, A I R 1925 Cal 1118=85 Ind Cas 619, 82 Ind Cas 1008=40 C L J 191-28 C W N 991=A I R 1925 Cal 204 An order wrongly refusing to grant committal for examination of witnesses, is revisable A I R 1922 Cal 42=35 C L J 78=68 Ind Cas 9

Interlocutory order according to Allahabad High Court is not subject to appeal A I R 1928 All 97=50 A 276=25 A L J 991=108 Ind Cas 735, 39 A 254=15 A L J 227=38 Ind Cas 828 but see 18 A L J 486=58 Ind Cas 729 An order of a subordinate Judge allowing a plaintiff to put in an application conditional on the payment of a certain amount of costs is not revisable 24 O C 215=64 Ind Cas 211 Interlocutory orders are open to attack in an appeal from final orders under s 105 and therefore not revisable 24 O C 215=64 Ind Cas 211 An order would s on where such order Ind C P L R (All) 157-56 course rs passed during the unless they determine the case so far as the party applying for revision is concerned, or concluded the claim otherwise in a manner not open to appeal 5 O L J 430=47 Ind Cas 676 An order of remand is not an interlocutory order for the purposes of revision A I R 1923 Oudh 177=26 O C 10=10 O L J 36=73 Ind Cas 591 An interlocutory order made with the object of collecting materials upon which the case is to be determined thereafter is not revisable A I R 1925 Oudh 189=11 O L J 692=28 O C 78=80 Ind Cas 612

The Chief Court of Lahore will interfere with interlocutory orders only in exceptional cases 26 P L R 1917=40 Ind Cas 65 64 Ind Cas 387, 42 Ind Cas 221=164 P W R 1917, but see 149 P W R 196=8 P L R 1917=35 Ind Cas 608, A I R 1923 Lah 301 75 Ind Cas 107 84 Ind Cas 259-6 Lah 538 No revision lies against an interlocutory order save where irreparable loss would otherwise occur 20 P W R 1919=49 Ind Cas 470 No revision lies against an interlocutory order when the applicant has another remedy open to him 120 P W R 1918=46 Ind Cas 189, 96 Ind Cas 173 (Lah) No revision lies to the here the final decree to be passed would is 57 The power of revision in the case a c opor

be repaired 77 P R 1919=52 Ind Cas 859 fresh evidence on an issue after closing the c 17 P W R 1921=59 Ind Cas 450 Revision lies in the case of interlocutory orders where otherwise irreparable damage would result to the parties A I R 1922 Lah 100=4 Lah L J 176=29 P L R 1922=65 Ind Cas 267 Entertaining an appeal from an interlocutory order amounts to assumption of jurisdiction not vested in the court 2 Lah L J 673=67 Ind Cas 270 Even when the order is not of an interlocutory nature the High Court should not interfere except in cases where the order is not a final order such as one under order 41, Rule 25 2 Lah L J 662=67 Ind Cas 269 Interlocutory order deciding a question as to place of trial

can be interfered in revision A I R 1927 Lah 72=86 Ind Cas 395 Where suits for declaration that certain documents are void and for injunction to restrain opposite party from proceeding to arbitration under arbitration clause are filed the order of Court staying suit and asking parties to proceed with arbitration is final and revision lies from it. A I R 1931 Lah 66=130 Ind Cas 769 Orders refusing amendment of plaint or refusing permission to withdraw suit on the ground that it is defective in form are not open to revision being interlocutory orders A I R 1930 Lah 589=31 P L R 456=122 Ind Cas 105

An interlocutory order is not capable of revision except where the order complained against is such as is calculated to cause irreparable loss to the injured party and there is no right of appeal and no remedy available to the party A I R 1924 Pat 673=5 P L T 425=3 Pat 930=80 Ind Cas 667, see also A I R 1926 Pat 575=97 Ind Cas 353 72 Ind Cas 118=A I R 1927 Pat 118=4 P L T

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tion to refuse  
A I R 1922  
Pat 359=4 Pat L J 195=(1922) Pat 79=50 Ind Cas 470 The High Court will interfere with an interlocutory order directing the trial of certain issues in a case before trying others 2 P L T 154=60 Ind Cas 528 Revision from erroneous preliminary decision is bad and should be permitted in special circumstances only 110 Ind Cas 78

Court in appeal is not to revise an order which though not appealable can be called into question in appeal A I R 1927 Bom 599=29 Bom L R 1355=107 Ind Cas 50 Rejection of evidence is inadmissible is no ground of revision A I R 1927 Bom 664=29 Bom L R 304=101 Ind Cas 385 The High Court has the power to call for the record of a case in which the question of jurisdiction is involved, even if it be in an interlocutory stage A I R 1924 Bom 67=48 B 43=25 Bom L R 992=77 Ind Cas 241 The High Court will not interfere with interlocutory orders passed by a L R 801=44 B 619=57 Ind Cas 556 with  
in revision unless for most cogent 43  
Ind Cas 684 An interlocutory order passed in an appealable case cannot be revised 41 Ind Cas 942

An interlocutory order is  
allows the continuance of  
allow 15 N L R 21=40 In  
The High Court can interfere  
setting it aside when no appeal lies directly from an order and when sufficient grounds exist promptly calling for its interference even though the substance of the order may be one that could be brought up on appeal from the final decree in the suit A I R 1921 L B 6=11 L B R 65=64 Ind Cas 821 Where the interests of justice requires the amendment which was refused the High Court may interfere in revision 67 Ind Cas 335 A wrongly passed order staying a suit in contravention of s 10 though interlocutory is open to revision A I R 1923 Lah 69=33 P W R 1922=69 Ind Cas 111 Order of refusal to stay suit under s 10 C P Code is also revisable A I R 1925 Lah 144=82 Ind Cas 234 But no revision lies against an interlocutory order if the decree that might be passed in suit is appealable 71 Ind Cas 911 The determination of one of the issues in the case does not afford a ground for revision unless the decision goes to the root of the jurisdiction of the trial Court to determine the remaining issues A I R 1924 Pat 673=5 P L T 425=(1924) Pat 254=3 Pat 930=80 Ind Cas 667

It is not usual to interfere in revision in the case of interlocutory order A I R 1925 Nag 62=79 Ind Cas 911 Interlocutory orders against which no appeal can lie but the correctness of which can be challenged in an appeal against the final order and Cas 375 Where  
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h 642=96 Ind Cas  
ion of jurisdiction is  
Order of restoration of  
interlocutory order is subject to revision 107 Ind

Cas 395 Refusal to grant temporary injunction is no ground for revision A I R 1925 Nag 222=107 Ind Cas 908 No revision lies against an order staying the trial of suit A I R 1923 Lrh 69=33 P W R 1922=69 Ind Cas 111 Declining to entertain objection of defendant, before passing a decree absolute under Order xxxiv, r 5 (2) does not call for a revision 5 P L J 342 No revision lies against an order issuing a warrant of attachment against the properties of witness 4 O L J 450=42 Ind Cas 42

An order refusing to extend time for setting aside an abatement under order XLII, rule 9 or for an application for review is not open to revision 25 M L T 116=(1918) M W N 883=9 L W 166=49 Ind Cas 268 Declining to entertain objection of defendant

( ) does not call for revision 1, rule 5  
suing is overruled and embro 1, place of  
to revise the order 41 A 60. 1, power  
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Cas 331 An order refusing a claim under order 21, rule 58 to property, which has been ordered to be sold under a mortgage decree is not revisable 26 C W N 50=68 Ind Cas 271 Where a Court dismisses a suit under order IX, r 8 C P Code before the receipt of the report of a commissioner appointed in the suit, the order of dismissal can be set aside in revision under S 115, 54 Ind Cas 568 Where a judgment-debtor deposits money under order XXI r 89, without an application to set aside the sale and the sale is confirmed and

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order rejecting an appeal for failure of the appellant to give security for costs is not open to revision when it is made in the interest of the justice 18 A L J 838=2 U I  
dismissed for  
considering  
petitioner H

Cas 81 Where the lower Court  
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An application for  
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The High Court  
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316=31 C L J 81=56 Ind Cas 122  
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11 Rang 36=143 Ind Cas 525=A I R 1933 Rang 49, 134 Ind Cas 118, A I R 1931 Rang 193=131 Ind Cas 503 The word case is wide enough to include an interlocutory order and even though there may be an appeal from the final decree that consideration will not prevent interference in revision 134 Ind Cas, 744=9 Rang 71=A I R, 1931 Rang 136

New plea.—A plea of estoppel cannot be entertained for the first time in revision A I R 1925 Nag 77=22 N L R 118=80 Ind Cas 946 Point as to *res judicata* cannot be raised for the first time in revision A I R 1921 Nag 53=13 L W

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1925 Pat 461=6 P L T 295=87 Ind Cas, 381, 40 C L J 197=A I R 1924 Cal 1036=84 Ind Cas 685, 62 Ind Cas 952=A I R 19 Bom 149=47 B 56=23 Bom L R 802 but see 110 Ind Cas, 63=51 M 672=A I R, 1025 Mad 58=55 M L J 274=28 L W 297, 35 P L R 109.

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can be interfered in revision. A I R. 1927 Lah. 72=85 Ind. Cas. 395. Where suits for declaration that certain documents are void and for injunction to restrain opposite party from proceeding to arbitration under arbitration clause are filed the order of Court staying suit and asking parties to proceed with arbitration is final and revision lies from it. A I R. 1931 Lah. 66=130 Ind. Cas. 762. Orders refusing amendment of plaint or refusing permission to withdraw suit on the ground that it is defective in form are not open to revision being interlocutory orders. A I R. 1930 Lah. 589=31 P. L. R. 456=122 Ind. Cas. 105.

An interlocutory order is not capable of revision except where the order complained against is such as is calculated to cause irreparable loss to the injured party and there is no right of appeal and no remedy available to the party. A I R. 1924 Pat. 673=5 P. L. T. 425=3 Pat. 930=80 Ind. Cas. 667; see also A I R. 1926 Pat. 575=97 Ind. Cas. 353; 72 Ind. Cas. 148=A. I R. 1923 Pat. 518=4 P. L. T. 401; A I R. 1923 Pat. 598=3 P. L. T. 638. Where the record of a case has been sent for by the High Court, it would not be exercising a wise discretion to refuse to interfere on the mere ground that the order is an interlocutory one. A I R. 1922 Pat. 359=4 Pat. L. J. 195=(1922) Pat. 79=50 Ind. Cas. 470. The High Court will interfere with an interlocutory order directing the trial of certain issues in a case before trying others. 2 P. L. T. 154=60 Ind. Cas. 528. Revision from erroneous preliminary decision is bad and should be permitted in special circumstances only. 110 Ind. Cas. 78.

Court in appeal is not to revise an order which though not appealable can be called into question in appeal. A I R. 1927 Bom. 599=29 Bom. L. R. 1355=107 Ind. Cas. 50. Rejection of evidence as inadmissible is no ground of revision. A I R. 1927 Bom. 604=29 Bom. L. R. 304=101 Ind. Cas. 385. The High Court has the power to call for the record of a case in which the question of jurisdiction is involved, even if it be in an interlocutory stage. A I R. 1924 Bom. 67=48 B. 43=25 Bom. L. R. 992=77 Ind. Cas. 241. The High Court will not interfere with interlocutory orders passed by a Court while a suit is pending. 22 Bom. L. R. 801=44 B. 619=57 Ind. Cas. 556. Interlocutory orders will not be interfered with in revision unless for most cogent reasons and to prevent immediate injuries. 43 Ind. Cas. 684. An interlocutory order passed in an appealable case cannot be revised. 41 Ind. Cas. 942.

in revision. 67 Ind. Cas. 335. A wrongly passed order staying a suit in contravention of s. 10 though in interlocutory is open to revision. A I R. 1923 Lah. 69=33 P. L. R. 1922=69 Ind. Cas. 111. Order of refusal to stay suit under s. 10, C P Code is also revisable. A I R. 1925 Lah. 144=82 Ind. Cas. 234. But no revision lies against an interlocutory order if the decree that might be passed in suit is appealable. 71 Ind. Cas. 911. The determination of one of the issues in the case does not afford a ground for revision unless the decision goes to the root of the jurisdiction of the trial Court to determine the remaining issues. A I R. 1924 Pat. 673=5 P. L. T. 425=(1924) Pat. 244=3 Pat. 930=80 Ind. Cas. 667.

It is not usual to interfere in revision in the case of interlocutory order. A I R. 1925 Nag. 62=79 Ind. Cas. 911. Interlocutory orders against which no appeal can lie but the correctness of which can be challenged in an appeal against the final decree. 375. Where defendant time. A I R. in the course the suit has 96 Ind. Cas. jurisdiction is res ordination of order is subject to revision. 107 Ind.

Cas 395 Refusal to grant temporary injunction is no ground for revision A I R 1925 Nag 222=107 Ind Cas 908 No revision lies against an order staying the trial of suit A I R 1923 Lah 69=33 P W R 1922=69 Ind Cas 111 Declining to entertain objection of defendant, before passing a decree absolute under Order xxxiv, r 5 (2) does not call for a revision 5 P L J 342 No revision lies against an order issuing a warrant of attachment against the properties of witness 4 O L J 40=42 Ind Cas 42

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suit is not revisable 40 P W R 196=59 Ind Cas 680 An order setting aside an order rejecting an appeal for failure of the appellant to give security for costs is not open to revision when it is made in the interest of the justice 18 A L J 838=2 U P L R 283 (All)=42 A 626=60 Ind Cas 81 Where the lower Court dismissed for default an application for setting aside an *ex parte* decree without considering whether there was sufficient cause for the non appearance of the petitioner High Court set aside the order and directed restoration of the applica

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316=31 C L J 81=56 Ind Cas 122  
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New plea—A plea of estoppel cannot be entertained for the first time in revision A I R 1925 Nag 77=22 N L R 118=80 Ind Cas 946 Point as to *res judicata* cannot be raised for the first time in revision A I R 1921 Mad 532=13 L W 289=61 Ind Cas 480 Objection as to non joinder cannot be raised in the first instance in a revision where right to objection accrued during the suit 46 Ind Cas 648 So also fresh question of limitation can not be raised A I R 1927 Cal 381=45 C L J 555=103 Ind Cas 69 Fresh question of jurisdiction cannot also be raised A I R 1927 Cal 381=45 C L J 279=102 Ind Cas 125 The general rule is that revision fresh point cannot be considered whether it be of law or of fact A 1925 Pat 461=6 P L T 795=87 Ind Cas 381, 40 C L J 197=A 1924 Cal 1036=84 Ind Cas 685, 62 Ind Cas 922=A I R 1922 Bom 149 56=23 Bom L R 802, but see 110 Ind Cas 63=31 M 672=A I R, 1923 5-8=55 M L J 274=3 L W 297, 35 P L R 109

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Ind Cas 1017 Order refusing to restore a case dismissed for default is revisable A. I. R. 1926 Nag 409=2 N. L. J. 145=9, Ind Cas 202. An order under s 34(d) is also open to revision by the High Court. A. I. R. 1923 Lah 89=4 Lah L. J. 272=79 Ind Cas. 173. Order bringing non-cooperating defendants on record at the instance of contesting defendants on appeal can be revised. A. I. R. 1924 Cal. 814=39 C. L. J. 73, is not ordinarily revisable. 74 Ind Cas. 4. Interfere in revision ordinarily with order of leave. View there was no good ground for a review of the order rejecting an appeal under Order XLI, r 10 2) 32 Ind. Cas. 86. An error in the appointment of a guardian *ad litem* is not ordinarily revisable. 3 P. L. W. 92=45 Ind Cas. 316. Order under s 34 of the Guardians and Wards Act are open to revision. 35 Ind Cas 587. The order of the Court rejecting an application for restoration of suit dismissed under Order IX, rr 2 and 3 is not open to revision. A. I. R. 1930 Lah 440=129 Ind. Cas 755.

An order setting aside an *ex parte* decree is not like a finding of the Court in a pending suit that it has jurisdiction to try the suit and cannot be set aside by High Court in revision. A. I. R. 1931 All 294=(1931) A. L. J. 377, see also 96 Ind Cas 782=A. I. R. 1926 Lah 637, 64 Ind Cas 527=A. I. R. 1922 All 441=19 A. L. J. 907, but see A. I. R. 1921 Ouh 142=24 O. C. 282=64 Ind Cas 303.

Not an appeal but a revision lies on an order granting mortgagee interest on mortgage money for the time during which sale proceeds of mortgage property are lying in Court. A. I. R. 1929 Rang 127=118 Ind Cas 416. Order granting adjournment without fixing time for payment of process fee followed by an order of dismissal for want of prosecution is a wrong order and can be set aside in revision. A. I. R. 1924 Nag 298=79 Ind Cas 123. Where the lower Court has postponed the consideration of an application for review, there can be no appeal in as much as the order can not be construed as a final order. The only remedy is revision under s 115 A. I. R. 1929 All 373=119 Ind Cas 561. Order that application could be filed being no order at all can be revised. A. I. R. 1928 Mad 215=51 M. 244=27 L. W. 320=54 M. L. J. 154=106 Ind Cas 660.

Orders as to (1) misjoinder of parties (2) non joinder of parties and (3) misjoinder of parties and cause of action can be revised. A. I. R. 1922 Mad 174=(1922) M. W. P. 316=16 L. W. 186=43 M. L. J. 277=70 Ind Cas 684. Ordinarily orders in rateable distribution cases are not revisable unless they involve any question of jurisdiction. 14 L. W. 582=(1921) M. W. N. 817=70 Ind Cas 20. An order refusing to restore a suit dismissed for default merely on the ground that it would fail on merits, is revisable under s 115 A. I. R. 1923 Mad 177=18 L. W. 837=(1922) M. W. N. 822=70 Ind Cas 38. Revision does not lie against an order rejecting an application for review except where an obvious in justice has to be denied. A. I. R. 1924 Lah 400=71 Ind Cas 160. Where a suit was dismissed by the trial court for want of jurisdiction and the lower Appellate Court remanded the case for action under Order VII r 8 the order of remand is revisable. A. I. R. 1923 Lah 524=73 Ind. Cas 755.

Where decree holder is prevented from reaping benefit of decree, revision is competent for the ends of justice. A. I. R. 1931 Mad 534=132 Ind Cas 301. Where the trial Court extended time for paying deficit court fee after passing of the decree the order can be set aside in revision. 129 Ind. Cas 732=A. I. R. 1931 All 318. The practice of the Lahore High Court is not to revise an order passed under S. 73 C. P. Code 134 Ind Cas 195.

Arbitration.—No revision is maintainable from an order setting aside an award. A. I. R. 1925 All 458=47 A. 121=8, Ind Cas 502. Filing award by Court having L. R. 164=83 Ind Cas 539. Revisable A. I. R. 1924 Sind 75=.

in terms of the award the Cal 53=129 Ind Cas 428= of arbitrators is no ground for revision. 117 P. W. R. 1916=107 P. W. R. 1916=70 P. L. R. 1917=34 Ind Cas 192. No revision lies against an order superseding an award



on misconstruction of terms of reference A I R 1922 All 64=20 A L J 117=65 Ind Cas 779 Where case is referred to arbitration without party's consent and without permitting him to file objection, the decree can be set aside in revision for want of jurisdiction A I R 1919 Lah 171=114 Ind Cas 712 Wrongful staying of suit

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interfere

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should be superseded or should be continued is settled by the Court directing that the arbitration should continue and another person is appointed to act as arbitrator the order is one deciding a case within the meaning of s 115 A I R 1929 All 144=51 A 501=(1919) A L J 182=11, Ind Cas 611 An order under the last portion of rule 17(4) Sch II, directing a party to nominate an arbitrator passed without an order under earlier portion of the sub rule ordering an agreement to be filed is liable to be revised A I R 1926 Lah 505=94 Ind Cas 483

vice and orders when they are placed in

1916=11 P W R 1916=31 Ind Cas 700

part of award is valid and is separable is at

most an error of law 66 P R 1915=146 P W R 1915=31 Ind Cas 80 No revision will lie in respect of order setting aside an award by the arbitrators as it is an interlocutory order A I R 1929 Oudh 493=6 O W N 813=5 Luck 397=123 Ind Cas 224, but see A I R 1929 Lah 367=110 Ind Cas 302

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192 Refusal to hear objections to

time is refusal to exercise jurisdiction

115 2 L W 1115=31 Ind Cas

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irregularity 3 O L J 583=37 In

with a decree passed in terms of

63 Ind Cas 243 If award is impeached on reference being bad proceedings are

open to revision A I R 1928 All 740=50 A 955=26 A L J 1009=110 Ind

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decree passed in accordance with

The High Court has power to

L R 1454=45 B 832=59 I

Court are open to revision 9 S L R 183=34 Ind Cas 845

Where decision by arbitrators is on points not referred to, the decree is based

on such decision is revisable A I R 1926 Mad 201=49 M L J 523=91 Ind

Cas 745 Revision lies on award decree also A I R 1925 Bom 341=49 B 53=27

Bom L R 423=87 Ind Cas 910 Refusing to hear objection to award calls for

interference in revision A I R 1924 All 788=46 A 686=22 A L J 6,6=82 Ind

Cas 16 But refusal to pass decree on valid partial award being interlocutory order

is no ground of revision A I R 1928 Cal 174=105 Ind Cas 9, Order making

an award not appealable under para 16 Sch II is not revisable A I R 1917 Pat

135=7 P L J 759=95 Ind Cas 321 Order superseding an award in a

pending case and directing the suit to proceed on the merits is not revisable A I R

1925 All 566=47 A 916=23 A L J 656=89 Ind Cas 173

Where a Court accepting an award has erroneously decided some of the

questions of law and of fact as to the validity of an award delivered out of

s 115 would not apply 4 Pat. L J 265=50 Ind Cas 52 Where the Court does not allow a party the time which the law allows him under para 16 to make objections, but proceeds to pass at once a decree in accordance with the award, the High Court may exercise its discretion under s 115 A I R 1921 Bom 32=45B 832=59 Ind Cas 811 But if a Court has jurisdiction to decide objection to an award even if it has come to a wrong conclusion on a question of law or fact his decision cannot be interfered with in revision A I R 1923 Lah 194=73 Ind Cas 558, see also A I R 1923 Oudh 235=26 O C 107=74 Ind Cas 401 An order refusing to pass a decree in terms of award but continuing the hearing of the suit by the Court, instead is an interlocutory order and is not revisable A I R 1923 Bom 402=25 Bom L R 443=47 B 421=73 Ind Cas 464 If objection to an award on the ground of non joinder is not taken memorandum of objection to the award nor is it shown that parties not joined where necessary High Court will not interfere in revision with the decision of lower Court on their points A I R 1923 Mad 502=44 M L J 359=17 L W 424=32 M L T 298= (1923) M W N 296=73 Ind Cas 202 A revision lies where Court which passed the decree on award has committed an error in procedure such for example as proceeding on misconception of evidence or has misused the jurisdiction prescribed by the Civil Procedure Code in procedure justifying the interference in revision A I R 1921 Lah 396=22 P L R 1922=64 Ind Cas 363 Where the applicant wishes to challenge the validity of the order of reference to arbitration a revision is competent 54 All 297=A I R 1932 All 665, see also 26 P L R 368=139 Ind Cas 596=A I R 1932 Sind 128 In cases of awards a Court should not interfere unless it finds out not only an illegality committed but some substantial harm resulting from that illegality 1931 M W N 961=34 L W 725=61 M L J 761 Where a Court accepts an award filed by the arbitrator without giving the parties time to file exceptions to the award there is material irregularity in the

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an illegality or acted with material irregularity and the High Court could interfere in revision 34 P L R 34=A I R 1933 Lah 139=141 Ind Cas

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his enquiry in the absence of the objector and the latter applies to the Court to summon the arbitrator as a witness to substantiate his allegation the refusal of the Court so to do is not only a material irregularity but is an illegality and the order passed by the Court filing an award and passing a decree on its basis is improper 34 P L R 397=145 Ind Cas 329=A I R 1933 Lah 538

No revision lies, against an order passed an award made on a reference to arbitration suit to proceed 34 Bom. L R 376=A I R 1933 A order setting aside an arbitration award pendency of the suit, and the decision of the question whether the award is valid or invalid does not amount to a decision of a case within the meaning of s 115 53 A 1006=1931 A L J 242=156 Ind Cas 568=A I R 1932 A 452 Revision

against a decree in accordance with award is not competent even when the validity of award is challenged on account of the invalidity of the reference 136 Ind Cas 11=33 P L R 163=A I R 1932 Lah 239, see also 9 O W N 191=137 Ind Cas 151=A I R 1932 Oudh 156, A I R 1931 A L J 1087=A I R 1932 All 154 *contra* 54 A 297=A I R 1932 All 665 Where the ground of attack of an award has failed and the court has refused to set aside the award under para 16 (i) of the second Schedule a decree must be passed in accordance with the award and a finality attaches to such a decree and the matter can not be allowed to be challenged in revision 134 Ind Cas 30=1931 A L J 906

**Amendment of plaint**—An order vi rule 17 is open to revision 188=2 U P L R (Pat) 29=55 Ind 1925 Nag 195=78 Ind Cas 510 a plaintiff to amend his plaint can be revised A I R 1935 Mad 188=88 Ind Cas 278, A I R 1926 Mad 1124=24 L W 400=(1927) M W N 256, but see A I R 1926 Cal 112=30 C W N 928=98 Ind Cas 751, A I R 1927 Lah 847=9 Lah L J 357=103 Ind Cas 701, 37 C W N 1093 An order directing that a plaint should be amended as being bad for misjoinder is revisable 4 N L J 58=63 Ind Cas 419 But where amendment of suit or involve any material injustice to it is not revisable A I R 1922 Mad 321 Ind Cas 167 Allowing amendment of

cause of action and an order allowing such amendment is not liable to be set aside in revision A I R 1930 Lah 559=125 Ind Cas 379 Where amendment of a plaint was ordered subject to the payment of costs and the defendant after having drawn out the cost objected to the amendment in revision *Hell* the revision was unsustainable 1932 M W N 1118 Though an order refusing amendment of the plaint is an order made in the exercise of discretion by the Lower Court and will not ordinarily be reviewed in revision yet there is no hard and fast rule that in no circumstances will the discretion exercised by a judicial officer be revised A L R 1934 Cal 104=A I R 1934 Cal 107

sing amendment of decree

A I R 1924 Lah 621=76

h 400 Refusal to order the

amendment of a decree as being uncalled for is tantamount to a refusal to exercise the jurisdiction so as to justify revision. 16 A L J 749=47 Ind Cas 830 Refusal of amendment of decree under s 151 C P Code on the ground of laches is

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decree and decree is drawn in accordance with earlier and operative part of the

s 115 3 A W R 474

not interfere  
is necessary  
trial Court s

15 Ind Cas.

812, see also A I R 1929 Oudh 148=6 O W N 418=116 Ind Cas 38, A I R 1930 Pat 592=11 P L T 6=8=128 Ind Cas 790, A I R 1928 Lah 414=10 Lah L J 161=108 Ind Cas 391, 50 Ind Cas 58, 38 Ind Cas 133=(1917) M W N

550, but see A I R 1930 Nag 51=121 Ind Cas 672 Order refusing application to implead party as co respondent under Indian Divorce Act is not open to revision A I R 1928 Cal 114=107 Ind Cas 475 Order refusing application to implead party as co respondent under Indian Divorce Act is not open to revision A I R 1928 Cal 114=54 C 1038=107 Ind Cas 475 Where the lower Court refused in the exercise of its jurisdiction, to add a party as plaintiff, this section does not apply. 93 Ind Cas 932=4 Pat 723=7 P L T 499 An order rejecting an application under order 1 rule 10, on the ground that it was too late cannot be revised 64 Ind Cas 563 In a suit for partition among co sharer landlords, if tenants are not made parties the order is not open to revision A I R 1923 Mad 690=18 L W 198=(1923) M W N 403=45 M L J 703=76 Ind Cas 207 But finding that heirs of *Ex parte* decree holder are not necessary parties to proceedings for setting aside decree cannot be interfered with A I R 1926 Pat 20=90 Ind Cas 329 An order refusing to make a transposition of the parties is open to revision only when such refusal is expressly based on a supposed jurisdiction in the court Cal 160=5 L W 207 An order that the court has exercised jurisdiction, rule 10 the High Court can be revised, widow as the administratrix of the estate, to be made a co-plaintiff on the ground that the widow was guilty of laches and collusion and widow admits the fact of adoption but denies authority refusal to join the person as a plaintiff entitles the person to revision under s 115 44 Ind Cas 564

**Order as regards court-fee—**Lower Court's order that the court fee paid is

is not open to revision M L J 953=4 Ind Cas 842, 929) M W N A I R 1926 3, 56 M 744=revision lies to the fee and plaintiff can move the High Court forthwith without waiting for a stay order Ind Cas 831 see also A I R 1929 Pat 427=10 P L T 464=119 Ind Cas 78 A I R 1928 Mad 416=51 M 664=55 M L J 345=27 L W 286=108 Ind Cas 539 A I R 1927 Nag 756=10 N L J 106=103 Ind Cas 268, A I R 1926 Mad 678=23 L W 581=51 M L J 67=96 Ind Cas 129 A I R 1925 Mad 713=48 M L J 688=21 L W 649=(1925) M W N 276=87 Ind Cas 660, 71 Ind Cas 173=A I R 1923 Mad 270=(1922) M W N 831=17 L W 623=71 Ind Cas 173, A I R 1923 Mad 270=17 L W 623=(1922) M W N 831=71 Ind Cas 173, A I R 1921 Pat 180=(1921) Pat 166=56 Ind Cas 649 but see 120 P R 1919=53 Ind Cas 427 51 Ind Cas 581 1 P L T 5=55 Ind Cas 786, 56 Ind Cas 649=5 P L J 400=1 P L T 268, A I R 1922 Nag 128=65 Ind Cas 327, A I R 1926 Mad 768=23 L W 581=50 M L J 497=94 Ind Cas 424, A I R 1927 Mad 1021=53 M L J 452=39 M I T 220=104 Ind Cas 145 Erroneous decision about court fee is revisable A I R 1924 Nag 105=7 N L J 91=81 Ind Cas 643 Orders of court fee involve questions of jurisdiction and hence are revisable 134 is not competent plaintiff in as much subsequent order 1482 Order of case of arbitrary and not based 9, see also 142 Ind Cas 195=1933 M W N 1128=A I R 1933 Pat 367 Where a court has come to a reasonable finding as regards the insufficiency of court fees, it is not open to revision 143 Ind Cas 54=16 N L J 29=22 N L R 125=A I R 1933 Nag 107 (F B)

**Sanction to prosecute—**An order passed by a Civil Court under s 476 Cr Pro Code can be revised only under s 115 16 N L R 23=21 Cr L J 270=3, Ind Cas 286 A I R 1923 Oudh 119=9 O & A L R 103=24 Cr L J 781=9 O L J 593=74 Ind Cas 445 An order under s 476 Cr Pro Code, directing the trial of a person under s 193 I P Code is open to revision A I R 1926 All 438=23 Cr L J 291=66 Ind

Cas. 515 An order under s 46 Cr Pro Code, passed by a Civil Court can be revised only if it fails to specify the charges 38 A 695=14 A L J 814=18 Cr L J 4=36 Ind Cas 856 Prosecution order of collector under s 476 while acting under s 70 is not open to revision by High Court 14 A L J 1077=18 Cr L J 317=38 Ind Cas 419 An order passed by a Civil Court under s 195 Cr Pro Code can be revised under s 115 only 25 C L J 401=18 Cr L J 793=21 C W N 64=41 Ind Cas 313, 19 Ind Cas 197=40 C 477, but see 17 Cr I J 184=33 Ind Cas 824 No revision lies against an order directing prosecution for an offence under s 195 A I R 1922 Oudh 200=74 O C 357=23 Cr L J 228=66 Ind Cas 68, but see 32 Ind Cas 330=17 Cr L J 42=18 M L T 391 Sanction for prosecution under s 181 Penal Code by an officer exercising Small Cause powers must be decided to be of a civil nature and revision lies to the High Court under s 115 16 A L J 92=20 Cr L J 19=48 Ind Cas 477 Where there has been no excess of jurisdiction or failure to exercise jurisdiction in refusing sanction under s 195 Cr Pro Code High Court will interfere in revision A I R 1923 Cal 45=36 C L J 265=26 C W N 1016=23 Cr L J 665=69 Ind Cas 153, A I R 1924 Cal 641=24 Cr L J 170=71 Ind Cas 49, A I R 1926 Sind 215=20 S L R 90=27 Cr L J 11 R 1923 All 490=71 Ind Cas 617, 90 Ind Cas 443 P L T 1923=26 Cr L J 1565=90 Ind Cas 443 Criminal Court but admitted in appeal, appellate order is revisable A I R 1927 M. 334=28 Cr L J 296=25 A L J 369=47 A 536=100 Ind Cas 376, see also A I R 1928 Cal 237=35 C 836=47 C L J 277=102 Ind Cas 211 But where the appellate Court confirms the order of refusal or ordinarily interfere Ind Cas 48

and something is omitted from the written statement that of itself constitutes offence under s 193 Penal Code the High Court is not only not justified in exercising but is bound to exercise its power in revision to set aside the order A I R 1930 Cal 639=32 Cr L J 238=127 Ind Cas 111 If the act of the executing court in enquiring under s 46 is *ultra vires* a revision is competent 32 P L R 46=131 Ind Cas 216=32 Cr L J 617=A I R 1931 Lah 105

Leave to sue as pauper.—An order admitting an application for leave to sue as pauper is not open to revision. A I R 1922 All 208=20 A L J 471=67 Ind Cas 641, *contra* A I R 1926 Mad 958=96 Ind Cas 175, A I R 1923 Oudh 118=9 O L J 610=74 Ind Cas 344 Order of rejection of application to sue as pauper if irregular is open to revision A I R 1927 Nag 340=104 Ind Cas 198, see also A I R 1927 Mad 441=52 M L J 330=101 Ind Cas 18, A I R 1927 Lah 56=93 Ind Cas 879 A I R 1925 Pat 30=3 Pat 275=(1925) Pat 134=6 P L R 207=83 Ind Cas 871 An order refusing leave to sue *in forma pauperis* is not revisable A I R 1922 All 1=20 A L J 55=44 A 248 A I R 1926 All

may be wrong A I R 1925 Oudh 74=11 O L J 568=79 Ind Cas 922 Where on material before it court finds that applicant under order 33 is not a pauper in

pauper the High Court will not interfere A I R 1930 Rang 324=128 Ind Cas 848, see also A I R 1929 Lah 746=121 Ind Cas 81 Taking evidence from the to the conclusion whether of order XXXIII amounts s 115 A I R 1923 All Where an applicant has been no revision lies A I R

1931 All 659=(1931) A L J 727, but an order refusing permission to bring a suit or to appeal as a pauper can be revised in an appropriate case 9 Rang 86=A I R 1931 Rang 129 9 Rang 92=132 Ind Cas 707=A I R 1931 Rang 131, A I R 1931 Rang 318 In a proper case the High Court will interfere in revision against an order of a petition of an application for leave to sue as a pauper 34 Bom L R 1273=A I R 1932 Bom 584, but see A I R 1934 Lah 401

**Decree under s 9 of the Specific Relief Act**—A revision is competent from a decree passed in a suit under s 9 of the Specific Relief Act 53 A. 414=129 Ind Cas 559=A I R 1931 All 205, but see 8 O W N 1341, A I R 1934 All 541

**Insolvency proceeding**—Where the lower appellate Court modified an order of conditional discharge in the absence of the Official Receiver who had not been impleaded and the matter was taken up to the High Court but the official Receiver did not appear *Held* that though the official Receiver was a necessary party to the appeal the *H* and at the instance of absence 132

Ind Cas 526=A I R 1934 All 447 insol  
**Insolvency Act** the fact that the wrong party was called upon to begin, taken alone might not be sufficient ground for a new trial But where the trial Judge has taken *his mind is coloured*

Lah 672=32 P L R 476=132 Ind Cas 525

**Discretion use of, by lower Court**—An improper exercise of discretion by the lower Court can not be a ground for revision 29 C L J 362=51 Ind Cas 233 The discretion of a Judge granting or refusing review of his judgment can not be revised 40 C L J 61 100 J 151=74 Ind Cas 351=A I R 1913 Oudh 153 Nor t discretionary power of  
 the lower C 41, rule 27 33 P. L R  
 v power of the lower

330=137 Ind Cas 330  
 appellate Court under order

275=A I R 1932 Lah 360  
 tion in breaches of contracts

Cas 121 An error in the exer

s 115 25 C W N 555=55 Ind Cas

ing adjournment on condition that plaintiff paid certain damages and that in a case

was not to be taken up unless amount was paid A I R 1921 Oudh 23=24 O C

215=64 Ind Cas 211 Order for payment of adjournment costs in contravention

of provision of law is not open to revision except when the amount awarded is

excessive or unreasonable 57 Ind Cas 506 An order refusing to admit additional

evidence offered three days after the argument was closed under order 41, rule 27

is not revisable 67 Ind Cas 252 Order extending time for payment of Court fees

and costs to defendant on allowing amendment of plaint is not open to revision

36 C W N 869=140 Ind Cas 373 Order refusing to strike out plaint

on satisfaction of the decree can not be revised 56 C L J 1=

A I R 1932 Cal 831 The High Court will not interfere unless the lower Court

has exercised its discretion in such a manner that it was obviously wrong and

unjust for it to make the order he did The lower Court has a discretion to amend

the decree under s 152 or not 10 O W N 958=A I R 1933 Oudh 425 Where

order under order 23 rule 1 is passed in exercising discretion the order cannot be

revised A I R 1906 All 548=24 A L J 721=96 Ind Cas 480 A long delay

by the defendants in referring the matter to arbitration justifies the Court in refusing

to enforce the clauses of arbitration A I R 1933 Lah 1007 It is for the trial

and the High Court will not

re the lower Court has passed an

decision vested in it and upon

it with in revision 14 P L T

use of its discretion the lower

Mad 10=32 L W 446=59 M L J 710=129 Ind Cas 36 Amendment or alteration of issues made before passing of decree being discretionary cannot be made ground for revision. (1918) M W N 836=113 Ind Cas 313 Order of refusal to appoint curator for delin can be no ground of revision A I R 1927 Nag 253=102 Ind Cas 476

Revision will lie against ignorant and perverse exercise of discretion 20 C W N 1080=1 Pat L J 46=3 Pat L W 55=37 Ind Cas 129, A I R 1923 Lah 506=5 Ind Cas 487, 80 Ind Cas 708=A I R 1925 Cal 293, A I R 1931 Cal, 263=34 C W N 578=127 Ind Cas 341 Entertaining application after time due to incorrect exercise of discretion is open to revision A I R 1927 All 386=109 Ind Cas 727 Order of extending time under s 14) C P Code is not revisable A I R 1916 Nag 156=8 Ind Cas 419 Revision lies where there has been a misuse of law coupled with misunderstanding the nature of judicial discretion A I R 1922 Mad 332=14 L W 642=(1921) M W N 799=42 M L J 97=30 M L T 172=45 M 191=69 Ind Cas 951 Order rejecting application to allow further evidence without exercising judicial discretion can be set aside in revision A I R 1924 Rang 318=3 Bur L J 125 Order granting time for specific performance in wrongful exercise of discretion is alone open to revision A I R 1927 Rang 311=5 Rang 615=6 Bur L J 216=10, Ind Cas 467 Order for security for the full amount of the decree under order 21 r 9 being within the discretion of the Court no revision will lie unless the discretion was improperly used A I R 1919 Sind 110 116 Ind Cas 101 Exercise of jurisdiction in absence of circumstances supposed to exist is revisable A I R 1927 All 704=25 A L J 994=103 Ind Cas 729 Where discretion is given to a Court, it has to exercise judicially and not arbitrarily and it is open to the High Court to interfere in revision where such Court appears to have exercised this discretion without applying its mind to the case A I R 1933 All 927

**Cost**—The question of costs is principally within the discretion of the court below and unless the High Court is satisfied that this discretion has been exercised arbitrarily it will not interfere in revision with that discretion 144 Ind Cas 76 C A I R 1933 All 311 Mistake regarding costs is no ground for revision A I R 1928 Lah 800=10 Lah L J 401=109 Ind Cas 476

**Ex parte decree**—  
passed by a court in default  
case decided under s

**Appeal**—In all cases where the records have been called for *suo motu* or on the application of one of the parties no appeal lies to a Division Court under Cl 10 from a decision of a Judge passed in the exercise of revisional jurisdiction irrespective of whether the assumption of jurisdiction is justified or not and whether the order is right or not on its merits. 12 P L T 599=A I R 1931 Pat 292=133 Ind Cas 676=10 P 428

**Withdrawal of suits and revision**—An order allowing the plaintiffs to withdraw their suits as against certain of the defendants can be revised A I R 1930 All 863=128 Ind Cas 827 The High Court can interfere in revision where withdrawal of suit has been allowed without reasons justified by order 23 rule 1 (2) 48 Ind Cas 1005, 117 P W R 1918=46 Ind Cas 181, 5 Pat L W 104=3 Pat L T 460=(1918) Pat 220=46 Ind Cas 79, 4 P L W 233=3 P L J 630=44 Ind Cas 406, 43 Ind Cas 316, 6 L W 1=(1917) M W N 719=41 Ind Cas 281, 32 Ind Cas 402, 15 A L J 10=31 Ind Cas 617, 61 Ind Cas 584=A I R 1922 Nag 84=18 N L R 30, A I R 1922 Pat 44 (F B)=3 P L T 80=1 Pat C 64 Ind Cas 337, 61 Ind Cas 639=A I R 1921 Pat 42=6 P L J 112=1 L T 634, 64 Ind Cas 948=A I R 1922 All 185=20 A L J 90, A I R Lah 97=68 Ind Cas 753 70 Ind Cas 484=A I R 1922 Cal 58 '9

L R 3=72 Ind Cas 1034, A I R 1924 Oudh 107=72 Ind Cas 1034, A I R 1927 All 701=25 A L J 870=103 Ind Cas 229, A I R 1926 Mad 863=23 L W 525=94 Ind Cas 983, A I R 1925 Oudh 140=11 O L J 351=79 Ind Cas 1031, A I R 1925 Oudh 61=78 Ind. Cas 121 Where a Court can entertain an application under order 23 rule 1, and come to the conclusion that to be drawn and direct the suit to be of the defendants as to costs the order of the court exercised its discretion wrongly in favour of the plaintiff (1930) A L J 1209=125 Ind Cas 580, see also 40 A 612, A I R 1927 All 750=25 A L J 858=103 Ind Cas 372 An order granting leave to withdraw suit if improper it will be interfered with in revision 64 Ind Cas 556, A I R 1929 All 683=1929 A L J 961=119 Ind. Cas 859, 39 C L J 371=A I R 1924 Cal 751=84 Ind. Cas 372 50 A 199=25 A L J 943=4 I R 19-3 All 98=106 Ind Cas 435, 60 Ind Cas 899=A I R 1921 All 65=19 A L J 47 Order permitting plaintiff to withdraw the suit with per be revived if Court is acting with jurisdiction Cas 112=A I R 1924 All 121, 92 Ind Cas J 313, 46 Ind Cas 71=40 A 612=16 A L J N 263=127 Ind Cas 71, 10 O W N 311= Cas 222 An order allowing the plaintiffs to gain of the defendants can be the subject of revision 128 Ind Cas 827=A I R 1930 All 863

**Delay**—A High Court will refuse to interfere in revision where there has been undue delay A I R 1921 Oudh 141=24 O C 282=64 Ind Cas 303 Delay in applying for revision unless good cause is shown is fatal A I R 1929 Oudh 383 A I R 1925 Oudh 608=86 Ind Cas 329, 77 Ind Cas 115 Delay for no fault of applicant A I R 1928 Mad 528=51 M 672=55 M L J 274=28 L W 297=110 Ind Cas 63 A delay of three months has been (1922) M W for relief in Ind. Cas 570 hes. 4 O L J

551=43 Ind Cas 470 L R 2A 248 Rev Time for filing revision is 45 days in C P and Berar A I R 1926 Nag 65=89 Ind Cas 933 Revision application should not be admitted beyond the time allowed for appeals except for special reasons A I R 1930 Oudh 496=7 O W N 894=128 Ind Cas 739 Article 181 does not apply to an application made to High Court in revision of an order of a Criminal Court of inferior jurisdiction These powers of revision are exercised by High Court quite irrespective of any right on the part of the aggrieved party to move the Court and no time limit is placed on High Court's power of revision in either criminal or civil cases A I R 1930 Oudh 401=7 O W N 663=126 Ind Cas 395

It is not the usual practice of the High Court to interfere in revision after great after the date of the order R 1933 Lah 175 Legally a Ind Cas 482=A I R 1933 civil revisions are entertained of the order sought to be revised A I R 1933 Pat 582

## PART IX

### SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS

116 [S 681] This Part applies only to High Courts which are or may hereafter be established under the \* Indian High Courts Act, 1861†† [or the Government of India Act, 1915‡]

\* See now the Government of India Act, 1915 (5 and 6 Geo 5, Ch 61)

† 24 & 25 Vict, c. 101

‡ These words were inserted by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

§ 5 & 6 Geo 5, c. 61.



Application of Code to High Courts

117 [S 632] Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts

Scope—Unless specifically excluded or superseded by rules provisions of Code apply to original jurisdiction of Chartered High Courts A I R 1928 Mad 38=34 M L J 263=27 L W 760=109 Ind Cas 173. Provisions of Code apply to Chartered High Courts in the exercise of civil jurisdiction including Letters Patent Appeal A I R 1931 All 244=1931 A L J 187 (R B)=132 Ind Cas 24 In the absence of any rule framed by the High Court in exercise of the power (saved by s 129 of the Code) to regulate its own procedure in its Original Side Civil procedure Code applies by force of secs 117 120 and 121 of the Code, to the jurisdiction exercisable under it of the Letters Patent, upon appeal from a judgment passed by a Judge of the High Court on its Original Civil Side 25 O W N 557=481 A 76=48 C 481 3 C L J 507=11 A L J 781=23 Bom L R 681=60 Ind Cas 274=40 M L J 303 (P C) see also 43 C 243=20 C W N 140

118 [S 633] Where any such High Court considers it necessary

Execution of decree before ascertainment of costs

that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs,

and as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119 [S 634] Nothing in this Code shall be deemed to authorise any

Unauthorised persons not to address Court

person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys

Scope—Section 119 is not restricted to admission or professional conduct A I R 1928 Mad 472=107 I C 206 In the original side of the Calcutta High Court,

and Madras, *provisions not applicable to Cause Courts* 7 W R 228

Provisions not applicable to High Court in original civil or insolvent jurisdiction

sections 16, 17 and 20 \*

Scope—Section 20 is not applicable to High Court on original side A I R 1923 Mad 272=(1922) M W N. 811=72 Ind Cas 982, see also 13 B 520=16 I A. 156

## PART X.

### RULES

121. [N o]. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Effect of rules in First Schedule

\* Sub section (2) of Section 120 was repealed by the Presidency Insolvency Act, 1909 (3 of 1909) s 127 and Sch. III

L R 3-72 Ind Cas 1034, A I R 1924 Oudh 107=72 Ind Cas 1034, A I R 1927 All 701=25 A L J 870-103 Ind Cas 229, A I R 1926 Mad 863=23 191, Oudh 140=11 O L J 351=79 =78 Ind Cas 121 Where a Court can rule 1 and come to the conclusion that to be drawn and direct the suit to be of the defendants as to costs, the order the court exercised its discretion wrongly in favour of the plaintiff (1930) A L J 1209=125 Ind Cas 580, see also 40 A 612, A I R 1927 All 750=25 A L J 838=103 Ind Cas 372 An order granting leave to withdraw suit if improper it will be interfered with in revision 64 Ind Cas 556, A I R 1929 All 633=1929 A L J 951=119 Ind Cas 859, 39 C L J 371=A I R 1924 Cal 751=84 Ind Cas 372, 50 A 199=25 A L J 943=A I R 1928 All 98=106 Ind Cas 435, 60 Ind Cas 899=A I R 1921 All 65=19 A L J 47 Order permitting plaintiff to withdraw the suit with permission to bring a fresh suit cannot be revived if Court is acting with jurisdiction 58 Ind Cas 134, see also 74 Ind Cas 112=A I R 1924 All 121, 92 Ind Cas 558=A I R 1926 All 294=24 A L J 313, 46 Ind Cas 71=40 A 612=16 A L J 492, A I R 1920 Cal 424=34 C W N 263=127 Ind Cas 71, 10 O W N 311=A I R 1933 Oudh 255=145 Ind Cas 222 An order allowing the plaintiffs to withdraw their suits as against certain of the defendants can be the subject of revision 128 Ind Cas 827=A I R 1930 All 863

**Delay**—A High Court will refuse to interfere in revision where there has been undue delay A I R 1921 Oudh 141=24 O C 282=64 Ind Cas 303 Delay in applying for revision unless good cause is shown is fatal A I R 1929 Oudh 383 A I R 1926 All 228=97 Ind Cas 993, A I R 1925 Oudh 603=86 Ind Cas 329, A I R 1923 Oudh 272=10 O L J 205=77 Ind Cas 115 Delay for no fault of applicant is no bar to revision application A I R 1928 Mad 528=51 M 672=55 M L J 274=28 L W 297=110 Ind Cas 63 A delay of three months has been excused by the High Court A I R 1922 Mad 63=16 L W 760=(1922) M W N 130=65 Ind Cas 732 A party aggrieved must come to High Court for relief in revision at the earliest possible moment and with no ulterior purpose 39 Ind Cas 570 An application for revision can be refused on the ground of plaintiff's laches 4 O L J 551=43 Ind Cas 470 L R 2A 248 Rev Time for filing revision is 45 days n C. P. and Berar A I R 1926 Nag 65=89 Ind Cas 933 Revision application should not be admitted beyond the time allowed for appeals except for special reasons A I R 1930 Oudh 496=7 O W N 894=128 Ind Cas 739 Article 181 does not apply to an application made to High Court in revision of an order of a Criminal Court of inferior jurisdiction These powers of revision are exercised by High Court quite irrespective of any right on the part of the aggrieved party to move the Court and no time limit is placed on High Court's power of revision in either criminal or civil cases A I R 1930 Oudh 401=7 O W N 663=126 Ind Cas 395

It is delay in revision after great delay in the date of the order in question 333 Lah 175 Legally a revision Cas 482=A I R 1933 Peshi 51 But it is a matter of uniform practice that civil revisions are entertained only if they are filed within three months of the date of the order sought to be revised A I R 1933 Pat 582.

## PART IX

### SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS

116. [S 631] This Part applies only to High Courts which are or may hereafter be established under the \* Indian High

Part to apply only to certain High Courts, Courts Act, 1861†; [or the Government of India Act, 1915‡]

\* See now the Government of India Act, 1915 (5 and 6 Geo 5, Ch 61)  
† 24 & 25 Vict. c. 103

‡ These words were inserted by s 2 and Sch of the Amending Act, 1916 (13 of 1916)  
§ 5 & 6 Geo 5, c. 61.

119 [S<sup>c</sup> 634] Nothing in this Code shall be deemed to authorise any Unauthorised person is not to address Court person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys

Scope—Section 119 is not restricted to admission or professional conduct A I R 11-8 Mad 472=107 I C 206 In the original side of the Calcutta High Court is applicable so far In Madras Advocate habid High Court an

50 C 986 see also 37 C 853 24, 37 Ind Cas 699 In the Barristers and Attorneys are e and Madras, pleaders and v Cause Courts 7 W R 228

Provisions not applicable to High Court in original civil or insolvent jurisdiction

120 [S<sup>c</sup> 633, 639] (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20 \*

Scope—Section 20 is not applicable to High Court on original side A I R 1923 Mad 272=(1922) M W N. 811=72 Ind Cas 982, see also 13 B 520=16 I A. 156

## PART X

### RULES

121 [New] The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

\* Sub-section (2) of Section 120 was repealed by the Presidency towns Insolvency Act, 1909 (3 of 1909) s 127 and Sch III

## 122 [New] High Courts established under the Indian High Courts

Power of certain High Courts to make rules Act, 1861, \* [for the Government of India Act, 1915†] and the Chief Courts of Oudh and Sindh, § may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule

Scope—Rules made by the High Court under the powers conferred by C P Code and published in the local Official Gazette have the force of law 5 Bom L R

16 Ind Cas 521=245 P L R 1912

High Court for regulating its own procedure

12 Ind Cas 18, 16 Ind Cas 521

But it must not be inconsistent with the code 32 B 14, 4 Ind Cas 1154 High Court has no power to so frame the rules as to override the provisions of the code or Letters Patent A I R 1930 All 558=(1930) A L J 1126=128 Ind Cas 238 Rules framed under this section may apply to both sides of High Court unless expressly excluded A I R 1928 Bom 125=52 B 159=50 Bom L R 402=103 Ind Cas 79, High Court has power merely to make rules and orders for the purposes of regulating proceedings in the civil cases A I R 1926 Rang 1=3 Rang 546=4 Bur L J 185 (F B) Chief Court of Oudh is a High Court A I R 1928 Oudh 89=4 O W N 1114 Rule in conflict with clear provision of the code is *ultra vires* A I R 1925 Oudh 492=28 O C 169=85 Ind Cas 455 Rule framed under s 122 C P Code excluding application of s 5 of Limitation Act to petition under order IX rule 3 is *ultra vires* A I R 1925 Mad 14 (F B)=47 M 824=47 M L J 409=20 L W 352, 35 M L T 43=(1924) M W N 682=80 Ind Cas 877 Sections 122 and 123 do not apply to Patna High Court and rules

Bom L R 484=122 Ind Cas 76 Rule framed by Lahore High Court requiring first court's judgment to accompany memo of second appeal is *ultra vires* A I R

Cas 33 Rule extending s 55 of the Limitation

3 is *ultra vires* A I R 1925 Mad 14 (F B)

W 332=(1924) M W N 682=80 Ind Cas

101 on A I R 1923 Lah 96=68 Ind Cas

777 Rule framed by the Allahabad High Court requiring copy of judgment to accompany memo of second appeal is *ultra vires* A I R 1921 All 23=43 A

660=19 A L J 598=63 Ind Cas 338 Patna High Court rules Chapter VII, rule

6 is not under s 172 and second appeal is not barred if copy of the first court's

1921 Pat 509=(1923) Pat 19=74 Ind Cas

Court has power to annul, alter or add to any

a new rule that has been made is to some

existing rule the new rule must by implication

be deemed to have annulled or altered that rule 139 Ind Cas 836=1931 A L J

865=A I R 1931 All 567 (F B)

## 123 [New] (1) A Committee, to be called the Rule Committee, shall

Constitution of Rule Committees in certain provinces be constituted at [the town which is the usual

place of sitting of each of the High Courts] and Chief Court of Sindh" § referred to in

section 122]

\* 24 and 25 vict C 104

† The words were inserted by s 2 and Sch of the Amending Act 13 of 1916

‡ 5 and 6 Geo 5 c. 61

§ Substituted by Act 34 of 1926

for the words each of the towns of Calcutta, and Rangoon by s 2 and Sch of the Amen

by Act VIII of 1919 and the words 'and of the Chief Court' were subsequently repealed by s 3 and Sch. II of the Repealing and Amending Act, 1923 (VI of 1923)

to be a rule by which the  
 (5) each such Committee who shall be  
 appointed shall receive such remunera-  
 tion the Governor General in Council  
 or by the Local Government, as the case may be.

Scope—Sections 122 and 123 do not apply to Patna High Court and rules made  
 by it though not submitted to any Rule Committee are not *ultra vires*. 5 P. L. J  
 749—1921 Pat 97=2 P. L. T 112=60 Ind Crs 28, = A. I. R. 1921 Pat 83

124 [Ac v] Every Rule Committee shall make a report to the  
 Committee to report to High Court established at the town at which  
 Court it is constituted on any proposal to amend,  
 or to make new rules, and before making any rules under section 122 the  
 High Court shall take such report into consideration

125 [Ac v] High Courts other than the Courts specified in section 122,  
 may exercise the powers conferred by that  
 section in  
 conditions  
 Judicial Commissioner of Coorg, the  
 other cases the Local Government, may determine]

Provided that any such High Court may, after previous publication, make  
 a rule extending within the local limits of its jurisdiction any rules which  
 have been made by any other High Court

Scope—Where the fact of Patna High Court rule adopting the Calcutta High  
 Court rules is published there is no necessity of publishing the rules in their entirety  
 61 Ind Crs 666—A. I. R. 1921 Pat 428=2 P. L. T 45

\* The words "(in Burma)" were substituted for the original words "(in the  
 or Burma)" by s 2 and Sch 1 of the Repealing and Amendment Act 1913 (XII of 1913)  
 of the Repealing and Amendment Act 1923 (XI of 1923)  
 † These words were substituted for the words "as the Governor General in Council  
 of 1920)

**126** [New] Rules made under the foregoing provisions shall be subject to the previous\* [approval] of the following authorities, namely —

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861, † [for the Government of India Act, 1915], to the \* [approval] of the authority prescribed by ‡ [the proviso to section 107 of the latter Act] for rules made under that section,
- (b) if the rule is made by any other High Court, to the \* [approval] of the Local Government

**Scope**—Rules made by High Court for conduct of its own business or regulation of Pleadings and hearing before it are not subject to sanction of Local Government  
A I R 1908 Mad 472=109 Ind Crs 206

**127** [New] Rules so made and § [approved] shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the same force and effect within the local limits of the jurisdiction of the High Court which made them as if they had been contained in the First Schedule

**128** [New] (1) Such rules shall not be inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the Procedure of Civil Courts

(2) In particular, and without prejudice to the generality of the powers conferred by sub section (1) such rules may provide for all or any of the following matters, namely —

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service,
- (b) the maintenance and custody, while under attachment, of live stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live stock and property, and the proceeds of such sale,
- (c) procedure in suits by way of counter claim, and the valuation of such suits for the
- (d) procedure in garnishee or in substitution suits, Addition to,
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not,
- (f) summary procedure—

- (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant with or without interest, arising—  
on a contract express or implied, or on an enactment where the sum sought to be recovered is a fixed sum

\* This word was substituted for the word 'sanction' by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

† These words were inserted by s 161

‡ These words were substituted for the words and figure 'section 15' of that Act by s 161

§ This word was substituted for the word 'sanctioned' by s 2 and Sch 1 of the Repealing and Amending Act, 1917 (24 of 1917)

of money or in the nature of a debt other than a penalty, or  
 on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only, or  
 on a trust, or

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non payment of rent, or against persons claiming under such tenant,

(g) procedure by way of originating summons,

(h) consolidation of suits, appeals and other proceedings,

(i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial, and non judicial duties, and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

Scope—Section 128 refers to rules made under present Code with advice of

A I R 1929 Mad 641=52 M 563=29 L W

343 A village head man is not entitled to

J N 1215 Suit for negotiable instrument

s 128 (2) (f) and Art 5 applies to it A I R

1927 Sind 90=21 S L R 257=98 Ind Cas 78 It is doubtful whether s 128 validates rules allowing delegation of judicial duties existing previous to present Code 21 C W N. 1052=42 Ind Cas 623

129. [S 652, third para] Notwithstanding anything in this Code,

Power of Chartered High Courts to make rules as to their original civil procedure

any High Court established under the Indian High Courts Act, 1861,\* [or the Government of India Act, 1915] may make such rules not inconsistent with the Letters Patent establishing

it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Scope—Rule making power under s 129 is devised to make for elasticity of procedure and to remedy defects in Code Rules need not be consistent with Code A I R 1930 Cal 685=57 C 6,6 Letters Patent referred to is Letters Patent of 1865 A I R 1924 Cal 1025=51 C 905=28 C W N 916=81 Ind Cas 1048

130. [S 652, second para 2] A High Court not established under

Power of other High Courts to make rules as to matters other than procedure

the Indian High Courts Act, 1861,\* [or the Government of India Act, 1915] may, with the previous † [approval] of the Local Government, make, with respect to any matter other

than procedure, any rule which any High Court so established might, under section 15† [or section 107, respectively of those Acts] make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency town.

\* These words were inserted by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

† This word was substituted for the word "sanction" by s 2 and Sch. I of the Repealing and Amending Act, 1917 (24 of 1917)

‡ These words were substituted for the words "of that Act" by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

**126** [New] Rules made under the foregoing provisions shall be subject to the previous\* [approval] of the following authorities, namely —

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861, † [or the Government of India Act, 1915], to the \* [approval] of the authority prescribed by ‡ [the proviso to section 107 of the latter Act] for rules made under that section,
- (b) if the rule is made by any other High Court, to the \* [approval] of the Local Government

**Scope**—Rules made by High Court for conduct of its own business or regulation of Pleadings appearing before it are not subject to sanction of Local Government  
A I R 1928 Mad 472=109 Ind Cas 206

**127** [New] Rules so made and § [approved] shall be published in the Publications of rules Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule

**128** [New] (1) Such rules shall not be inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the Procedure of Civil Courts

(2) In particular, and without prejudice to the generality of the powers conferred by sub section (1) such rules may provide for all or any of the following matters, namely —

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service,
- (b) the maintenance and custody, while under attachment, of live stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live stock and property, and the proceeds of such sale,
- (c) procedure in suits by way of counter claim, and the valuation of such suits for the purposes of jurisdiction
- (d) procedure in garnishee and charging orders either in addition to, or as substitution for, the attachment and sale of debts,
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not,
- (f) summary procedure—
- (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant with or without interest, arising—  
on a contract express or implied, or on an enactment where the sum sought to be recovered is a fixed sum

word 'sanction' by s 2 and Sch of the

16 words and figure section 15 of this Act

by *ibid* —  
§ This word was substituted for the word 'sanctioned' by s 2 and Sch I of the Repealing and Amending Act 1917 (24 of 1917)



of money or in the nature of a debt other than a penalty, or  
 on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only, or  
 on a trust, or

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or moine profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non payment of rent, or against persons claiming under such tenant

(g) procedure by way of originating summons,

(h) consolidation of suits, appeals and other proceedings,

(i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial, and non judicial duties, and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts

Scope—Section 128 refers to rules made under present Code with advice of committee constituted under s 123 A I R 1929 Mad 641=52 M 563=29 L W 823=57 M L J 264=116 Ind Cas 343 A village head man is not entitled to notice before warrant (1930) M W N 1215 Suit for negotiable instrument provided under order 37 comes within s 128 (2) (i) and Art 5 applies to it A I R 1927 Sind 90=21 S L R 257=98 Ind Cas 78 It is doubtful whether s 128 validates rules allowing delegation of judicial duties existing previous to present Code 21 C W N 1052=42 Ind Cas 623

129. [S 652, third para] Notwithstanding anything in this Code,

any High Court established under the Indian High Courts Act, 1861,\* [or the Government of India Act,

Power of Chartered High Courts to make rules as to their original civil procedure inconsistent with

it to regulate its own procedure in the exercise

as it shall think fit and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Scope—Rule making power under s 129 is devised to make for elasticity of procedure and to remedy defects in Code Rules need not be consistent with Code. A I R 1930 Cal 685=57 C 6,6 Letters Patent referred to is Letters Patent of 1865 A I R 1924 Cal 1025=51 C 905=25 C W N 916=81 Ind Cas 1048

130. [S 652, second para 2] A High Court not established under

the Indian High Courts Act, 1861,\* [or the Government of India Act, 1915] may, with the previous [approval] of the Local Government, make, with respect to any matter other

than procedure, any rule which any High Court so established might, under section 15† [or section 107, respectively of those Acts] make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency town.

\* These words were inserted by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

† This word was substituted for the word "sanction" by s 2 and Sch I of the Repealing and Amending Act, 1917 (24 of 1917)

‡ These words were substituted for the words "of the Local Government" by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

131. [S 652, fourth para] Rules made in accordance with section 129 or section 130 shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law.

## PART XI.

## MISCELLANEOUS.

132. [S 640] (1) Women who, according to the customs and manners of the country ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Scope—The provisions of this section are not restricted to the examination of witnesses. They apply also to parties to suits or proceedings before the Court. 11 Ind Cas 668 Appearance meaning thereby compelling to come forth into view or become visible to public gaze is exempted not from attendance. A I R 1929 Cal 528=33 C W N 681=56 C 865=121 Ind Cas 635 Unmarried girl of 12 years is a woman. 24 W R 375 This section is extended to native women only and not to all women of rank. 8 W R 29, see also 19 P R 1899 A lady is not a *pardanashin* lady who does not object to communicate in matters of business with persons who are outside his family and who attends Court and Registration office. 8 Bom. L R 379=10 C W N 570=33 C 773=3 C L J 484=16 M L J 166=33 I A 86 P C The fact that a *pardanashin* lady appeared in public does not take away her right under this section. 45 C 492=22 C W N 147=44 Ind Cas 157, see also 26 C 650=3 C W N 751, 3 C W N 753, 45 C 697=26 C L J 319=41 Ind Cas 610=22 C W N 197, 2 Hyde 88, 5 C W N 232 (notes), 2 Hyde 88, 3 C W N 750, 24 W R 375, 14 B 584, 15 W R 129, 8 Ind Cas 418, 15 C 775, 4 C 20=3 C L R 93 But commission need not be issued when she can be examined in a *palki* on proper identification. 18 W R 230 But a *pardanashin* woman can not refuse to be examined on commission at any place other than place of her choice. A I R 1931 Cal 229=64 I C C 88 Right of *pardanashin* lady to be examined on commission is absconding. If a woman is in fact a *pardanashin* merely because she 319=22 C W N 1 woman strictly d on commission onal appearance' to power to insist her provisions of S 132, or Order 5 rule 3 or Order 10 rule 4 The exemption from personal appearance is a right which no Court has power to refuse and applies to parties as well as to witnesses. The words personal appearance in s 132 can not be interpreted so as to compel, *pardanashins* to attend Court by wearing a veil or *burka* with their face Court has reason to believe was guilty of malpractices s Court may exclude her evidence to attend the Court. A. L. R 1934 All 66=55 A 666=1933 A L J 1384

133 [S. 641] (1) The Local Government may, by notification in the Local Official Gazette,\* exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption

\* For such notification see the different local Rules and Orders

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

**Scope**—Every person what his position may be who seeks the aid of the court must conform to the rules of the Court 43 Ind Cas 729=42B 136=20 Bom L R 1. A person can be exempted under this section only by a special notification 28 M L J 410 (421). The exemption conferred by this section is absolute and is not confined to cases in which he is summoned by the opposite party Marsh 627

Arrest other than in execution of decree

134. [New] The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

135 [S 642] (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court

Exemption from arrest under civil process

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal

(2) Nothing in sub section (2) shall enable a judgment debtor to claim exemption from arrest under an order for immediate execution or where such judgment debtor attends to show cause why he should not be committed to prison in execution of a decree

**Scope**—The protection from arrest afforded s 642 extends only to arrest under the Civil Procedure Code. Therefore an accused person attending a Criminal Court Act 4 A. 27. The wordings "defendant appearing to defend" do not amount to "voluntary" XXXVIII 37 M L J 435=

deviation A I R 1931 Bom 175=33 Bom L R 44=131 Ind Cas 467 Person coming to appear as accused cannot be arrested and he is entitled to refusal of

Court is not exempted from arrest in execution of second decree A I R 1924 Mad. 900=47 M L J. 678=34 M L T. 102=(1924) M W N 781=84 Ind Cas 513 Person causing arrest and officer arresting judgment-debtor proceed under s. 135, commit offence under s. 342, Penal Code 121 P. L R 1910=36 Ind Cas 493

that the court or tribunal which he attends has jurisdiction in the matter pending before it or the party believes in good faith that it has such jurisdiction, and thirdly that he should be exempt from arrest in going to the tribunal from his ordinary tribunal and in returning from it to the Such place of residence may be within the jurisdiction of the court before which the matter is pending or outside its jurisdiction. What period is reasonable is a question of fact to be determined by the court in each case and no hard and fast rule can be laid down as to the extent or duration of the privilege. Further the exemption is forfeited if in going to or in returning from the court there is unnecessary or excessive deviation sufficient in the opinion of the court to forfeit the privilege. No party or witness can claim to return to his ordinary place of residence by any route he likes. 33 Bom. L. R. 44 = A. I. R. 1931 Bom. 175 = 131 Ind. Cas. 467 = 55 B. 612, see also 36 C. W. N. 1071 = A. L. R. 1933 C. 373. It makes no difference whether he comes in as a defendant or as a plaintiff. *Ibid.* An Income Tax Officer is a tribunal within the meaning of this section. 141 Ind. Cas. 463 = 34 P. L. R. 177 = A. I. R. 1933 Lah. 214.

Exemption of members of Legislative bodies from arrest and detention under civil process

\*[135A (1) No person shall be liable to arrest or detention in prison under civil process—

- (a) if he is a member of either Chamber of Indian Legislature or of a Legislative Council constituted under the Government of India Act, during the continuance of any meeting of such Chamber or Council,
- (b) if he is a member or any committee of such Chamber or Council, during the continuance of any meeting of such committee,
- (c) if he is a member of either Chamber during the continuance of a joint meeting or sitting of a conference or joint meeting or sitting of a member and during the fourteen days before and after such meeting or sitting.

(2) A person released from detention under sub section (1) shall, subject to the provisions of the said sub section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub section (1).]

136 [S 648] (1) Where an application is made that any person shall be arrested or that any property shall be

Procedure where person to be arrested or property to be attached is outside district

shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be

sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court in either of which cases the Court making the arrest shall release him

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, and Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court

Scope—This section does not authorise the Court to attach any property, which is not authorised to attach by any other sections of the Code, where such an order may be made, for execution beyond the local limits of its jurisdiction S M 20 This section merely prescribes the procedure to be adopted when property outside the jurisdiction of the Court is to be attached under any provision of the Code It attachment before judgement of the Court 1 L B R

rt to attach property before judgement, where the property is situate outside the jurisdiction 7 C W N 216 Whether High Court Judge or original side can direct District Judge within appellate jurisdiction to execute warrant of arrest for contempt is doubtful Proper course is to direct to issue injunction and arrest might be ordered for breach of same bringing case within pile of section 136 A I R 1928 Cal 462=55 C 777=32 C W N 114=107 Ind Cas 63, see also A I R 1926 Mad 574=50 M L J 401=9, Ind Cas 197 The Court can order attachment before judgment of property outside the local limits of its jurisdiction and further it is also competent to entertain an application for removal of such attachment and to remove the attachment 9 Rang 561=A I R 1931 Rang 279 Under s 136, C P Code an injunction order under from committing a breach of contract may of the Court issuing the injunction A I R 1280 In case of attachment before judgment of Court order should be sent to the District Judge of the place and not to be sent to the Nazir of the Court A L R 1933 All 583=2 A, W R 174

137 [S 645] (1) The language which on the commencement of this Code, is the language of any Court Subordinate to a High Court shall continue to be the language of such Subordinate Court until the Local Government otherwise directs

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English, but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him, and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138 [S 185 A] (1) The \* [High Court] may by notification in the local official Gazette direct with respect, to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is Power for Local Government to require evidence to be recorded in English

\* These words were substituted for the words Local Government by s 2 and Sch 11 of the Decentralisation Act, 1914 (4 of 1914)

that the court or tribunal which he attends has jurisdiction in the matter pending before it or the party believes in good faith that it has such jurisdiction, and thirdly that he should be exempt from arrest during such period as is reasonably required in going to the tribunal from his ordinary place of residence, in attending that residence whence he came court before which the is reasonable is a ques each case and no hard and fast rule of the privilege. Further the exemption is forfeited if in going to or in returning from the court there is unnecessary or excessive deviation sufficient in the opinion of the court to forfeit the privilege. No party or witness can claim to return to his ordinary place of residence by any route he likes 33 Bom. L. R. 44=A I R 1931 Bom 175=131 Ind Cas 467=55 B 612, see also 36 C W N. 1071=A L R 1933 C 373. It makes no difference whether he comes in as a defendant or as a plaintiff *Ibid*. An Income Tax Officer is a tribunal within the meaning of this section 141 Ind Cas 463=34 P L R 177=A I R 1933 Lah 214.

Exemption of members of Legislative bodies from arrest and detention under civil process

\*[135A. (1) No person shall be liable to arrest or detention in prison under civil process.—

- (a) if he is a member of either Chamber of Indian Legislature or of a Legislative Council constituted under the Government of India Act, during the continuance of any meeting of such Chamber or Council;
- (b) if he is a member or any committee of such Chamber or Council, during the continuance of any meeting of such committee;
- (c) if he is a member of either Chamber of the Indian Legislature, during the continuance of a joint sitting of the Chambers or of a meeting of a conference or joint committee of the Chambers of which he is a member, and during the fourteen days before and after such meeting or sitting.

(2) A person released from detention under sub section (1) shall, subject to the provisions of the said sub-section, be liable to re arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub section (1).]

136 [S 648] (1) Where an application is made that any person

shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be

sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court in either of which cases the Court making the arrest shall release him.

(4) Where a person is to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, and Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

**Scope**—This section does not authorise the Court to attach any property, which is not authorised to attach by any other sections of the Code, where such an order may be made for execution beyond the local limits of its jurisdiction. S M 20. This section merely prescribes the procedure to be adopted when property outside the jurisdiction of the Court is to be attached under any provision of the Code.

**Attachment before judgement of the Court.** A L B R 114=107 Ind Cas 63, see also A I R 1926 Mad 574=50 M L J 401=95 Ind Cas 197. The Court can order attachment before judgment of property outside the local limits of its jurisdiction and further it is also competent to entertain an application for removal of such attachment and to remove the attachment. 9 Rang 561=A I R 1931 Rang 279. Under s 136, C P Code an injunction order under from committing a breach of contract may of the Court issuing the injunction. A I R 1280. In case of attachment before judgment of Court, order should be sent to the District Judge of the place and not to be sent to the Nazir of the Court. A L R 1933 All 583=2 A, W R 174.

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**Judge of the place and not to be sent to the Nazir of the Court.** A L R 1933 All 583=2 A, W R 174.

**137 [S 645] (1)** The language which, on the commencement of this Code, is the language of any Court Subordinate to a High Court shall continue to be the language of such Subordinate Court until the Local Government otherwise directs.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English, but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

**138 [S 185 A] (1)** The \* [High Court] may, by notification in the local official Gazette, direct with respect, to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is Power for Local Government to require evidence to be recorded in English.

\* These words were substituted for the words "Local Government" by s 2 and Sch Pt I of the Decentralisation Act, 1914 (4 of 1914).

allowed shall be taken down by him in the English language and in manner prescribed

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court

Oath on affidavit by whom to be administered 139 [S 197] In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath to the deponent

Notes—Order IX, rule 5 C P Code is only an enabling provision enacted for a special purpose only. A plaintiff filed in support of proof of a service of process on the defendant an affidavit was sworn on the Bar Library by the identifier before a pleader who is also an Honorary Magistrate. The Munsiff refused to accept the affidavit and directed the plaintiff to have an affidavit sworn before the officer of the court appointed for that purpose. Held, that the Munsiff's refusal was not a ground for setting aside the judgment. The Honorary Magistrate administers the oath he is empowered to administer and that the provisions of the Code do not require judicial notice of that fact. The provisions of the Code do not require judicial notice of that fact. The provisions of the Code do not require judicial notice of that fact.

under s 476 Cr P Code by the District Judge of Muzaffarpur. A I R 1933 Pat 548=14 P L T 635=A I R 1933 Pat 713

140 [S 645A] (1) In any Admiralty or Vice Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall, upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors, and such assessors shall attend and assist accordingly

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed

141 [S 647] The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction

Miscellaneous proceedings applicable, in all proceedings in any Court of civil jurisdiction

Scope—This section is intended to apply to miscellaneous matters other than suits or appeals. 9 A 36 Suit includes appeals. A I R 1928 Lah 488=110 Ind Cas. 374 Section 141 deals with procedure alone not substantive law of arbitration. A I R 1928 Rang 137=6 Rang 563=112 Ind Cas 45 This section cannot operate to give appeal from order under order 14, r 9 not otherwise appealable. A I R 1922 Cal 572=36 C L J 184=69 Ind Cas 1003 An issue referred to a Civil Court for decision by a Revenue Court is an original matter in the nature of the suit. The Civil Court has jurisdiction under the provisions of s 141 and order 9 to entertain an application for the setting aside of the *ex parte* decision and to decide the issue on the merits. A I R 1934 All 86

of  
185  
15  
of the High Court



"C 633, 18 C 462, 22 W R 512 Their  
g the view of the Calcutta High Court  
set at rest the conflict. So the previous  
contrary are no longer good law. So now  
in execution. A I R 1926 Lih 107=89  
Ind. Cas 360, A I R 1926 Cal 773=53 C 679=50 C W N 570=96 Ind Cas  
705, A I R 1929 Mad 757=57 M L J 381=30 L W 424=52 M 899 (F  
B)=120 Ind Cas 567 A I R 1929 All 485=121 Ind. Cas 552, A I R  
1930 Lih. 961=129 Ind Cas. 204 A I R 1925 Cal 812=29 C W N.  
42 C L J 26=29 C W N 886=(F B)=87 Ind Cas 633, A I R 1921  
Sind. 53=17 S L R 103=83 Ind Cas 749, A I R 1925 Cal 510=41  
C L J 286=79 Ind Cas 351, A I R 1923 Lih. 506=75 Ind Cas 487, A  
I R 1933 Nag 1-6=29 V L R 1-6=133 Ind Cas 584, A I R 1922  
Nag 267=18 N L R 157-4 N L J 118=64 Ind Cas 420, 63 Ind Cas 855,  
A I R 1921 Lah 67= Lah 66-64 C L R 1921=60 Ind Cas 720, A I R 1921  
Bom 463 4 P L J 135 41 Ind Cas 617, 1933 A L J 1032=A I R 1933 All  
783=145 I C 995 (I B). Order IX rule 9 does not apply to execution proceedings  
5 Pat L W 203=4 Pat L J 230=47 Ind Cas 154, see also A I R 1922 Rang  
267=4 N L J 118=18 N L R 152=64 Ind Cas 420, 68 Ind Cas 643=A I R 1923  
Nag 18, A I R 1929 Pat 259 1 P L R 134=2 Pat. 372=4 P L T 73=71 Ind Cas  
484, A I R 1925 Mad 126=47 M L J 263=20 L W 192=81 Ind Cas 841,  
A I R 1929 All 485=121 Ind Cas 552 Order of dismissal of execution petition for  
failure to take necessary steps for prosecution is not appealable A I R 1923 Pat  
180-4 P L T 72  
dismissed under  
Ind Cas 547  
in execution of decree and order IX

part orders under its inherent powers A I R 1931 Sind 97=133 Ind Cas  
65 (F B)

In all proceedings etc.—This section is applicable only to proceedings in  
original suit A I R 1924 Pat 346=4 P L T 732 Applicability of this section

551=120 Ind Cas. 72 Section 141

A I R 1922 Sind 6=66 Ind Cas

s 144 A I R 1922 All 223=2

restitution proceedings A I R 1922 All 273=20 A L J 226=44 A 407=66

Ind Cas 144 Where application for restoration for default has been dismissed

application can be restored 1 Lah 339=1 Lah L J 188=58 Ind Cas 748

see also 10 P W R 1919=1 P L R 1919=50 Ind Cas 401 No appeal lies from

order return

693=117 L

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A I R 1922 Cal 572=36 C L J 184=69 Ind Cas 1003

Section 141 extends ss 10 and 11 to civil miscellaneous proceedings A I R

1922 Sind 6=16 S L R 79=69 Ind Cas 796 Execution can issue suo motu

case of surety bond by guardian and surety under ss 43 and 45 Guardian and Ward

Act A I R 1927 Sind 262=103 Ind. Cas 492 An express provision in Successio:

not render provi  
A I R 1927 Sind  
ained by the Success  
s  
sued by ss 19 (3) and 26 (3) A I R 1924 All  
3 A L J 345=79 Ind Cys 363 This section has no application  
to application under s 105 B T Act A I R 1924 Pat 104=3 Pat 67=(1923) Pat  
273=2 Pat L R 169=5 P L T 591-79 Ind Cas 5 Where permission is given  
to *mutuwalli* to lease *chik* property order is under s 141 A I R 1924 Cal  
327=38 C L J 338=77 Ind Cys 907 Order IX and order XLIII r 1 apply  
to application to set aside dismissal order for default A I R 1923 Nag 293=  
19 N L R 119=75 Ind Cas 589 In probate proceedings involving interest  
of minor, every rule in order XXXII, is not strictly and legally applicable  
24 C W N 541=59 Ind Cas 664 General provisions of C P Code apply  
to Court under the Companies Act 1 Lah 187=2 Lah L J 291=55 Ind  
Cas 820 Procedure prescribed by order XVI applies to enquiries under cases  
under the Legal Practitioner's Act 23 C W N 560=50 Ind Cas 806 But  
s 141 does not apply to proceedings under s 14 of the Legal Practitioners  
Act 1 P L J 576=18 Cr L J 132=(1917) Pat 60=37 Ind Cys 484 Provisions  
of Code are applicable to proceedings under the Lunacy Act 22 C W N 547=27  
C L J 205=43 Ind Cas 511 The Court could in proceedings under the  
Guardians and Wards Act pass an order by way of injunction restraining the giving  
away of a female minor in marriage to an unsuitable husband 28 N L R 332=  
A I R 1933 Nag 62=141 Ind Cys 170 Where an application to *sue in forma*  
*pauperis* is dismissed for default order 9 rule 9 read with s 141 enables the Court  
to restore the application for proper reasons 140 Ind Cas 226=1932 M W N  
1262=36 L W 586 No appeal lies from an order rejecting an application to  
set aside the dismissal of an application for restoration of a suit dismissed in  
default 28 N L R 83=139 Ind Cas 296=A I R 1932 Nag 101 It is doubtful  
whether s 141 and order 9 rule 9 apply to an application to set aside an order of  
dismissal for default of an application to set aside an *ex parte* decree A I R 1933  
Rang 406 The Insolvency Court has the same inherent powers as any Court  
exercising civil jurisdiction and has power to make supplementary orders for the  
protection of creditors A L R 1933 Pat 180=12 P 163=A I R 1933 Pat 84=  
41 Ind Cas 836=13 P L T 775

142 [S 94] All orders and notices  
Orders and notices to be in writing served on or given to any person under the  
provisions of this Code shall be in writing

143 [S. 95] Postage, where chargeable on a notice, summons or  
letter issued under this Code and forwarded by  
post, and the fee for registering the same,  
Postage shall be paid within a time to be fixed before the communication is made  
Provided that the Local Government \* may remit such postage, or fee, or  
both, or may prescribe a scale of court fees to be levied in lieu thereof

144 [S 583] (1) Where and in so far as a decree is varied or re-  
versed, the Court of first instance shall, on  
Application for restitution the application of any party entitled to any  
benefit by way of restitution or otherwise, cause such restitution to be made  
as will, so far as may be, place the parties in the position which they would  
have occupied but for such decree or such part thereof as has been varied or  
reversed, and, for this purpose, the Court may make any orders, including  
orders for the refund of costs and for the payment of interest, damages,  
compensation and mesne profits, which are properly consequential on such  
variation or reversal

(2) No suit shall be instituted for the purpose of obtaining any restitu-  
tion or other relief which could be obtained by application under sub-  
section (1)

\* The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I part I, of the Devolution Act, 1920 (38 of 1920).

**Principle**—A claim under s 144 is governed by the same principles that apply to a claim for money paid and received. Where pursuant to a decree or order of

of the Court should be held entitled to retain such money or property as against and who was claiming resitua  
 R 1932 Rang 356 The obvious  
 is to place the successful litigant so far as possible in the position in which he would have been had the original decree not been passed against him and the unsuccessful party is also liable for the delays of the Court 16 R D 503=13 L R 293  
 131 P 145 It is a duty cast upon Court to enforce the obligation 33 C 927 see also 32 A 79 affirmed n 48 I A 43=38 A 163 P C, 23 M 306 13 C L J 743 15 C L J 187 A I R 1930 Mad 787=59 M L J 225, A I R 1929 Nag 158=117 Ind Cas 288

**Scope of the section**—This section applies only to cases where in execution of a decree passed by one court a benefit is received by the defendant and that decree is reversed or set aside subsequently by a competent court A I R 1931 Mad 81=60 M L J 219=33 L W 259=130 Ind Cas 451 The principle of this section is not confined exclusively to matters in execution The power of restitution is inherent in  
 M L J 79=33 L W  
 decree has been set aside  
 Cas 601 This section  
 Privy Council A I R 1926 Lah 488=7 Lah 232=8 Lah L J 338=27 P L R 400=93 Ind Cas 954 Right of restitution is not limited to reversal of decree in appeal but applies equally to cases where a decree has been reversed or suppressed by some other proceedings (1916) 1 M W N 155=30 M I I 368=10 M L T

tion to  
 d nor  
 ment

an application for restitution as a  
 his representative an application for  
 360=51 Ind Cas 375 Where decree has  
 of restitution party taking benefit of the decree cannot object to the restitution  
 application 34 C W N 746=52 C L J 505=130 Ind Cas 236=A I R 1931  
 Cal 42

This section is mandatory and gives no discretion to the Court The legal representatives or assignees of a party liable to restore possession are equally liable 6 L W 568=42 Ind Cas 523 The powers given by this section can be exercised by all Courts Civil or Revenue 46 Ind Cas 475=11 Bur L T 3 Section 144 does not deal with restitution only It covers a case of party entitled to a benefit by way of restitution and empowers a Court to do justice to the parties to the suit A I R 1929 Lah 657=118 Ind Cas 389, see also A I R 1930 Pat 473=11 P L T 361=125 Ind Cas 779, A I R 1937 Lah 635=103 Ind Cas 657 Apart from s 144, restitution can be granted under s 151 A I R 1926 Lah 685=96 Ind Cas 804, see also A I R 1924 All 718=46 A 767=22 A L J 673=84 Ind Cas 75, 75 Ind Cas 858=A I R 1924 Lah 583, A I R 1925 Mad 365=83 Ind Cas 138, A I R 1921 Pat 800=5 P L T 553=78 Ind Cas 310, A I R 1925 Pat (F B)=3 Pat 371=5 P L T 145=78 Ind Cas 200, A I R 1922 Cal 28=26 C W N 408=35 C L J 53=64 Ind Cas 864 A I R 1924 Lah 583=75 Ind Cas 858, A I R 1922 Cal 28=26 C W N 408=35 C L J 53=64 Ind Cas 864

The word restitution implies that a party who applies under s 144 should prove that he was in possession of something, the restitution or restoration of which he seeks A I R 1931 Mad 81=60 M L J 719=33 L W 259=(1930) M W N 1245=130 Ind Cas 451 Or otherwise immediately

following restitution provide for cases where it is not possible to make restitution in the sense of restoring the very property lost to the petitioner A I R 1931 Mad 81=60 M L J 219=33 L W 259=130 Ind Cas 451, see also A I R 1931 Rang 21. The restitution should clear the account between the parties and leave no claim on one side or the other A I R 1931 Oudh 12=7 O W N 1075=129 Ind Cas 326. Restitution must be granted as a matter of course and is not discretionary A I R 1928 Rang 293=117 Ind Cas 57, A I R 1926 Lah 685=96 Ind Cas 804. Decree in another suit in respect of same property between same parties cannot be affected by any thing in s 144 A I R 1929 All 527=118 Ind Cas 519 A I R 1929 Cal 814=33 C W N 908. This section is not exhaust

restore any party which has suffered any injury

1929 Lah 1011=1011 C 280 Under the

decree in

988=84 I

includes

130=80 I

therefore

551=2 P

not money or other property

144 and section 580 of the old code

is not due to the variation in decree

not objected to either at the time of

A I R 1922 Mad 96=(1922) M W N

The meaning of the words

possible place the parties in

for such decree is that the

and leave no claim on one

side or the other 129 Ind Cas 326=7 O W N 1075=A I R 1931 Oudh 12

By liberal construction this section can be made applicable to claim to recover

money overpaid under a decree 33 Bom L R 1557 The expression party

includes representative of a party 138 Ind Cas 260=32 P L R 673=A I R

1932 Lah 527, see also A I R 1932 All 239=1932 A L J 239=137 Ind Cas

39, A I R 1933 Pat 564

o cases in which a decree is varied or

apply to cases in which the decree is

d 55 A 221=144 Ind Cas 492=1933

504=38 L W 874=

suance of an order of

court has the power

h Court to direct the

creditors to refund the amount 143 Ind Cas 330=1932 A L J 1095=A I R

1933 All 117

Decree varied or reversed —Section 144 applies where the decree is varied or

reversed and not to a case where as the result of a different suit the title of a person

derived by purchase under quite a different proceeding in execution of a decree

which stands unreversed is questioned A I R 1929 Cal 814=33 C W N 908=

57 C 226=125 Ind Cas 645 A I R 1930 Cal 89=56 C 550=120 Ind Cas 807

Restitution should be ordered only when applicant discharge his obligation under

the reversed decree A I R 1929 Rang 156 7 Rang 107=117 Ind Cas 252

Where a decree is reversed costs realised under the same must be refunded

irrespective of the fact that the suit property was given to charity or any other

purpose 54 Ind Cas 816 Plaintiff getting decree for uses of a well which is

reversed on appeal but on second appeal restored was entitled for a compensation

during which he was kept out of enjoyment of the water 21 Bom L R 157=43 B

176 B=50 Ind Cas 715 Auction purchaser is bound to restore possession to

appeal During pendency of appeal

for the purpose of transference of

but see 30 M I J

47 Ind Cas 628=41

purchaser and the decree is set aside 43 B 335=20 Bom L R 925=48 Ind Cas

130 It is only a bona fide purchaser who is not a party to the suit or proceeding

that is entitled to keep the property purchased by him In all other cases the

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is not due to the variation in decree

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The meaning of the words

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1932 Lah 527, see also A I R 1932 All 239=1932 A L J 239=137 Ind Cas

39, A I R 1933 Pat 564

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130 It is only a bona fide purchaser who is not a party to the suit or proceeding

that is entitled to keep the property purchased by him In all other cases the

purchaser is liable to be defeated on the reversal of the decree in execution of which the sale is effected A I R 1926 Mad 78=48 M 767=49 M L J 452=er obtained possession of the ree but under colour thereof, n if the decree be set aside L J 551=28 P L R 62= of equitable jurisdiction sets Creditor of the

decree holder attaching the dec restitution can be had against him 796=39 M L J 225=127 Ind execution for s 144 (2) to apply rejected suit for possession and declaratio<sup>n</sup> is barred A I R 1931 Cal 14=34 C W N 707=179 Ind Cts 403 Section 144 applies where a decree is varied or reversed A decree is only varied or reversed by a superior court on appeal or on revision or on reference But if a decree is set aside either by a proceeding to the suit itself or by a decree in another suit altogether or if, without being set aside by such a decree, it is superseded these are matters which are not within the words of the section A I R 1931 Cal 14=34 C W N 707=129 Ind Cas 403 Where the preliminary decree is varied or upset by the appellate Court, the final decree passed thereon and all execution proceedings taken in pursuance of the final decree fell through even though no appeal is filed from the final decree Application under s 144 is not barred on the ground that there was no reversal of final decree in appeal 1931 A L J 651=A I R 1931 All 655=133 Ind Cts 622 This section prescribes a remedy which is separate from and independent of the remedy under or for 21 rule 9 *Ibid* This section is not confined to cases where restitution is claimed on the reversal of the decree in first and second appeal but applies also to case of variance of decree effected by compromise 1933 M W N 641 see also 144 Ind Cts 695-A I R 1933 Lah 791 The right to apply for restitution really on the date when for the first time a decision is given which entitles a party asking for restitution to have restitution 144 Ind Cts 150=A I R 1933 Cal 422

**Restitution**—Restitution means restoration of parties to their former position before passing of erroneous decree that is reversed A I R 1929 Nag 138=117 Ind Cas 288, see also A I R 1927 Lah 625=8 Lah 356=9 Lah L J 359=28 P L R 695=104 Ind Cas 817 Where a decree is reversed in an appeal filed by one of the defendants the other defendants are also entitled to apply for restitution A I R 1927 All 182=93 Ind Cas 1042 Where a decree is passed with a reservation as to the question of restitution the party taking benefit of the decree cannot object to the application for restitution A I R 1931 Cal 42=52 C L J 505=130 Ind Cas 236 No restitution can be obtained against *bona fide* auction purchaser through Court competent to hold the sale A I R 1925 Lah 176=79 Ind Cas 57 Where an *ex parte* decree is passed the judgment debtor is entitled to restitution of property lost to him in execution on the decree

Where disputed property is in the hands of a Receiver such custody is for the benefit of the true owner and restitution can be ordered in favour of the true owner A I R 1928 Pat 260=7 Pat 319=103 Ind Cas 89 Where a decree-holder gets possession of the property in dispute without executing the decree the owner of the property can claim restitution on the decree being set aside 18 A L J 729=2 U P L R (A) 238=41 A 568

It is the party who is entitled to restitution who can apply to the Court and claim the help of the Court in the matter it is for his benefit that the provision has been introduced The restitution must be such as will put the parties in the position which they would have occupied but for the wrong decree The party who is to be assisted by Court must be put into the position which he could have occupied but for the wrong decree It is no answer to that provision to say that it cannot be given effect to because the other party happened to gain no benefit by the wrong decree or order which has been made 55 M 107=63 M L J 383=36 L W 504 1732 M W N 1044=132 Ind Cts 318=A I R 1933 Mad 3, Section 144 is "



C W. N 483=58 C 1070=134 Ind Cas 906  
of matters done under the decree or as an

have not arisen  
of, and who are

Temporary Subor-  
Temporary Subor-  
art of first instance  
921 Mad 103=13

"Court of first instance"  
d according to the general

of first instance has been abolished and also to cases where the Court of first  
instance has ceased to have a

161=95 Ind Cas 587 Court

where the variation or reversal

by a superior Court. If the case comes within the purview of the section no matter  
whether the question is simple or complicated, it will have to be determined on an  
application made under it and a separate suit would be barred. A I R 1931 Cal  
42=52 C L J 50,=34 C W N 746=130 Ind, Cas 235. The words 'Court of  
first instance' must mean that the application for restitution must be made to the  
Court which did the act which turned out to be wrong and not to the appellate  
Court. A I R 1931 Rang 21

Interest.—This section contains an express provision that the Court shall in  
its discretion award such interest as it chooses and the fact that the principal only  
is secured by the bond given by the executing creditor withdrawing money from  
Court does not absolve him from paying interest. 2 Pat L J 149=39 Ind Cas 22  
Interest can be awarded on costs refunded. 20 O C 327=4 O L J 729=43 Ind  
Cas 337, see also A I R 1911 All  
41 M 316=(1917) M W N 669  
A I R 1929

153=58 M L

232=8 Lah L

in Court and

89 Ind Cas 603=A I R 1925 Rang

A I R 1925 Bom 313=27 Bom L R

awarded by the decree the Court has

of interest by way of restitution. A I R

Cas 427. A party in whose favour an

of cost paid by him under a decree subsequently reversed is entitled to interest

thereon. 54 M 887=131 Ind Cas 832=33 L W 618=A I R 1931 Mad 561=

61 M L J 34, 35 C W N 1305, see also A I R 1932 Cal 313=137 Ind Cas 294

restoration of possession mesne profits

es or not A I R 1931 Nag 112=17.

of a decree in appeal, the appellant

from the property of which he has

been deprived. 53 Ind Cas 119, see also A I R 1915 P C 92=38 A 163=43 A

43=20 C W N 425=23 C L J 411=18 Bom L R 382 (P C)=33 Ind Cas

505, 21 C 987, 6 C W N 710, 53 Ind Cas 119, 21 A 1, 20 A 430, 18 A

262, 69 Ind Cas 278=A I R 1922 P C 269, 24 C W N 50, A I R, 1914 Lah

486=6 Lah L J 142=80 Ind Cas

Cas 807, A I R 1929 Cal 586

M L J 219=130 Ind Cas 451

declaration and possession is decreed

5 144 A I R 1927 Mad 898=39 M L T 94=27 L W 188=104 Ind Cas 168.

Order for mesne profits after decree is not one for restitution under s 114. An

executing Court has ample power to make an order to prevent what would be

essentially a miscarriage of justice and a separate suit is not necessary. A I R

1917 Lah 346=28 P L R 128=103 Ind Cas 328, see also 9 Lah L J 117

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3=65 Ind Cas  
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13=3 P L W  
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4=34 C W N  
mption suit for

465=A I R 1931 Cal 317=134 Ind Cas 372

**Procedure**—This section is not a rule of substantive law but lays down merely the procedure A I R 1928 All 293=50 A 767=26 A L J 587=112 Ind Cas 876 An application for restitution is not an application for execution A I R 1930 Lah 961=179 Ind Cas 204 A I R 1923 Nag 94=71 Ind Cas 47, but see A I R 1926 Mad 813=51 M L J 161=95 Ind Cas 587, 40 M 780=38 Ind Cas 806 A I R 1925 Oudh 199=13 O L J 731=1 Luck 40=92 Ind. Cas 23 Proceedings under s 144 of the Code are not execution proceedings although they are of course in the nature of proceedings in execution to enforce either directly or indirectly the final decree A party to an application under s 144 need not have been a party to the decree Section 144 includes matters which an execution Court or Appellate Court could not ordinarily deal with and the word party in the section is not used in the sense 'party to the suit' but means party to the application A I R 1922 All 238=44A 555=20 A L J 456=66 Ind Cas 545 Only the Court executing the decree can restore the property to the judgment debtor by way of restitution A I R 1928 Pat 502=113 Ind Cas 717 In objection proceedings and proceedings therefrom (such as proceedings under s 144) the objector under order 58 is party to the suit and the decree-holder and the judgment debtor are the other parties A I R 1929 Lah 657=118 Ind Cas 389. Restitution proceeding not being one in execution, Order 45 Rule 15 does not apply to application for restitution A I R 1927 Pat 208=102 Ind Cas 614.

A bona fide auction purchaser for value is not a party to the suit hence an order refusing R 1975 L restoring partition commissioner is not conclusive 55 Ind Cas 356 An order under s 144 C P Code is an order deciding a question under s 47 (1) and is therefore appeal



under s 144 is  
 apply for mesne  
 Cas 501 Fine  
 on appeal which

affirms the first Appellate Court's order reversing trial Court's decree A I R 1926 Cal 981=92 Ind Cas 960 A judgment debtor applied for execution against the decree holder, transferee and certain other persons and was successful. The purchaser then appealed and the order was set aside. The judgment debtor then made a second application for restitution against the decree holder for loss suffered by him on account of the sale. Held that it was a continuation of the first application and so not time barred 19 A L J 549=3 U P L R 91=63 Ind Cas 184. In cases not falling strictly within s 144 under which restitution is in certain cases imperative restitution lies in the discretion of the court and will lie

as 78 see also 1931 M W N 1006,  
 1 R 1933 Rang 180 A I R 1934  
 not barred where proceeds are  
 1934 Pat 150

A I R 1930 Rang 241=8 Rang 271=126 Ind Cas 11 A court fee payable on memorandum of appeal against such an order must be calculated in accordance with Art 1 Sch I Court Fees Act A I R 1930 Lah 24=113 Ind Cas 270 No ad valorem fee but a fee of Rs 4 is required for an appeal from order under s 144 A I R 1927 Lah 635=103 Ind Cas 657, see also 8 Lah 143=107 Ind Cas 474 A I R 1925 Pat 577=4 Pat 291=7 P L

**Appeal**—Where an application is made under s 144 and an order is passed under s 144 read with s 151 it is appealable, even though it is subsequently held that s 144 had bearing on the case and the application thereunder is competent. 11 Pat 153=140 Ind Cas 482=A I R 1932 Pat 317

**Enforcement of liability of surety** 145. [S. 253] Where any person has become liable as surety—

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or,
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47

Provided that such notice as the Court in each case thinks sufficient has been given to surety.

**Scope of the section**—Objection of s 145 is expeditious enforcement of liabilities against sureties. The surety can raise any defence that is open to him. A I R 1923 Mad 340=44 M L J 171=17 L W 473=72 Ind Cas 194. This section does not apply to sureties of an administration bond. A I R 1928 Rang 248=6 Rang 474=112 Ind Cas 427. Section 145 applies where surety is only personally liable and not where charge is created. A I R 1928 B 42=30 Bom. L R 19=52 Bom 72=107 Ind Cas 701. This section lays down procedure for enforcing surety's liability. A I R 1927 Rang 316=5 Rang 494=105 Ind Cas 541. This section applies to surety and in compromise of suit. A I R 1928 Lah 209=103 Ind Cas 449. This section does not bar suit. It is not exclusive remedy. A I R 1928 Rang 24. " " 471=112 Ind Cas 427. The word 'decrees' in the operative part of s to clause (c) to which the word Rang 474=112 Ind Cas 427. Sect surety. A I R 1926 Lah 544. " not applicable to the case of a surety.

may enforce the same manner as if d by the decree or 105=45 A 649=21

A L J 604=74 Ind Cas 927, see A I R 1924 Mad 241=75 Ind Cas 830. Order discharging surety from suretyship is a decree. A I R 1925 All 344=23 A L J 59=86 Ind Cas 105. This section includes case of surety for production of judgment debtor released wishing to apply for insolvency. 39 Ind Cas 407=(1916) 2 M W N 273, see also A I R 1921 Pat 72=57 Ind Cas 503. Forfeiture of security will be applied in satisfaction of the decree. 25 C W N 36=59 Ind Cas 778. Liability of a surety for the decree is not affected where a suit once dismissed for default is again restored. 59 C 1450=30 C W N 749=A I R 1932 Cal 858. In the absence of fraud or collusion a surety is liable by a consent decree. 59 C 1350=36 C W N 749=A I R 1932 Cal 858. But he is not so bound when there is other stipulation. 11 Pat 590=140 Ind Cas 565=A I R 1932 Pat 313 A surety may be liable after a certain amount. 136 Ind Cas 629=36 C W N 701=55 C L J 413=36 L W 111=A I R 1932 P C 131=63 M L J 85 (P C)

**Surety bond can be executed by the court without a suit.** 145 Ind Cas 1004=222 M W N 1007=A I R 1933 M 772=38 L W 450=65 M L J 507, A I R 1933 Mad 342=142 Ind Cas 581, A M W N 949=38 L W 315=A I R 1933 Lah 913, but see 54A 346=1933 All 121=142 Ind Cas 510=1933 A L J 142=A I R 1933 All 269 (F. B.) Execution of decree order contemplated by s 145 is execution in manner provided under order XX, C P Code. A I R 1934 Oudh 139.

For the performance of any decree—Surety for performance of decree arrived at by *bona fide* compromise of suit has been held liable A I R 1931 B 55=32 Bom L R 1394=55 B 97=128 Ind Cas 903 Sub-clause (1) applies even to person who is surety for himself A I R 1931 Rang 65=131 Ind Cas 500 Surety for performance of decree that may be passed cannot be discharged for 3 L W 705=92 Ind Cas judgment debtor ceases on the dismissal of the application.

143 Ind Cas 322=56 C L J 586=A I R 1933 Cal 337, see also 145 Ind. Cas 285=38 L W 254

For the restitution of any property—A Court cannot call on *supardar* to produce property in a different suit A I R 1924 All 64=73 Ind Cas 602 Judgment debtor is not bound to accept him in *supardar nam* in absence of condition to that effect A I R 1929 Lah 386=120 Ind Cas 421 Liability of a *supardar* can be enforced in execution A I R 1928 Lah 181=111 Ind Cas 592; A I R

deliver on a certain date the property entrusted and the order has never been set aside, it is legal to attach the personal property before that date 8 O W N 218=A I R (1931) Oudh 311=14 O L J 248=132 Ind Cas 49, see also A I R 1931 All 567 (F B)=134 Ind Cas 836=1931 A L J 865

For the payment of any money, etc.—Surety for payment of decree that may be passed will not be liable for compromise decree granting time for payment A I R 1927 Cal 239=98 Ind Cas 988 This section is applicable when surety is

1927 Bom 84=28 Bom L R 1516=51 B 31=99 Ind Cas 820

rd—Contract of security may be oral or in 515=43 C L J 493=30 C W N 609=95 t apply to security bond taken out of court It 24 M L T 416=8 L W 507=(1918) M W N 764=48 Ind Cas 940 Surety bond for appearance of judgment debtor can not be forfeited without specific order for attendance is served 90 P L R 1916=166 P W R 1916=36 Ind Cas 73 Simple money decree holder can bring to sale surety's mortgaged property in execution 38 A 327=14 A L J. 385=33 Ind Cas 982 Surety's hypothecated property should not ordinarily be proceeded against without suit 39 A 225=15 A I J 76=38 Ind Cas 33 A property mortgaged by a surety cannot be sold as mortgaged property 38 Ind Cas, 130 Surety bond for release of judgment debtor can be enforced in execution 10 L W 172=53 Ind Cas 673 Immovable property validly mortgaged as security can be realized in execution A I R 1929 Lah 126=7 Lah 352=118 Ind Cas 632, see also A I R 1929 Lah 393=118 Ind Cas 443 Surety bond is enforceable like any other contract A I R 1928 Lah 61=108 Ind. Cas 376 Surety bond not to named person is not void and is enforceable A I R 1928 Bom 42=52 B 72=30 Bom L R 19=107 Ind Cas 710 Punjab court have inherent jurisdiction to proceed against surety even if obligee not named A I R 1928 Lah 807. Hypothecated property can be sold in execution A I R 1927 Mad 416=52 M L J 182=38 M L T 143=100 Ind Cas 841 Contract of additional interest by surety can be enforced by decree holder A I R 1927 Mad 416=52 M L J 182=38 M L T 143=100 Ind Cas 841 Surety bond not in favour of court can be enforced A I R 1926 Cal 877=53 C 515=43 C L J 493=30 C W N 609=95 Ind Cas 483 Mortgage or equitable mortgage by surety can be enforced in execution A I R 1926 Cal 889=54 C 1=30 C W N 683=95 Ind Cas 908, A I R 1926 Bom 279=50 B 339=28 Bom L R 603=95 Ind. Cas 696 Decree executed against surety is same decree in suit and not second decree A I R 1926 Mad 574=49 M 325=50 M L J 584=24 L W 261=94 Ind Cas 522 Surety under order XXI, r 23 C P Code is not enforceable

**Appeal**—Where an application is made under s 144 and an order is passed under s 144 read with s 151 it is appealable, even though it is subsequently held that s 144 had bearing on the case and the application thereunder is competent 11 Pat 153=140 Ind Cas 482=A I R 1932 Pat 317

**Enforcement of liability of surety** 145 [S. 253] Where any person has become liable as surety—

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or,
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47

*Provided that such notice as the Court in each case thinks sufficient has been given to surety*

**Scope of the section**—Objection of s 145 is expeditious enforcement of liabilities against sureties. The surety can raise any defence that is open to him A I R 1923 Mad 340=44 M L J 171=17 L W 473=72 Ind Cas 194. This section does not apply to sureties of an administration bond A I R 1928 Rang 248=6 Rang 474=112 Ind Cas 427. Section 145 applies where surety is only personally liable and not where charge is created A I R 1928 Rang 701. This section lays down compromise of suit A I R 1928 927 Rang 316=5 Rang 494=105 at bar suit. It is not exclusive remedy A I R 1928 Rang 249=6 Rang 474=112 Ind Cas 427. The word 'decrees' in the operative part of s 145 refers only to clauses (a) and (b) and not to clause (c) to which the word order only applies A I R 1928 Rang 249=6 Rang 474=112 Ind Cas 427. Sect surety A I R 1926 Lih 544 is not applicable to the case of a surety 1926 Sind 35=19 S L R 390=19. may enforce the same manner as if d by the decree or 105=45 A 649=21

A L J 604=74 Ind Cas 927, see A I R 1924 Mad 241=75 Ind Cas 830. Order discharging surety from suretyship is a decree A I R 1925 All 344=23 A L J 59=86 Ind Cas 105. This section includes case of surety for production of judgment debtor released wishing to apply for insolvency 39 Ind Cas 407=(1916) 2 M W N 273, see also A I R 1921 Pat 72=57 Ind Cas 303. Forfeiture of security will be applied in satisfaction of the decree 25 C W N 36=59 Ind Cas 778. Liability of a surety for the decree is not affected where a suit once dismissed for default is again restored 59 C 1450=30 C W N 749=A I R 1932 Cal 858. In the absence of fraud or collusion a surety is liable by a consent decree 59 C 1350=56 C W N 749=A I R 1932 Cal 858. But he is not so bound when there is other stipulation 11 Pat 590=140 Ind Cas 565=A I R 1932 Pat 313 A surety may be liable after a certain amount 136 Ind Cas 629=36 C W N 701=55 C L J 413=36 L W 111=A I R 1932 P C 131=63 M L J 85 (P C)

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Cas 1004=  
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19 581 A  
5=A I R  
346=1933

All 121=142 Ind Cas 510=1933 A L J 142=A I R 1933 All 269 (F B) Execution of decree order contemplated by s 145 is execution in manner provided under order XX, C P Code A I R 1934 Oudh 159.

For the performance of any decree—Surety for performance of decree arrived at by *bona fide* compromise of suit has been held liable A I R 1931 B 55=32 Bom L R 1394=53 B 97=128 Ind Cas 903 Sub-clause (1) applies even to person who is surety for himself A I R 1931 Rang 65=131 Ind Cas 500 Surety for performance of decree that may be passed cannot be discharged for misconduct of defendant A I R 1927 Mad 294=23 L W 705=92 Ind Cas 251 The liability of surety for appearance of judgment debtor ceases on the surrender of the judgment debtor to the Court or on the dismissal of the application 143 Ind Cas 322=56 C L J 586=A I R 1933 Cal 337, see also 145 Ind Cas 285=58 L W 254

For the restitution of any property—A Court cannot call on *supra* *lit* to produce property in a different suit A I R 1924 All 64=73 Ind Cas 602 Judgment debtor is not bound to accept him in *supra* *lit* in absence of condition to that effect A I R 1929 Lah 387=120 Ind Cas 421 Liability of a *supra* *lit* can be enforced in execution A I R 1928 Lah 181=111 Ind Cas 592, A I R 1921 All 220=19 A L J 247=62 Ind Cas 719 *Supra* *lit* for live stock can not be proceeded against in execution summarily 16 N L R 178=47 Ind Cas 956 In case of handing over of property for safe custody to third person on executing bond with sureties can be proceeded against in execution but the decree holder must get the bond assigned 12 L W 329=39 M L J 472=(1920) M W N 784=60 Ind Cas 134 Where a *supra* *lit* has already received a writ order from the Court to deliver on a certain date the property entrusted and the order has never been set aside it is legal to attach the personal property before that date 8 O W N 218=A I R (1931) Ouh 311=14 O L J 248=132 Ind Cas 49, see also A I R 1931 All 567 (F B)=134 Ind Cas 836=1931 A I J 865

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on execution Courts inherent power A I R 1926 Mad 1005=24 L W 300=51 M L J 239=(1926) M W N 681=97 Ind Cas 787 Surety for production of goods by order of trial Court is bound by order of Appellate Court also A I R 1927 Bom 84=28 Bom L R 1516=51 B 31=99 Ind Cas 820

Enforcement of security bond—Contract of security may be oral or in writing A I R 1926 Cal 877=53 C L J 493=30 C W N 609=95 Ind Cas 483 This section does not apply to security bond taken out of court It has to be enforced by a separate suit 24 M L T 416=8 L W 507=(1918) M W N 764=48 Ind Cas 940 Surety bond for appearance of judgment debtor can not be forfeited without specific order for attendance is served 90 P L R 1916=166 P W R 1916=36 Ind Cas 73 Simple money decree holder can bring to sale surety's mortgaged property in execution 38 A 327=14 A L J 385=33 Ind Cas 982 Surety's hypothecated property should not ordinarily be proceeded against without suit 39 A 225=15 A I J 76=38 Ind Cas 33 A property mortgaged by a surety cannot be sold as mortgaged property 38 Ind Cas 130 Surety bond for release of judgment debtor can be enforced in execution 10 L W 172=53 Ind Cas 673 Immoveable property validly mortgaged as security can be realized in execution A I R 1929 Lah 126=7 Lah 352=118 Ind Cas 632, see also A I R 1929 Lah 393=118 Ind Cas 443 Surety bond is enforceable like any other contract A I R 1928 Lah 61=108 Ind Cas 376 Surety bond not in named person is not void and is enforceable A I R 1928 Bom 42=52 B 72=30 Bom L R 19=107 Ind Cas 710 Punjab court have inherent jurisdiction to proceed against surety even if obligee not named A I R 1928 Lah 807 Hypothecated property can be sold in execution A I R 1927 Mad 416=52 M L J 182=38 M L T 143=100 Ind Cas 841 Contract of additional interest by surety can be enforced by decree holder A I R 1927 Mad 416=52 M L J 182=38 M L T 143=100 Ind Cas 841 Surety bond not in favour of court can be enforced A I R 1926 Cal 877=53 C L J 493=30 C W N 609=95 Ind Cas 483 Mortgage or equitable mortgage by surety can be enforced in execution A I R 1926 Cal 889=54 C 1=30 C W N 683=95 Ind Cas 908, A I R 1926 Bom 279=50 B 339=28 Bom L R 605=95 Ind Cas 696 Decree executed against surety is same decree in suit and not second decree A I R 1926 Mad 574=49 M 325=50 M L J 584=24 L W 561=94 Ind Cas 522 Surety under order XXI, r 23 C P Code is not enforceable

Decree holder must obtain assignment of bond 25 M L T 220=(1917) M W N 219=9 L W 476=52 Ind Cas 410 This section does not help to realise debt due by surety for guardian of man by summary procedure 41 M 40=(1917) M by surety is decree for purpose 414=39 Ind Cas 648 The court order in favour of the judgment creditor in case of deposit A I R 1922 Bom 340=46 B 702=23 Bom L R 1263=64 Ind Cas 648 The properties of this surety charged can be directed to be sold on default of payment with a date fixed A I R 1918 P C 55=42 A 153=43 I A 228=22 O C 212=38 M L J 302=18 A L J 263=22 Bom L R 521=55 Ind Cas 550 (P C) Surety for receiver can be proceeded against the execution 10 L

A I R 1934 Lah 401.

**Liability of surety**—Surety's liabilities are co extensive with those of the judgment debtor Decree holder can proceed directly against surety on dismissal of appeal 117 Ind Cas 65, A I R 1933 Nag 287 Surety is liable for not only property but its profits also A I R 1929 All 90=118 Ind Cas 191 Surety agreeing to pay instalment in case of default is personally liable even without express stipulation A I R 1930 Lah 185=124 Ind Cas 677 Where judgment debtor is absent in execution proceedings, surety for presence of judgment debtor is liable 689 Contract of surety is revocable Discharge of surety for decree holder honorary A I R 1930 Lah 896=129 discharged if execution is taken out A I R 1929 Lah 770=119 Ind Cas 485 Execution against judgment debtor before proceedings against surety not necessary A I R 1925 Rang 135=84 Ind. Cas 998, 6 Rang 474=A I R 1929 Rang 249=112 Ind Cas 427 Surety for appearance can be discharged but surety for performance of decree cannot A I R 1929 Lah 43=11 Lah L J 141=30 P L R 130=119 Ind Cas 419. Decree holder's absence does not excuse non production of judgment debtor on date fixed A I R 1928 Lah 974=116 Ind Cas 554 Where judgment debtor fails to apply for insolvency in time fixed makes surety liable A I R 1928 Lah 974=116 Ind Cas 554 Surety for party in suit is for successor in trust though not on record A I R 1928 Nag 294=109 Ind Cas 636 Surety is not liable for not producing judgment debtor on any other date than named even if Court is closed A I R 1928 Lah 696=10 Lah L J 401=109 Ind Cas 546 Surety is liable for Receiver's accounts unchallenged but subsequently discovered to be improper A I R 1927 Rang 334=6 Bur L J 15=100 Ind Cas 995 Surety for deceased is not liable on decree against wrong legal representatives A I R 1927 Bom 63=50 B 80=28 Bom L R 1382=100 Ind Cas 186 Liability of surety can be enforced against his legal representatives A I R 1926 Sind 294=19 S L R 165=98 Ind Cas 136 This section applies to surety even in compromise of suit A I R 1928 Lah 209=103 Ind Cas 449, 99 P W R 1918=45 Ind Cas 997 The Property given as security can be realised by the decree holder in execution and no separate suit is either necessary or maintainable 6 L W 762=(1917) M W N 872=34 M L J 84=41 M 327=43 Ind Cas 187 The fact that the security is given does not take away any legal right which a decree holder otherwise has 3 Pat L J 176=4 P L W 216=43 Ind Cas 454 Where sureties have substantially complied and have though some what late produced the judgment debtor the extreme step of executing the decree must not be taken A I R 1925 Rang 135=2 Rang 567=84 Ind personally for decree debt if he fails to A I R 1924 Lah 490=6 Lah L J asks for time to bring the judgment time and the judgment debtor is brought is discharged A I R 1924 Rang 374=3 Bur L J 99 A surety under an adjustment of an execution can be proceeded against in execution under this section A I R 1925 Sind 25=17 S L R 257=83 Ind. Cas 870 Dismissal of execution in which security furnished is no bar to enforcement of the bond by separate execution A I R 1924 Pat 487=5 P L T 336=81 Ind Cas 702 An assignee decree holder can proceed in execution against the surety It is not necessary for him to get an

assignment of the surety bond and institute a suit 142 Ind Cas 363=1932 M W N 1295=37 L W 127=A I R 1933 Mad 219 Where security bond has been executed by plaintiff to the Court as a condition for temporary injunction, it can be executed by the Court under this section where it can be executed by any other provision of the Code 56 M 984=145 Ind Cas 1011=1933 M W N 985=38 L W 385=A I R 1933 Mad 691=65 M L J 342 Where a judgment debtor who has been arrested in execution of a decree is released on the surety furnishing security for his appearance but owing to the default of the decree holder citation petition is dismissed and the surety is also surety is not automatically revived by the mere A I R 1934 Lah 349

**Discharge of surety**—The liability of a surety for a debt ceases when his principal's debt is extinguished by merger of the estate of the debtor and creditor A I R 1923 Mad 340=17 L W 473=44 M L J 171=72 Ind Cas 194 Death of defendant does not d 88, 71 Ind Cas 46 22 C W N 919=43 li decree holder commits 634=91 Ind Cas 27

the surety for judgment debtor the surety is discharged A I R 1926 Cal 218=30 C W N 510=9, Ind Cas 409 Obtaining of protection order does not excuse non production of judgment debtor on date fixed A I R 1926 Mad 958=(1926) M W N 1000=33 Surety's liability does not end otherwise provided in bond A I R 1927 Rang 310=5 Rang

49=105 Ind Cas 540 Where surety is for payment of interest upto certain amount on stay of execution pending appeal and where the amount of security is changed surety is liable for interest upto date of changing the order A I R 1926 Bom 563=78 Bom L R 517=94 Ind Cas 645 Compromise if *bona fide* does not discharge surety even when made without his consent or knowledge 55 B 97=32 Bom L R 1394=A I R 1931 Bom 55, see also 56 M 625=64 M L J 386=A I R 1933 M 307 A surety is discharged from his liability when substantial compliance has been made with his surety bond 134 Ind Cas 718=33 Bom L R 820=A I R 1931 Bom 444 Liability of surety subsists even where the creditor agrees to discharge the principal debtor in as much the agreement operates as a covenant not to sue 56 M 625=141 Ind Cas 852=(1933) M W N 45=37 L W 170=A I R 1933 Mad 309=64 M L J 386

**Notice**—Notice before attachment of surety's property is essential A I R 1929 Lah 205=30 P L R 131=11 Lah L J 40=117 Ind Cas 226 Notice under the proviso along with warrant for the arrest of surety is not invalid A I R 1927 Lah 131=99 Ind Cas 518 Order to pay against surety without notice is wrong A I R 1923 Rang 26=4 U B R 99=1 Bur L J 236=70 Ind Cas 870 An order for arrest against surety, without notice under the proviso is *ultra vires* A I R 1931 Mad 828=1931 M W N 963, see also 132 Ind Cas 49=14 O L J 249=8 O W N 218=A I R 1931 Oudh 311

given security on behalf of a judgment-debtor for the performance of a decree cannot apply to the executing court to cancel the surety bond on the ground that it was obtained by fraud His remedy is only by way of suit Section 145 only makes him a party for a limited purpose, namely for appeal 43 M 325=38 M L J 65=11 L W 45=27 M I T 207=(1900) M W N 114=55 Ind Cas 363 Hypothecation of property does not make surety party under s 47 A I R 1917 P C 55=55 Ind Cas 550 Surety being party can plead fraud in execution A I R 1925 Lah 618=7 Lah I J 457=76 P I I 361=32 Ind Cas 750 Surety is party only for purpose of appeal and not in suit before trial court A I R 1925 And

105=20 S L R 362=96 Ind Cts 234 Surety not party to suit, becomes judgment debtor in execution against him A I R 1928 All 527=51 A 346=26 A L J 1160=112 Ind Cas 534

**Limitation**—Surety bond is enforceable within 3 years of appellate decree 41 B 34=21 Bom L R 861=53 Ind Cts 187 An application for execution against the judgment debtor and the surety is not barred, if made within 3 years of the application against the judgment debtor alone A I R 1922 All 481=20 A L J 726=44 A 743=77 Ind Cas 129, but see 31 B 50=8 Bom L R 807, 142 Ind Cas 363=1932 M W N 1296=37 L W 127=A I R 1933 Mad 216

**Revision**—An order under s 145 passed by a sub-judge is open to revision by the High Court although an appeal lies to the District Court from such order and a further appeal from the order of the District Court lies to the High Court 11 Rang 134=144 Ind Cas 163=A I R 1933 Rang 64, see also 56 M 909=145 Ind Cas 871=1933 M W N 925=38 L W 651=A I R 1933 Mad 780=65 M L J 407

**S. 146.** [Vc v] Save as otherwise provided by this Code, or by any law for the time being in force, where any proceedings by or against representatives proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

**Scope**—S 146 is a general residuary provision 38 L W 280 No fresh execution petition by legal representative is necessary A I R 1930 Sind 283=24 S L R 193=123 Ind Cas 303 Representative can continue appeal or application when not properly prosecuted or when the person dies It is not limited to fresh proceedings A I R 1926 Mad 573=51 M L J 10=23 M L W 379=(1926) M W N 287=93 Ind Cas 831 Auction purchaser of under proprietary tenure in mortgage decree is legal representative for the purpose of rent decree against the original tenant A I R 1929 Oudh 353=6 O W N 469=117 Ind Cas 452 Execution application by one of the surviving coparceners of the deceased decree holder can not be said to be invalid so as to prevent the deduction of the time mentioned in sub para (3) of part II of the 3rd Schedule of the Code A I R 1927 Bom 123=51 B 143=29 Bom L R 75=100 Ind Cas 619 Section 146 does not refer to pending proceedings A I R 1927 Mad 507=52 M L J 477=38 M L T (H C) 275=102 Ind Cas 243 Decree holder's legal representatives can not be substituted in the execution petition to continue it A I R 1927 Mad 184=50 M 1=25 L W 354=(1925) M W N 981=51 M L J 745=99 Ind Cas 927 Puisse mortgagee is not a representative under this section 92 Ind Cas 946=A I R 1926 Cal 1015 The assignee of preliminary partition decree is not a person claiming under the decree holder within s 146 A I R 1926 Mad 1129=24 L W 392=97 Ind Cas 754 Assignee of heir can not apply under Order XXII r 10 when heir is not on record A I R 1925 Mad 1166=87 Ind Cas 402 Legal representative not on record can apply for setting aside *ex parte* decree A I R 1925 Oudh 370=27 O C 299=85 Ind Cas 529, see also A I R 1923 All 30=83 Ind Cas 601 Assignment or devolution of interest creates legal representation A I R 1924 Mad 709=19 L W 660=76 Ind Cas 809, see also 8 L W 21=41 M 510=48 Ind Cas 840 Judgment debtor's assignee can not continue appeal when already withdrawn A I R 1924 Mad 470=(1924) M W N 62=84 Ind Cas 665 This section covers cases of transfers in part A I R 1921 Mad 599=(1921) M W N 649=44 M 919=41 M L J 316=14 L W 297 (F B)=69 Ind Cas 337 Section 146 should be read as supplementary to rules A I R 1921 Mad 599=44 M 919=41 M L J 316=69 Ind Cas 337 Legal representative can not execute the decree without his name being substituted A I R 1922 Pat 563=3 P L T 625=69 Ind Cas 99 Transferee from auction purchaser can obtain possession 40 A 216=16 A L J 150=42 Ind Cts 936 Transferee after decree can appeal 1917 M W N 306=40 Ind Cts 846, see also 20 O C 31=33 Ind Cas 511 Pending proceedings can be continued against purchaser *pendente lite* A I R 1921 Mad 126=13 L W 37=61 Ind Cts 979 This is subject to procedure in Order XXI, Rule 16 A I R 1922 All 98=66 Ind Cas 878 Where on the death of a pauper plaintiff *pendente lite* his heir is brought on record and he is not himself a pauper an application may be made to have him dispaupered. 131 Ind Cas 828=1931 M W N 199=33 L W 446=A I R 1931



Mad 324. On the death of a decree holder his legal representative has a right to continue execution 33 Bom L R 818=A I R 1931 Bom 423=134 Ind Cas 720, see also 1931 M W N 1209=34 L W 866 (F B)

**147 [A. v.]** In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

**148 [A. v.]** Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

**Scope**—Court has power to grant extension of time fixed by it for doing any act A I R 1924 All 818=22 A L J 791=82 Ind Cas 184 This section applies only to proceedings prior to the passing of a decree Any order extending time after final decree must be deemed to have been passed under s 47 of the Court 74 Ind Cas 573=A I R 1924 Oudh 179, see also A I R 1926 Nag 44=21 N L R 111=87 Ind Cas 12 This section does not apply to extension of time for doing acts under mortgage or other decrees 39 M 876=2 L W 1074=29 M L J 708=18 M L T 486=31 Ind Cas 740, see also 34 A 388 14 Ind Cas 240, 37 C W. N 878 A I R 1933 Pat 563=143 I C 548 10 A L J 520 79 Ind Cas 912 Court can extend time agreed upon by parties for payment of decretal amount of mortgage money 23 C W N 439 30 Ind Cas 937 see also A I R 19 5 Nag 258=8 N L J 6=86 Ind Cas 307 Neither s 148 nor s 151 empowers a Court to meddle with final decree A I R 19 6 Mad 1059 24 L W 443 (19 6) M W N 713=97 Ind Cas 795 Court has inherent power to amend its own decree so as to extend time fixed to make up deficit Court fee A I R 1923 Cal 612=76 C W N 720=37 C L J 395=74 Ind Cas 575, A I R 1926 Mad 133=22 L W 582=92 Ind Cas 800, but see A I R 1925 Pat 299=6 P L T 4=4 Pat 190=85 Ind Cas 172

Time can be extended excusing delay under this section where an application for issue of fresh notice is not made in time, the previous notice having been returned unserved A I R 1927 Bom 68=28 Bom L R 1446=50 B 815=100 Ind Cas 147 But the Court can not extend the period of one month allowed under s 55 (4) as in that case the period is fixed by code and not by Court and s 148 has no application  
As the proviso by S 5 of the be extended 27(2) of the In discharge for sion is made after expiry of the fixed date A I R 1925 Lah 416=26 P L R 126=86 Ind Cas 115

Where plaintiff in whose favour decree is passed in suit for specific performance is asked to deposit sale consideration within fixed time that time cannot further be extended A I R 1930 Pat 279=126 Ind Cas 910 see also 3 L W 29=19 M L T 137=32 Ind Cas 401, 12 P L T 249=A I R 1930 Rang 279=126 Ind Cas 910 Time fixed by a pre-emption decree, for paying purchase money cannot be extended either under s 148 or s 151 C P Code 64 Ind Cas 242, A I R 1923 Lah 162=71 Ind Cas 35, A I R 1921 Lah 337=73 Ind Cas 891, A I R 1928 Oudh 492=5 O W N 890=114 Ind Cas 500, *contra*, 1 P L J 92=2 Pat L W 400=34 Ind Cas 88 Jurisdiction under s 148 is limited to cases where time is fixed by Court, otherwise than by its decree in a suit But once an appeal is preferred from the decree the Appellate Court has jurisdiction to extend the time though not under s 148 but under the provisions of r 32 of order X L I by varying the decree of the Court of first instance in that behalf A I R 1928 Oudh 32=2 Luck 42=4 O W N 252=101 Ind Cas 258 Where decree finally settles the rights of the parties the Court cannot extend time so as to interfere with the rights of the parties. A I R 1929 All 666=(1929) A I R 3=118 Ind Cas 391 Time fixed by decree which has become final the parties cannot be extended where

105=20 S L R 362=96 Ind Cas 234 Surety not party to suit, becomes judgment debtor in execution against him A I R 1928 All 527=51 A 346=26 A I J 1160=112 Ind Cas 534

**Limitation**—Surety bond is enforceable within 3 years of appellate decree 41 B 34=21 Bom L R 861=53 Ind Cas 187 An application for execution against the judgment debtor and the surety is not barred, if made within 3 years of the application against the judgment debtor alone A I R 1922 All 481=20 A L J 726=44 A 743=77 Ind Cas 129, but see 31 B 50=8 Bom L R 807, 142 Ind Cas 563=1932 M W N 1296=37 L W 127=A I R 1933 Mad 216

.. passed by a sub judge is open to revision appeal lies to the District Court from such order the District Court lies to the High Court 11 Rang 134=144 Ind Cas 163=A I R 1933 Rang 64 see also 56 M 909=145 Ind Cas 871=1933 M W N 925=38 L W 651=A I R 1933 Mad 780=65 M L J 407

**S. 146 [New]** Save as otherwise provided by this Code, or by any law for the time being in force, where any Proceedings by or against representatives proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him

**Scope**—S 146 is a general residuary provision 38 L W 280 No fresh

original tenant A I R 1929 Oudh 353=6 O W N 469=117 Ind Cas 452 Execution application by one of the surviving co parceners of the deceased decree holder can not be said to be invalid so as to prevent the deduction of the time mentioned in sub para (3) of part II of the 3rd Schedule of the Code A I R 1927 Bom 123=51 B 143=29 Bom L R 75=100 Ind Cas 619 Section 146 does not refer to pending proceedings A I R 1927 Mad 507=52 M L J 477=38 M L T (H C) 275=102 Ind Cas 243 Decree holder's legal representatives can not be substituted in the execution petition to continue it A I R 1927 Mad 184=50 M 1=25 L W 251=102 M W N 281=51 M L J 745=99 Ind Cas 927 Puisneec 92 Ind Cas 946=A I R partition decree is not a person A I R 1926 Mad 1129=24 L W

392=97 Ind Cas 754 Assignee of her can not apply under Order XXII r 10 when heir is not on record A I R 1925 Mad 1166=87 Ind Cas 402 Legal representative not on record can apply for setting aside *ex parte* decree A I R 1925 Oudh 370=27 O C 299=85 Ind Cas 529 see also A I R 1923 All 30=83 Ind Cas 601 Assignment or devolution of interest creates legal representation A I R 1924 Mad 709=19 L W 660=76 Ind Cas 809, see also 8 L W 21=41 M 510=48 Ind Cas 840 Judgment debtors assignee can not continue appeal when already withdrawn A I R 1924 Mad 470=(1924) M W N 62=84 Ind Cas 665 This section covers cases of transfers in part A I R 1921 Mad 599=(1921) M W N 649=44 M 919=41 M L J 316=14 L W 297 (F B)=69 Ind Cas 337 Section 146 should be read as supplementary to rules A I R 1921 Mad 599=44 M 919=41 M L J 316=69 Ind Cas 337 Legal representative can not execute the decree without his name being substituted A I R 1922 Pat 563=3 P L T 625=69 Ind Cas 939 Transferee from auction purchaser can obtain possession 40 A 216=16 A L J 150=42 Ind Cas 936 Transferee after decree can appeal 1917 M W N 506=40 Ind Cas 846, see also 20 O C can be continued against purchaser L W 37=61 Ind Cas 979 This A I R 1922 All 98=66 Ind Cas *nisi pendente lite* his heir is brought on application may be made to have him dispaupered 131 Ind Cas 828=1931 M W N 199=33 L W 446=A I R 1931

*Mad 324* On the death of a decree holder his legal representative has a right to continue execution 33 Bom L R 818=A I R 1931 Bom 423=134 Ind Cas 720, see also 1931 M W N 1209=34 L W 866 (F. B.)

**147. [N<sup>o</sup>] In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.**

**148 [N<sup>o</sup>.] Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, Enlargement of time from time to time, enlarge such period, even though the period originally fixed or granted may have expired.**

**Scope**—Court has power to grant extension of time fixed by it for doing any act A I R 1924 All 818=22 A L J 791=82 Ind Cas 184 This section applies only to proceedings prior to the passing of a decree Any order extending time after final decree must be deemed to have been passed under s 47 of the Court 74 Ind Cas 573=A I R 1924 Oudh 179, see also A I R 1926 Nag 44=21 N L R 111=87 Ind Cas 12 This section does not apply to extension of time for doing acts under mortgage or other decrees 39 M 876=2 L W 1074=29 M L J 708=18 M L T 486=31 Ind Cas 240, see also 34 A 388, 14 Ind Cas 240, 37 C W. N 878, A I R 1933 Pat 563=145 I C 548, 10 A L J 520 79 Ind Cas 912 Court can extend time agreed upon by parties for payment of decretal amount of mortgage 93 see also A I R 1925 Nag 258=8 N L J 101 s 151 empowers a Court to meddle with final L W 445=126 M W N 713=97 Ind Cas 1923 Cal 612=26 C W N 700=37 C L J 395=74 Ind Cas 575, A I R 1926 Mad 133=22 L W 582=92 Ind Cas 800, but see A I R 1925 Pat 299=6 P L T 4=4 Pat 190=85 Ind Cas 172

Time can be extended excusing delay under this section where an application for issue of fresh notice is not made in time, the previous notice having been returned unserved A I R 1927 Bom 68=28 Bom L R, 1446=50 B 815=100 Ind Cas 147 But the Court can not extend the period of one month allowed under s 55 (4) as in that case the period is fixed by code and not by Court and s 148 has no application A I R 1926 Mad 689=50 M L J 477=(1926) M W N 390 As the provisions of S 43(1) of Insolvency Act are mandatory and the powers given by S 5 of the Act are limited to that extent time of application for discharge cannot be extended A I R 1930 Rang 166=8 Rang 187=125 Ind Cas 346 Section 27(2) of the Insolvency Act contemplates an extension of time for application for discharge for good reason and should be granted even if the application for extension is made after expiry of the fixed date A I R 1925 Lah 416=26 P L R 126=86 Ind Cas 115

Where plaintiff in whose favour decree is passed in suit for specific performance is asked to deposit sale consideration within fixed time that time cannot further be extended A I R 1930 Pat 279=126 Ind Cas 910, see also 3 L W 29=19 M L T 137=32 Ind Cas 401, 12 P L T 249=A I R 1930 Rang 279=126 Ind Cas 910 Time fixed by a pre-emption decree, for paying purchase money cannot be extended either under s 148 or s 151 C P Code 64 Ind Cas 242, A I R 1923 Lah 162=71 Ind Cas 35, A I R 1924 Lah 357=73 Ind Cas 891, A I R 1928 Oudh 492=5 O W N 890=114 Ind Cas 500, *contra*, 1 P L J 92=2 Pat L W 400=34 Ind Cas 88 Jurisdiction under s 148 is limited to cases where time is

But once an appeal is preferred to extend the time though not ex X L I by varying the decree 1928 Oudh 32=2 Luck 425=4

O W N 252=101 Ind Cas 258 Where decree finally settles the rights of the parties, the Court cannot extend time so as to interfere with the rights of the parties A I R 1929 All 666=(1929) A L J 968=118 Ind Cas 591 Time fixed by a decree which has become final between the parties cannot be extended where the

effect is to alter the the terms of the decree A I R 1924 Oudh 330=11 O L J 119=78 Ind Cas 387, see also A I R 1923 Lah 372=73 Ind Cas 922 (40 A relied on), A I R 1921 Lah 6=3 Lah L J 310 (F B)=67 Ind Cas 770, 9 O L J 53=66 Ind Cas 273, A I R 1922 Oudh 131=25 O C 74=66 Ind Cas 205, 7 O L J 378=23 O C 254=57 Ind Cas 488, 57 Ind Cas 16=18 A L J 826 The test to determine whether power exists to extend time is whether the proceeding in which time was originally granted is still pending or not A I R 1928 Mad 154=33 M L J 494=26 L W 33=39 M L T 146=105 Ind Cas 124

Where a compromise decree contains independent and separately enforceable terms the fact of parties failing to perform their respective obligations does not debar one party to enforce the other to perform his obligation in execution proceedings and any time fixed by the decree can be enhanced A I R 1929 Nag 164=25 N L R 110=116 Ind Cas 651 But where debtor to set aside an execution sale a compromise the decretal amount within a fixed time the sale shall stand confirmed the Court has no power to extend the time fixed for payment A I R 1925 Pat 691=6 P L T 510=88 Ind Cas 1020 Where under a compromise decree payment of the decretal amount, is to be made within certain time the Court can extend the time if it thinks that time is not of the essence of the contract, and no revision lies from such an order extending time A I R 1924 Pat 387=2 Pat 906=5 P L T 401=82 Ind Cas 805, see also A I R 1983 Nag 88=71 Ind Cas 471 When an order provides that the suit would be dismissed if money is not paid within certain time further order by the Court is necessary before the dismissal of the suit and on application for extension of time for making the payment it is open to Court to grant the prayer But if the order states that on default of payment the suit will stand dismissed time cannot be extended A I R 1922 Cal 320=48 C 901=66 Ind Cas 481, see also 37 M L J 695=11 L W 25=54 Ind Cas 451, 23 M L T 7=42 Ind Cas 561, 15 A L J 511=42 Ind Cas 613 In the absence of negligence or laches time for payment of Court fee can be extended if there is sufficient cause for the delay A I R 1924 Pat 663=3 Pat 337=6 P L T 151=80 Ind Cas 1030, A I R 1922 Cal 234=26 C W N 391=70 Ind Cas 43 Time for deposit of printing charges under r 13 of Oudh Rules of Practice cannot be extended under s 148 22 O C 13=50 Ind Cas 789 Executing Court cannot extend time fixed for payment of decretal amount 49 Ind Cas 840=15 N L R 39 A I R 1923 Nag 210=19 N L R 8=71 Ind Cas 401 A I R 1923 Oudh 16=72 Ind Cas 879, A I R 1925 Pat 153=80 Ind Cas 574

In the absence of a very strong case the Appellate Court must not interfere with trial Courts discretion used under s 148 or s 149 A I R 1925 Pat 299=6 P L T 4=3 Pat L R 22=4 Pat 190=85 Ind Cas 172 Where an appeal is to be accepted only on payment of costs by appellant and he does not pay in time the Court can extend the time limited in the order for payment either under s 148 or 115 A I R 1915 Pat 153=80 Ind Cas 575 Where an order setting aside an *ex parte* decree is passed on condition of paying damages within certain time the Court can extend time A I R 1924 Lah 222=73 Ind Cas 648 Where terms fixing time within which Court fees should be paid are embodied in decree directing that the suit should stand dismissed in default of payment even the Court which passed the decree has no jurisdiction to extend the time 40 A 579=16 A L J 675=47 Ind Cas 4, A I R 1931 All 318=129 Ind Cas 752 This section does not empower Court to grant extension of time for doing an act prescribed by Provincial Small Cause Court Act 1 P L T 323=56 Ind Cas 810

1. An appellant's suit is set aside on appeal. Court can extend time for

under s 18 of the Limitation Act 4 Pat L J 428=52 Ind Cas 439 Where time for payment is fixed by decree of first Court and the decree is confirmed on appeal, time runs from date of appellate decree though it does not expressly mention the time for payment 34 C L J 415=70 Ind Cas 6 Where time granted has expired and an application by party to excuse delay and enlarge the time is presented along with the fulfilment of the condition and the Court acts upon the matter as

It is deemed that the Court has extended the  
 the court  
 under order 21,  
 15 C W N 877  
 id for production  
 e Court under s  
 148 55 A 376=142 Ind Cas 331=1933 A. L. J 127=A. I. R. 1933 All 262 (F. B.)  
 This section has no application for the doing of an act by a decree passed in a suit  
 146 Ind. Cas 171, 138 Ind Cas 121=1932 M. W. N. 72=35 L. W. 57=A. I. R.  
 1932 Mad 223, A. I. R. 1934 Nag 109

Section 148 applies only where time is fixed for the doing of any act prescribed  
 or allowed by the Code 146 Ind Cas 171, see also 145 Ind Cas 191=A. R.  
 1933 All 157, 38 L. W. 201=A. I. R. 1933 Mad 563=143 Ind Cas 903=65  
 M. L. J 538, 144 Ind Cas 129=A. I. R. 1933 All 261, 33 P. L. R. 549=A. I. R.  
 1932 Lah 235=137 Ind Cas 76, 36 C. W. N. 867=140 Ind Cas 373, 1932 M. W.  
 N 635

This section has no application where time is fixed by the Court. A. I. R. 1933  
 Rang 8 When mistake in payment of Court fee stamp is not *bona fide* extension  
 of time can not be granted A. I. R. 1934 Lah 424 Limitation under Art 166 of  
 the Limitation Act cannot be extended A. I. R. 1934 Pesh 25

A decree and is not appealable under s 104  
 A revision lies against an order dismissing  
 payment under the terms of a decree A. I.  
 R. 1925 Oudh 330=11 O. L. J 119=78 Ind Cas 387

**149 [New]** Where the whole or any part of any fee prescribed for  
 any document by the law for the time being in  
 force relating to court fees has not been paid,  
 the Court may, in its discretion at any stage,  
 allow the person, by whom such fee is payable to pay the whole or part, as  
 the case may be, of such court fee, and upon such payment the document,  
 in respect of which such fee is payable shall have the same force and effect  
 as if such fee had been paid in the first instance

**Scope**—Time can be granted at any stage for payment of deficit Court fee Court  
 may therefore grant time before or after registration of the plaint and even after the  
 expiry of the period of limitation A. I. R. 1926 Nag 156=89 Ind Cas 419  
 The discretion to give time for payment of Court fee at any stage means a stage  
 of judicial proceedings and not after a final decree has been passed and the Court  
 is divested itself of jurisdiction A. I. R. 1931 All 138=129 Ind Cas 732  
 Discretion under s 149 can be exercised at any stage in the case and in respect  
 of whole or part of any prescribed fee A. I. R. 1929 P. C. 147=31 Bom. L. R., 241=  
 33 C. W. N. 781=56 I. A. 232=50 C. L. J. 39-57 M. L. J. 281=10 Lah 737=  
 (1929) M. W. N. 818=31 P. L. R. 7 (P. C.)=117 Ind Cas 493 In the absence of  
*bona fide* mistake about Court fee and where the omission to pay the full amount  
 is deliberate time to make up deficiency can not be granted A. I. R. 1923 Lah 309=  
 75 Ind Cas 667 1 Lah 234=3 Lah L. J. 370=57 Ind Cas 215, A. I. R. 1922  
 Lah 440=67 Ind Cas 106, 62 P. L. R. 1919=53 Ind Cas 256, A. I. R. 1923  
 All 629=80 Ind Cas 251, 39 C. 388=138 Ind Cas 643=A. I. R. 1932 Cal 482  
 Where the deficiency in court fee was pointed out to the party at an early stage  
 but he made no attempt to make it good no time can be granted at the time of  
 hearing 138 Ind Cas 738=33 P. L. R. 187 Under this section the court has a

an insufficiently stamped appeal is filed in time has power under s 149 C P Code to accept it on the deficiency being made good even if it was made after expiry of limitation A L R 1934 All 72=1933 A L J 1357=146 Ind Cas 753 Section 149 does not speak of rejection but only of admission and it is not easy to see how read with order 7, rule 11 it can be said to confer unlimited power of rejection 1932 M W N 104

Unless there is satisfactory explanation of the mistake, any extension will not be granted for making up deficiency on memorandum of appeal 3 Lah L J 156=67 Ind Cas 130 Before granting permission to deposit deficit Court fee reason for not filing the entire Court fee in the first instance must be considered 66 Ind Cas 493

Where an insufficiently stamped plaint is filed within limitation the suit is deemed to have been instituted on the date of filing of plaint though the deficiency is made good after limitation 1 P L J 420=3 P L W 51=37 Ind Cas 507 Where Court fee cannot definitely be ascertained until record is received or there is doubt as to the amount time may be extended but not where it is deliberately not paid fully 3 Pat L J 74=5 Pat L W 18=42 Ind Cas 675, A I R 1924 Lah 325=69 Ind Cas 196, 71 Ind Cas 737=A I R 1923 Lah 135, 73 Ind Cas 788, 72 Ind Cas 879=A I R 1923 Oudh 16, A I R 1929 Pat 731=8 Pat 906=10 P L T 622=120 I C 313 A case of mistake in valuation is pre eminently a case where discretion under s 149 C P Code should be used A I R 1929 P C 147=31 Bom L R 841 33 C W N 781=56 I A 232=50 C L J 39=30 L W 104=57 M L J 281=10 Lah 737=31 P L R 7 (P C)=117 Ind Cas 493, A I R 1929 Nag 294=119 Ind Cas 700, 123 Ind Cas 527=A I R 1929 Lah 784

Ignorance of law or poverty is not an adequate legal ground for extension and no extension should be granted when insufficiently stamped memorandum of appeal

R 1922=65 Ind Cas 741  
5 P L J 544=1 P L T 544=  
1e permission to deposit deficit  
instances and reasons for not

Code can not be given 21 P W R 1921=59 Ind Cas 689, A I R 1921 Lah 371=26 P L R 1921=59 Ind Cas 667 Where discretion as regards granting time is not exercised and the memorandum of appeal is rejected the order of rejection should be set aside A I R 1923 All 349=21 A L J 333=74 Ind Cas 757 An appeal can not be rejected on the ground that requisite court fee was not paid without calling upon appellant to make up deficiencies or exercising any discretion in the matter *Ibid*

absence  
Cas 398  
pleader  
allowed  
=49 Ind

reasonable cause for not paying the requisite Court fee the case is a fit one for extending time for making good the deficiency A I R 1930 Lah 24=113 Ind Cas 270 Where an error of the Court misleads party and the deficiency in the Court fee is due to a *bona fide* mistake on his part he is entitled to benefit of s 149 A I R 1931 Lah 509=92 Ind Cas 319 Where plaint is in time and the deficiency is made up within time allowed by the Court but after the expiry of the period of limitation, the suit is not time barred A I R 1926 Nag 156=89 Ind Cas 419 Where the deficiency in an insufficiently stamped appeal is made good after the expiry of the limitation but the omission to pay proper Court fee is unintentional and

a *bonafide* mistake has been committed, the appeal should not be dismissed merely for such omission A I R 1925 Lah 246=6 Lah L J 506=84 Ind Cas 946 Where deficit Court fee is accepted after time fixed for payment and plaint is registered, it may be inferred that the Court condones the delay and grant extends on as it is in its discretion to do under s 148 or s 149 for it might have rejected the plaint under Order VII, rule 11 A I R 1925 Pat 299=4 P 199=3 P L T 22=6 P L R 4=85 Ind Cas 172, see also A I R 1926 Mad 676=51 M L J 50=(1926) M W N 341=9, Ind Cas 439

Time can be allowed under Art 158 Limitation Act for supplying Court fee stamp on application to set aside an award can be extended A I R 1928 Sind 87=23 S L R 91=107 Ind Cas 223 Court can refuse to fix a time within which the deficit Court fee shall be paid It has discretion to extend the time already fixed Section 149 does not give the Court any discretion to refuse to grant the time within Order VII rule 11 says it shall grant A I R 1926 Mad 675=1926 M W N 341 51 M L J 90=9, Ind Cas 439 It is an abuse of the powers of the Court to refuse the deficit Court fee where the delay is that of one day A I R 1927 Oudh 507=1 Lu k Cas 574=104 Ind Cas 527 Where indulgence under s 149 in case of an appeal insufficiently stamped is refused the appellant is entitled to have his appeal heard in regard to his claim for which Court fee has been paid and in so far as it is within time, whether or not such a request is made to the Court by the appellant A I R 1931 Lah 237=32 P L R 19=9=131 Ind Cas 297

Leave to sue as pauper—Section 149 has no application to validate subsequent payment of Court fees in case of an application for leave to sue as a pauper A I R 1909 Nag 268=12 N L J 69=118 Ind Cas 687, A I R 1933 Nag 237= A I R 1933 Nag 282 Discretion under s 149 to accept the plaint in a Court and treat the suit as having been instituted on date of application to sue as a pauper should not be too widely used by Court in favour of a plaintiff who fails to establish his right to sue as a pauper A I R 1929 Pat 637 11 L L T 55=118 Ind Cas 329 On dismissal of an application for leave to C . . . . . ment of Court 254= should applica court fee

and if paid within time appeal will be admitted 40 M 687=31 M L J 269, see also 6, Ind. Cas 741=26 P W R 192=3 Lah 35 Where an application for permission to appeal as a pauper was filed accompanied with a memorandum of on of the application lication along with a the payment of s 149 been instituted on the nd that the Court fee V N 855=140 Ind

Cas 190=A I R 1932 Oudh 343

discretion in granting Court A I R 1925 Ind Cas 419=A I R open to revision A I R 1927 Nag 256=10 N L L J 106=103 Ind Cas 268 Where deficit Court fees are accepted after the time fixed for its payment though without specifically excusing the delay review lies on proper and legal grounds A I R 1926 Mad 676=(1926) M W N 341=51 M L J 90=9, Ind Cas 439 If order under s 149 is not objected to when made or in Court making it appellate Court cannot go into the question as to whether the lower Court exercised its discretion in making orders 2 U P L R 1919=56 Ind Cas 47

150 [N<sup>o</sup> v] Save as otherwise provided, where the business of any

Transfer of business

Court is transferred to any other Court, the Court to which the business is so transferred

shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred

an insufficiently stamped appeal is filed in time has power under s 149, C. P Code good, even if it was made after expiry of L J 1357=146 Ind Cas 753 Section read with order 7, rule 11 it can be said to confer unlimited power of rejection 1932 M W N 104

Unless there is satisfactory explanation of the mistake, any extension will not be granted for making up deficiency on memorandum of appeal 3 Lah L J 156=67 Ind Cas 130 Before granting permission to deposit deficit Court fee reason for not filing the entire Court fee in the first instance must be considered 66 Ind. Cas 493

Where an insufficiently stamped plaint is filed within limitation the suit is deemed to have been instituted on the date of filing of plaint though the deficiency is made good after limitation 1 P L J 420=3 P L W 51=37 Ind Cas 507 Where Court-fee cannot definitely be ascertained until record is received or there is doubt as to the amount time may be extended but not where it is deliberately not paid fully 3 Pat. L J 74=5 Pat L W 18=42 Ind Cas 675, A I R 1924 Lah 325=69 Ind Cas 196, 71 Ind Cas 737=A I R 1923 Lah 135, 73 Ind Cas 788, 72 Ind Cas 879=A I R 1923 Oudh 16, A I R 1929 Pat. 731=8 Pat 906=10 P L T 622=120 I C 313 A case of mistake in valuation is pre eminently a case where discretion under s 149 C P Code should be used A I R 1929 P C 147=31 Bom L R 841 33 C W N 781=56 I A 232=50 C L J 39=30 L W 104=57 M L J 281=10 Lah 737=31 P L R 7 (P C)=117 Ind Cas 493; A I R 1929 Nag 294=119 Ind Cas 300, 123 Ind Cas 527=A I R 1929 Lah. 784

Ignorance of law or poverty is not an adequate legal ground for extension and no extension should be granted when insufficiently stamped memorandum of appeal

tion A I R 1922 Lah 225=3 Lah 35=26 P W R 1922=65 Ind Cas 741 the same rule is applicable in the case of plaint as well 5 P L J 544=1 P L T 544=58 Ind Cas 216 But to avail the terms of s 149 the permission to deposit deficit Court fee must be given after considering the circumstances and reasons for not

not affect the suit A I R 1923 All 538=21 A L J 387=45 A 518=74 Ind Cas 358, A I R 1922 Pat 56=3 P L T 142=70 Ind Cas 378 Where deficiency in stamp for a memorandum of appeal is brought to the notice of appellant but is still not made up till long after the appeal is time barred, benefit of s 149 C P Code can not be given 21 P W R 1921=59 Ind Cas 689, A I R 1921 Lah 371=26 P L R 1921=59 Ind Cas 667 Where discretion as regards granting time is not exercised and the memorandum of appeal is rejected the order of rejection should be set aside 757 An appeal can not be without calling upon and the matter. *Idid* in

Deficiency cannot be allowed to be made up on the day of hearing in the absence

nd Cas 198  
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and allowed  
919=47 Ind  
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a fit one for  
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Court fee is due to

A I R 1931 Lah 509.

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limitation, the suit is not time barred A I R 1926 Nag 156=89 Ind Cas 419

Where the deficiency in an insufficiently stamped appeal is made good after the expiry of the limitation but the omission to pay proper Court fee is unintentional and



a *bonafide* mistake has been committed, the appeal should not be dismissed merely for such an omission A I R 1925 Lah 246=6 Lah L J 506=84 Ind Cas 946 Where deficit Court fee is accepted after time fixed for payment and plaint is registered, it may be inferred that the Court condones the delay and grant extension as it is in its discretion to do under s 148 or s 149 for it might have rejected the plaint under Order VII, rule 11 A I R 1925 Pat 299=4 P 190=3 P L T 22=6 P L R 4=85 Ind Cas 172, see also A I R 1976 Mad 676=51 M L J 90=(1976) M W N 341=9, Ind Cas 439

Time can be allowed under Art 158 Limitation Act for supplying Court fee stamp on application to set aside an award can be extended A I R 1928 Sind 87=23 S L R 91=107 Ind Cas 223 Court can refuse to fix a time within which the deficit Court fee shall be paid It has discretion to extend the time already fixed Section 149 does not give the Court any discretion to refuse to grant the time which Order VII, rule 11 says it shall grant A I R 1926 Mad 675=1926 M W N 341=51 M L J 90=9, Ind Cas 439 It is an abuse of the powers of the Court to refuse the deficit Court fee where the delay is that of one day A I R 1927 Oudh 507=1 Lu k Cas 574=104 Ind Cas 527 Where indulgence under s 149 in case of an appeal insufficiently stamped is refused the appellant is entitled to have his appeal heard in regard to his claim for which Court fee has been paid and in so far as it is within time, whether or not such a request is made to the Court by the appellant A I R 1931 Lah 237=32 P L R 197=131 Ind Cas 297

Leave to sue as pauper—Section 149 has no application to validate subsequent payment of Court fees in case of an application for leave to sue as a pauper A I R 1979 Nag 268=12 N L J 69=118 Ind Cas 687, A I R 1933 Nag 237=A L R 1933 Nag 287 Discretion under s 149 to accept the plaint in a Court and treat the suit as having been instituted on date of application to sue as a pauper should not be too widely used by Court in favour of a plaintiff who fails to establish his right to sue as a pauper A I R 1929 Pat 6 al of an application for leave to be validated by payment of the discretion of the Court M L T 18=46 M L J 254=du lent such discretion should be exercised A I R 1923 Rang 256=74 Ind Cas 835 While dismissing application for leave to appeal as pauper time can be allowed to pay requisite Court fee and if paid within time appeal will be admitted 40 M 687=51 M L J 769, see also 65 Ind Cas 741=26 P W R 192=3 Lah 35 Where an application for permission to appeal as a pauper was filed accompanied with a memorandum of appeal as required by order 44 C P C and after the rejection of the application for permission to appeal as a pauper the appellant filed an application along with a Court fee stamp within limitation held that the effect of the payment of s 149 ( ) ( ) en instituted on the that the Court fee

Cas 190=A I R 1937 Oudh 343

discretion in granting Court A I R 1925 Ind Cas 419=A I R open to revision A I R 1927 Nag 256=10 N L L J 106=103 Ind Cas 268 Where deficit Court fees are accepted after the time fixed for its payment though without specifically excusing the delay review lies on proper and legal grounds A I R 1926 Mad 676=(1926) M W N 341=51 M L J 90=95 Ind Cas 439 If order under s 149 is not objected to when made or in Court making it appellate Court cannot go into the question as to whether the lower Court exercised its discretion in making orders 2 U P L R 1919=56 Ind Cas 47

150 [N o] Save as otherwise provided, where the business of any Court is transferred to any other Court the Court to which the business is so transferred

shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred

an insufficiently stamped appeal is filed in time has power under s 149 C P Code good, even if it was made after expiry of L J 1357=146 Ind Cas 753 Section admission and it is not easy to see how read with order 7, rule 11 it can be said to confer unlimited power of rejection 1932 M W N 104

Unless there is satisfactory explanation of the mistake, any extension will not be granted for making up deficiency on memorandum of appeal 3 Lah L J 156=67 Ind Cas 130 Before granting permission to deposit deficit Court fee reason for not filing the entire Court fee in the first instance must be considered 66 Ind Cas 493

Where an insufficiently stamped plaint is filed within limitation the suit is deemed to have been instituted on the date of filing of plaint though the deficiency is made good after limitation 1 P L J 420=3 P L W 51=37 Ind Cas 507 Where Court fee cannot definitely be ascertained until record is received or there is doubt as to the amount time may be extended but not where it is deliberately not paid fully 3 Pat L J 74=5 Pat L W 18=42 Ind Cas 675, A I R 1924 Lah 325=69 Ind Cas 196, 71 Ind Cas 737=A I R 1923 Lah 135, 73 Ind Cas 788, 72 Ind Cas 879=A I R 1923 Oudh 16 A I R 1929 Pat 731=8 Pat 906=10 P L T 622=120 I C 313 A case of mistake in valuation is pre eminently a case where discretion under s 149 C P Code should be used A I R 1929 P C 147=31 Bom L R 841 33 C W N 781=56 I A 232=50 C L J 39=30 L W 104=57 M L J 281=10 Lah 737=31 P L R 7 (P C)=117 Ind Cas 493, A I R 1929 Nag 294=119 Ind Cas 700, 123 Ind Cas 527=A I R 1929 Lah 784

Ignorance of law or poverty is not an adequate legal ground for extension and no extension should be granted when insufficiently stamped memorandum of appeal

R 1922=65 Ind Cas 741 and  
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not affect the suit A I R 1923 All 538=21 A L J 387=45 A 518=74 Ind Cas 358, A I R 1922 Pat 56=3 P L T 142=70 Ind Cas 378 Where deficiency in stamp for a memorandum still not made up till long Code can not be given 21 26 P L R 1921=59 Ind C exercised and the memorandum of appeal is rejected the order of rejection should be set aside A I R 1923 All 349=21 A L J 333=74 Ind Cas 757 An appeal can not be rejected on the ground that requisite court fee was not paid without calling upon appellant to make up deficiencies or exercising any discretion in the matter *Ibid*

Deficiency cannot be allowed to be made up on the day of hearing in the absence

Ind Cas 398  
of pleader  
and allowed  
1919=49 In I

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is made up within time allowed by the Court but after the expiry of the period of limitation, the suit is not time barred A I R 19 6 Nag 156=89 Ind Cas 419 Where the deficiency in an insufficiently stamped appeal is made good after the expiry of the limitation but the omission to pay proper Court fee is unintentional and

a *bonafide* mistake has been committed, the appeal should not be dismissed merely for such an omission A I R 1925 Lah 246=6 Lah L J 506=84 Ind Cas 946 Where deficit Court fee is accepted after time fixed for payment and plaint is registered, it may be inferred that the Court condones the delay and grant extension as it is in its discretion to do under s 148 or s 149 for it might have rejected the plaint under Order VII, rule 11 A I R 1925 Pat 299=4 P 190=3 P L T 22=6 P L R 4=85 Ind Cas 172, see also A I R 1926 Mad 676=51 M L J 90=(1926) M W N 341=9, Ind Cas 439

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**Leave to sue** querent payment of A I R 1919 Nag 2 A L R 1933 Nag 28\* Discretion under s 149 to accept the plaint in a Court and treat the suit as having been instituted on date of application to sue as a pauper should not be too widely used by Court in favour of a plaintiff who fails to establish his 1929 Pat 637=11 P L T 55=118 Ind Cas 319 to sue as pauper the plaint still re Court fees with a time to be fixed by C to do so A I R 1924 Mad 118=18 L W 451=53 M L T 18=46 M L J 254=76 Ind Cas 767 But where such application is fraudulent such discretion should be exercised A I R 1923 Rang 26=74 Ind Cas 835 While dismissing application for leave to appeal as proper time can be allowed to pay requisite Court fee and if paid within time appeal will be admitted 40 M 687=31 M L J 269, see also 65 Ind. Cas 741=26 P W R 1924=3 Lah 35 Where an application for permission to appeal as a pauper was filed accompanied with a memorandum of appeal as required by order 44 C P C and after the rejection of the application for permission to appeal as a pauper the appellant filed an application along with a Court fee stamp within limitation held that the effect of the payment of s 149 en instituted on the that the Court fee N 855=140 Ind Cas 190=A I R 1937 Oudh 343

**Appeal and revision**—Propriety of the exercise of discretion in granting time under this section can not be challenged by the appellate Court A I R 1925 Pat 299=(1924) Pat 355=6 P L T 4=85 Ind Cas 172, 89 Ind Cas 419=A I R 1926 Nag 156 An order demanding additional Court fees is open to revision A I R 1927 Nag 256=10 N L L J 106=103 Ind Cas 268 Where deficit Court fees are accepted after the time fixed for its payment though without specifically excusing the delay review lies on proper and legal grounds A I R 1926 Mad 676=(1926) M W N 341=51 M L J 90=95 Ind Cas 439 If order under s 149 is not objected to when made or in Court making it appellate Court cannot go into the question as to whether the lower Court exercised its discretion in making orders 2 U P L R 1919=56 Ind Cas 47

**150 [New]** Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred

**Scope**—This section applies only to cases when certain specified business has

court A I R 1928 Mad 746=28  
 overruled by 42 M 481 (F. B)]  
 a court and not to cases of court  
 which has ceased to exist A I R 1927 Mad 627=50 M 882=52 M L J 605=  
 38 M L T 351=25 L .. . transfer' in this  
 section includes cases wh the court under  
 the Civil Courts Act and A I R 1923  
 Mad. 92=(1922) M W. N 743=16 L. W 748=43 M L J 713=46 M 63=86  
 Ind Cas. 650 Assignment of business under s 13 (2) of the Bengal and Assam  
 Civil Courts Act from one Judge to another is not transferred within the meaning of s  
 150 and the latter Judge cannot entertain application to execute decree of former.  
 A I R. 19  
 decree is  
 business  
 see also A  
 An applica  
 court to w  
 M. L. J 3.  
 tended to  
 ness but 1

not directly  
 application  
 W 271 =  
 22 said that  
 ion effecting  
 s In this  
 150 applies

to both kinds of transfer" 55 M 801=62 M. L. J 687=35 L. W. 142=137 Ind  
 Cas 305=A. I R 1932 Mad 418 (F B)

**Effect of transfer of territorial jurisdiction pending suit**—Where a  
 suit is pending a transfer of territorial jurisdiction will not *per se* result in a transfer  
 of the suit and a transfer order is technically necessary A I R. 1930 Mad 528=  
 53 M 378=59 M L J 102=32 L W 329=113 Ind Cas 160 Where after attach-  
 ment of property and order for sale by court passing a money decree, the property  
 is transferred to the local limits of the jurisdiction of another court, the new

for unrealised balance after sale of ...  
 is transferred under order XXI, rule  
 last pending is transferred 38 In  
 order 39, rule 1 C P. Code is passed  
 the suit in case are transferred to ...  
 opposite party for contempt for disobeying the injunction can be entertained by the  
 latter court A I R 1923 Mad 92=43 M L J 713=(1922) M W N 743=86  
 Ind Cas 650=46 M 83 A temporary sub court having no defined local jurisdic-  
 tion is not empowered to execute decree passed by it in suit transferred to it by  
 District Court by attachment of properties, situate in places not subjected to its juris-  
 diction but should transfer the decree for execution to the court having jurisdiction  
 over the property 31 M L J 22=35 Ind Cas 296

**151. [New]** Nothing in this Code shall be deemed to limit or otherwise

Saving of inherent powers of Court. affect the inherent power of the Court to make  
 such orders as may be necessary for the ends  
 of justice or to prevent abuse of the process

of the Court

**Scope of the section**—The inherent power must not be exercised where the  
 Code contains specific provisions that would meet requirements of case and such  
 provisions should be followed A I R 1929 Lah 694=119 Ind Cas 483, see  
 also A I R 1928 Lah 772=112 Ind. Cas 295 Power under this section is to be  
 used only when there is no other remedy Courts are not enabled to evade or  
 ignore provisions of law as to procedure A I R. 1923 All 603=21 A. L. J. 447=  
 73 Ind Cas. 494, 73 P L R. 1916=105 P W R 1916=35 Ind Cas 633,

A. I R 1934 All 442, A. I R 1934 Mad 199 As no Code can be exhaustive of procedure for exercising every power which a Court of justice is competent to exercise s 151 has been enacted and should be availed of only where power which has been exercised has not been provided for in the Code A. I R 1921 Sind 8=15 S L R 61=63 Ind Cas 131 Courts have therefore always acted upon an assumption of their being possessed of an inherent power to act *ex debito justitiæ* and to do that real and substantial justice for the administration of which alone they exist 9 O W N 803-140 Ind Cas 412=A. I R 1932 Oudh 293, 26 S L R 395, A. I R 1931 All 427=132 Ind Cas 562 The exercise of the inherent power under this section is subject to the rule that it must not be invoked where the Code contains specific provisions which would meet the necessities of the case This section does not become applicable in every case in which there is no other remedy It is usually applied at the instance of the party who has a specific remedy under the Code but has neglected to avail himself of it, nor can the law of limitation be ignored by taking recourse to the section A. I R 1933 Pat 449=A. I R 1933 P 132=144 Ind Cas 147, see also A. I R 1933 Lah 747=A. I R 1933 Lah 266, A. I R 1933 Lah 598=34 P L R 88=A. I R 1933 Lah 169=141 Ind Cas 188, 69 Ind Cas 718=40 P L R 1922, 34 P L R 51=A. I R 1933 Lah 73=140 Ind Cas 843, 34 P L R 414=A. I R 1933 Lah 229=142 Ind Cas 654, A. I R 1933 Pat 582, 55 A 548=144 Ind Cas 731=A. I R 1933 A 382, 1931 M W N 710=A. I R 1931 M 791, 35 I C 63=73 P L R 1916

This section empowers the Court to pass such orders as it deems necessary for the proper administration of justice and to prevent abuse of the process of the Court A. I R 1925 Oudh 418 12 O L J 246 87 Ind Cas 937, 84 Ind Cas 134=A. I R 1925 Mad 47 48 M 494=20 L W 175 A reduction *ad absurdum* can be avoided by resort to s 151 101 W R 1916-37 Ind Cas 382 Exercise of powers conferred by s 151 is merely discretionary A. I R 1923 Lah 506=75 Ind Cas 487 Court has no inherent power to pass order in respect of suit not pending before it Court trying subsequent suit can not pass order in respect of previous suit A. I R 1929 Mad 631=91 Ind Cas 59 Court has no inherent jurisdiction to set aside order of predecessor in office or touch his judgment except that he can correct clerical or arithmetical mistakes or error by slip or omission or if there are grounds he can review it A. I R 1924 Pat 136=1 Pat L R 155=74 Ind Cas 110 Application under s 151 can be regarded as one for review A. I R 1922 Mad 446=31 M L T 132 (H C)=16 L W 440=43 M L J 290=(1922) M W N 495=70 Ind Cas 475 It is the duty of the Court to prevent injustice and abuse of its own powers A. I R 1923 Nag 182=19 N L R 36=6 N L J 100=71 Ind Cas 436 To relieve party from result of his own mistakes or to enable him to evade law of limitation, the inherent power can not be revoked A. I R 1922 Mad 417=43 M L J 184=16 L W 178=(1922) M W N 514=30 M L T (H C) 135=70 Ind Cas 743 This section cannot be so used as to override the provisions of the law of limitation A. I R 1922 Lah 266=66 Ind Cas 270 This section empowers Courts to deal with their own decrees and orders 42 B 363=20 Bom L R 348=45 Ind Cas 552 All trial Courts including Revenue Courts possess power given by s 151 46 Ind Cas 621 Sections 151, 152 and 153 are equally applicable both to the Court of first instance and Courts with Appellate jurisdiction and Appellate Court ought to take step by way of amendment which were clearly open to the first or other lower Court 38 A 398=34 Ind Cas 79 The above sections have no application to decree which are in conformity with judgment 34 Ind Cas 787 Where final decree omitted to give relief of mesne profits as amended by the preliminary decree and an appeal was not filed therefrom, review application from it being rejected s 151 can not be resorted to for the purpose of granting the suit relief A. I R 1925 Mad 886=48 M L J 512=88 Ind Cas 94 But a plaint can not be rejected even under s 151 in case not mentioned by order VII, rule 11 A. I R 1924 Oudh 413=11 O L J 260=83 Ind Cas 778 Damages or interest under s 151 cannot be awarded when not decreed A. I R 1924 Rang 275=3 Bur L J 58=82 Ind Cas 477

High Court can under s 151 pass such orders and give such directions as it finds necessary in the circumstances of a particular case pending appeal to the Privy Council A. I R 1931 Cal 77=34 C W N 631 191 I C 855 Memorandum of appeal can be changed into revision petition by the High Court A. I R 1921

111 Ind Cas 441 A L J 54=14 L W 85=63 Ind Cas 730, see also 43 Ind Cas 779 since so demands, even in 713=82 Ind Cas 852 Re n absence of it, cannot be

122 Ind Cas 519 Court is not empow final decree A I R 1926 Mad Court has inherent power to recall one which has been perfected A succ of his predecessor A I R 1922 Pat 204=59 L W 74=300 57=97 Ind Cas 697 Questions cutting at the root of subject matter under dispute can be taken cognizance of by every Court under the inherent power A I R 1927 Mad 143=98 Ind Cas 280 Discretion conferred upon by s 151 should not be exercised unless a strong case is made out for the same A I R 1927 Cal 420=100 Ind Cas 518 Court can under this section order the cancellation of order A I R 1925 Pat 720=6 P L T 488=86 Ind Cas 1929 Lah 409=30 P L R 306=11 Lah 35 can be set aside and necessary orders can be passed under this section by the High Court A I R 1924 All 818=22 A L J 29=82 Ind Cas 184

This section does not apply to a Commissioner under the Workman's Compensation Act who cannot exercise power under the same A I R 1930 Lah 657=125 to every case where there is no other 04=7 P L T 291=91 Ind Cas 483 A 2 statute A I R 1925 Pat 435=4 Pat 180=91 Ind Cas 213, A I R 1922 Pat 479=1 Pat 277=6, Ind Cas 341 Where other remedies exist by which justice can be done this section does not apply But it does apply where there are provisions of law leading to injustice It can also be resorted to, to override certain provisions of law under exceptional circumstances A I R 1928 Nag 106=106 Ind Cas 575, A I R 1924 Lah 70=69 Ind Cas 718=40 P L R 1922, A I R 1921 Pat 491=2 P L T 251=60 Ind Cas 368, A I R 1923 Lah 490=73 Ind Cas 136 Application of s 151 comes in question only to prevent injustice and abuse of process of Court 5 O L J 153=46 Ind Cas 68, see also A I R 1923 Oudh 59=25 O C 286=70 Ind Cas 278 This section applies where case is not covered by s 144 A I R 1922 Cal 28=26 C W N 408=35 C L J 53=64 Ind Cas 864 Procedure to set aside appeal proceedings on ground that respondent was not living on date of hearing is to apply for review Section 151 does not apply to the case 54 Ind Cas 104 Order for adjustment of decree cannot be set aside if there is no

Code 9 O W N 430=158 Ind Cas 149=3 A L J 1925 Pat 204=59 L W 74=300 57=97 Ind Cas 697 Oudh 44 application Lah 63 6-1 th 5=A I R 1932 Lah 238 Review under this section A L R 1932 any person and to send him to jail at any proper trial 136 Ind Cas 4 Varieties of inherent jurisdiction invented A I R 1934 All 585 of the compromise it cannot be not be accepted by other party con der passed by Court under misapprehension of facts cannot be set aside A I R 1934 All 287 This section cannot be used for remedying effects of negligence A I R 1934 All 250 Obvious infringement by Subordinate Court can be set right in interest of justice A I R 1934 Lah 16 Where in a case of attachment of decree, proceeds are paid to one of the decree holders before satisfaction of decree of attaching decree holder, Court can order refund under s 151 A I R 1934 Lah 142

Orders can be passed for the ends of justice—Orders under this section can be passed to prevent the miscarriage of justice 38 A 147=14 A L J 1230=35 Ind Cas 585, A I R 1922 Sind 6=6 S L R 7)=66 Ind Cas 776, A I R (1922) Pat 149=69 Ind Cas 200, A I R 1924 Oudh 403=11 O L J 227=80 Ind



Mad 612=41 M L J 54=14 L W 85=63 Ind Cas 730, see also 43 Ind Cas 779 It is the duty of the court to invoke s 151 whenever justice so demands, even in absence of precedent A I R 1924 Bom 90=25 Bom L R 713=82 Ind Cas 852 Re opening of a decision of fact arrived at upon evidence or in absence of it cannot be allowed except under provisions for review of judgment A I R 1929 Mad 404=122 Ind Cas 519 Court is not empowered either by s 148 or s 151 to meddle with its final decree A I R 1929 Cal 109=107 Ind Cas 705=74 L W 443 Though Court has inherent one which has been of his predecessor 57=97 Ind Cas 69, can be taken cognizance of by every Court under the inherent power A I R 1929 Mad 143=98 Ind Cas 280 Discretion can be exercised unless a strong case is made out 100 Ind Cas 518 Court can under this section made by it under para 3 of Sch II A I R Cas. 540 Under certain circumstances suit may arise subsequent to its institution A I R 1929 Lah 409=30 P L R 306=11 Lah 251=116 Ind Cas 31 Abortive proceedings can be set aside and necessary orders can be passed under this section by the High Court A I R 1924 All 818=22 A L J 29=82 Ind Cas 184

This section does not apply to a Commissioner under the Workmen's Compensation Act, who cannot exercise power under the same. A I R 1930 Lah 657=125 Ind Cas 637 Section 151 does not apply to every case where there is no other provision A I R 1926 Pat 27=4 Pat 704=7 P L T 291=91 Ind Cas 483 A Court cannot order a thing prohibited by the statute A I R 1925 Pat 435=4 Pat 180=91 Ind Cas 213, A I R 1922 Pat 479=1 Pat 277=6, Ind Cas 341 Where other remedies exist by which justice can be done this section does not apply But it does apply where there are provisions of law leading to injustice It can also be resorted to, to override certain provisions of law under exceptional circumstances A I R 1928 Nag 106=106 Ind Cas 575, A I R 1924 Lah 70=69 Ind Cas 718=40 P L R 1922, A I R 1921 Pat 491=2 P L T 251=60 Ind Cas 368 A I R 1923 Lah 490=73 Ind Cas 136 Application of s 151 comes in question only to prevent injustice and abuse of process of Court 5 O L J 153=46 Ind Cas 68, see also A I R 1923 Oudh 59=25 O C 286=70 Ind Cas 278 This section applies where case is not covered by s 144 A I R 1927 Cal 28=26 C W N 408=35 C L J 53=64 Ind Cas 864 Procedure to set aside appeal apply to the case 54 Ind be set aside if there is no

Code 9 O W N 430=138 Ind Cas 149= Oudh 445, 33 P L R 146=136 Ind Cas 735=A I R 1932 Lah 238 Review application cannot be treated as an A I R 1917 Lah 63 Court has no inherent forthwith for non compliance with 1 367=1932 A L J 221=A I R are well recognised and new categories cannot be invented A I R 1934 All 58, Where the decree is according to the terms of the compromise it cannot be amended because application for compromise can not be accepted by other party contained additional terms A I R 1934 Lah 597 Extension of facts cannot be set aside A I R be used for remedying effects of negligent infringement by Subordinate Court can be set 1934 Lah 16 Where in a case of attachment of the decree holders before satisfaction of decree of attaching decree holder Court can order refund under s 151 A I R 1934 Lah 142

Orders can be passed for the ends of justice—Orders under this section can be passed to prevent the miscarriage of justice 38 L 147=14 A L J 1230=36 Ind Cas 58, A I R 1922 Sind 6=6 S L R 77=66 Ind Cas 796, A I R (1923) Pat 149=69 Ind Cas 200, A I R 1924 Oudh 403=11 O L J 227=80 Ind



awarded under s. 151 A I R 1927 Lah 403=101 Ind Cas 142; A I R. 1927 Cal 203=44 C L J 441=100 Ind Cas. On a petition of a party may deprive him of the remedy under this section 109 Ind Cas 727=A I R 1928 Nag 149. Decree acted upon for six years cannot be allowed to be amended under s. 151. A I R 1923 Nag 109=67 Ind Cas. 310. A decree under s. 90 of the I. P. Act retained in conformity with the judgment can be amended under s. 151, so as to bring it in conformity with judgment 2 Pat L. W. 405=41 Ind Cas 203. Sections 151 and 152 cannot be invoked for the amendment of decree in execution, if an amendment is allowed the act of the Court would be *ultra vires* A I R 1922 Mad. 226=15 L. W. 301=65 Ind. Cas. 710.

Amendment of decree under s. 151 can be allowed to correct accidental omission of item of mortgaged property both from plaint and decree A I R. 1924 Rang 104=74 Ind Cas 1070. Amendment of decree necessitated by the decision in second appeal should be granted A I R 1923 Lah 371=11 Lah 34=120 Ind Cas. 176. Where there is mistake as to costs included in the decree, it is open to the aggrieved party to point out the mistake and claim its correction under s. 151 A I R 1928 Lah 200=10 Lah L. J. 401. Decree for pre-emption can be amended and amount due to pre-emptor from vendor on charge of property sold can be deducted for pre-emption money under Court's inherent power 2 U P L. R. (I C) 54=54 Ind Cas. 34. Court has inherent power to correct decree not correctly expressing what Court actually or intended to decide A I R 1923 Lah 147=73 Ind Cas 679. Alteration to make the decree consistent can be made before it being signed A I R 1923 Mad 392=17 L. W. 254=74 Ind Cas 416. High Court acting as a Court of Appeal can correct clerical errors under s. 151 A I R 1923 All 358=45 A 53=74 Ind Cas. 1004. Only appellate Courts can amend original decree appealed against where appeal is dismissed under order XXI r 11 95 Ind Cas 649, see also A I R 1923 Pat 218=81 Ind Cas 795. Amendment as to over statement of interest in execution application can be allowed under s. 151 A I R 1922 Pat 409=1 Pat 119=69 Ind Cas 200. Alteration in the decree can be made only by way of review, appeal or revision and s. 151 can not be resorted to for that purpose A I R 1921 Lah 3=3 Lah L. J. 310 (F B) 67 Ind Cas 772. Section 151 should not be invoked to give costs in cases other than in order XXV, rule 1 and order XXI r 10 A I R 1924 Cal 251=50 C 853=79 Ind Cas 298. Court cannot under its inherent power amend its own decree extending time to pay deficit

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erest, amendment in final decree allowed 1 U B 5=4 U B R 1=63 Ind Cas. Amendment of decrees and not to the final *halnama*. But for the ends of justice under ss 151 and 153 139 Ind Cas 491=1932 A L J 784=A I R 1932 All 587, see also 134 Ind Cas 407=8 O W N 883=12 L. R. 213 (Rev)=A I R 1931 Oudh 346, A I R 1932 Oudh 291=139 Ind Cas 367=9 O W N 633, 12 Pat L. T. 558=133 Ind Cas 171. When the preliminary decree in a mortgage suit did not provide for sale, but the final decree contained a provision that on the mortgagor's failure to pay the property could be sold *held* that ss 151 and 152 were wholly inapplicable in as much as it was not a case of mistake or omission A I R 1931 All 427.

**Compromise decree**—Compromise decree as a result of fraud upon the court can be reversed under s. 151 A I R 1927 Pat 354=6 Pat 108=10, Ind Cas 271, see also A I R 1922 Mad 446=43 M L J 290=(1922) M W N 493=31 M L T 132=16 L. W. 440=70 Ind Cas 425. Court has no inherent power to set aside consent decree, 26 S L R 395. But where a suit is compromised and a decree passed it is open to the plaintiff to apply under s. 151 to have the compromise decree cancelled on the ground that they had not consented to the terms therein mentioned 8 O W N 1267.

**Admission of evidence**—In a fit case the court can admit a document which was improperly rejected by the lower court 138 Ind. Cas 328=33 P. L. R 152=A I R. 1932 Lah 267.

revise its own order super-  
I R 1932 All 656 The  
misconduct of arbitrator.

even though the award is not made A I R 1933 Pat 466

**Partition**—The inherent power should be applied where the decree of the lower Court directs partition in an impossible manner. 27 N. L. R. 341.

**Consolidation of suits and appeals**—Courts are empowered to consolidate suits even without the consent of the parties A I R 1922 Pat 566=3 P L T 584=1 Pat 669=67 Ind Cas 1000, see also A I R 1924 Nag 196=75 Ind Cas 917, 40 Ind Cr 92 Consolidation of appeals can also be made under s 151 apart from Order

A 1 R 1923 Al .

J 279=45 Ind C

fact one appeal

1923 Pat 2157

is not that of

in one does not unless so stated govern the other A I R 1925 Pat 103=1 & 2  
431=4 Pat 448=1925 Pat 345=93 Ind Cas 129

**Costs**—Court can under inherent power enforce in such manner as it thought proper, payment of costs in favour of commissioner in connection with execution of commission recoverable from parties and proceeding taken if not proceeding between parties within s 47, the order is not appealable. A I R 1924 All 192=74 Ind Cas 186 Order to pauper to pay costs of amendment in cash and order dismissing a suit in fail.

L R 924=47 B 104

of the process of Court 21 C W N 826=26 C L J 44=40 Ind Cas 999 Order  
as to costs cannot be altered by the successor in office except in review or under  
s 152 A 1 R 1925 Pat 47=3 Pat 654=82 Ind Cas 813

**Dismissal for default**—If an application under order 9 rule 9 is made, a writ cannot be invoked to set aside a judgment. 151 C L J 23=129 Ind Cas 778, R 1928 Nag 91. Where in an application suit the word review is used the suit is not barred by limitation. 58 Ind Cas 748. An appeal is not barred by limitation. 4, B.

648-77 Hon I R 110 60 Ind Cas 919 Order under s 151 restraining execution  
to the judgment debtor is not  
Cas 438 Mistaken order of  
A I R 1928 All 301=26 A L J

382=103 Ind Cas 5. having been adjudged insolvent  
and the Official Assignee is not served dismissal of suit for default is bad and  
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98 Ind Cas 281. Inherent power cannot be exercised in favour of party remaining  
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so as to interfere with rights of third parties A I R 1926 Bom 377=28 Bom  
L R 626=50 B 457=96 Ind Cas 411. The Court cannot under s 151 set aside  
the order of dismissal for default or an order passed *ex parte* in applications under  
order XI rr 97 and 100 on sufficient cause being shown since there is no justifica-  
tion in taking resort to s 151 when other remedies already exist A I R 1929  
Mad 757=52 M 899=57 M L J 387=30 L W 424=120 Ind Cas 567

Execution—Inherent powers should be invoked for execution of Court provided in the Act under which it is passed  
- 890 Section 151 can be invoked to refuse to show that the Court is misled by misstatement  
- A I R 1926 Nag 17-88 Ind Cas 693 see  
f Cas 443 A I R 1923 Mad 635-44 M L J

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of necessary documents to Court in Native State to enable it to execute decree though the decree itself can not be transferred 13 Bur L T 145=61 Ind Cas 704 The Court can not invoke s 151 when the applicant has his remand under Order 21, rule 80, but did not avail himself of it 136 Ind Cas 735=33 P L R 146=A I R 1932 Lah 238 The order dismissing the application for execution is appealable, and where no appeal has been preferred from that order the application cannot be restored under s 151 A I R 1932 Oudh

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order 21, rule 66 Held that the proper order would be to treat the application as one under s 151 and revive both the applications on terms as to cost 36 C W N 567=55 C L J 184=A I R 1932 Cal 569 Where after the court sale and before its confirmation the judgment debtor was shown to have leased the property and realised a portion of the rent and thereupon the purchaser applied for a prohibitory order against the judgment debtor and tenant as regards the paying and receiving of rent Held that although the prohibitory order could not be issued under s 47 or order 21 rule 46 it could be passed under s 151 as the ends of justice required the same 136 Ind Cas 4-33 P L R 435=A. I R 1932 Lah 295 Where same property has been sold twice in execution of decrees of different decree holders an application for rateable distribution is put in long before the confirmation of the first sale but the court in ignorance of these facts confirms the second sale it has inherent power to avoid abuse of process of court and to set aside its order of confirmation of second sale on being appraised of the true facts 11 P 250=12 P L T 639=134 Ind Cas 616 There is no inherent jurisdiction in a court to set aside a sale outside the provisions of Order 21 1932 A L J 392=A I R 1932 All 403, see also 136 Ind Cas 755=33 P L R 146=A I R 1932 Lah 238

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**Ex parte order**—There is no inherent power in Court to set aside *ex parte* decree passed by itself, it can do so only under Order IX rule 13 A I R 1923 Lah 147=73 Ind Cas 660, A I R 1927 Lah 372=101 Ind Cas 617, A I R 1922 Pat 479=1 Pat 277, A I R 1922 All 441=19 A L J 907=64 Ind Cas 527, A I R 1921 Sind 38=15 S L R 61=63 Ind Cas 131 But it can not be laid down as a hard and fast rule that in no circumstances can power of Court under s 151 of the Code, be exercised except under provisions of Order IX rule 13 A I R 1921 Pat 491=2 P L T 251=60 Ind Cas 568, see also 34 Bom L R 142=A I R 1932 Bom 634, 34 Bom L R 714=135 Ind Cas 248=A I R 1932 Bom 271=A L R 1932 Bom 595 The inherent power should be exercised *ex debito justitiæ* on sound general principles and so as not to conflict with intentions of Legislature 43 M 94=37 M L J 599=26 M L T 377=10 L W 606=55 Ind Cas 847 (F B) *ex parte* order under Order XXI rule 90 can be set aside under inherent power of

**Arbitration**—Under s 151 the court is competent to revise its own order superseding a reference to arbitration 138 Ind Cas 524=A I R 1932 All 656 The court has inherent jurisdiction to deal with allegations of misconduct of arbitrator,

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**Consolidation of suits and appeals**—Courts are empowered to consolidate suits even without the consent of the parties A I R 1922 Pat 566=3 P L T 584=1 Pat 669=67 Ind Cas 1000, see also A I R 1924 Nag 196=75 Ind Cas 917, 40 Ind Cas 182 Consolidation of appeals can also be made under s 151 apart from Order V 11 P L T 11 116=(1918) Pat 759=45 Ind Cas 551, A I R 1923 A J 279=45 Ind (fact one appeal 1923 Pat 215= is not that of in one does not 431=4 Pat 448=1925 Pat 345=93 Ind Cas 129

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**Dismissal for default**—If an application under order 9 rule 9 is made when the period for it has expired, s 151 cannot be invoked to set aside a

319=52 C L J 23=129 Ind Cas 778 1928 Nag 91 Where in an application in the word review is used the suit should be restored despite the technical objection 58 Ind Cas 748 An appeal dismissed for default can be restored by Court under its inherent power 45 B 11 under s 151 restraining execution ce to the judgment debtor is not Ind Cas 438 Mistaken order of A I R 1928 All 301=26 A L J

382=108 Ind Cas 576 Where plaintiff is absent as having been adjudged insolvent and the Official Assignee is not served dismissal of suit for default is bad and can be set aside in appeal A I R 1927 Cal 76=31 C W N 22=53 C 844=98 Ind Cas 281 Inherent power cannot be exercised in favour of party remaining absent when he ought to be present and unable to give satisfactory reason therefor, so as to interfere with rights of third parties A I R 1926 Bom 377=28 Bom L R 626=50 B 457=96 Ind Cas 411 The Court cannot under s 151 set aside the order of dismissal for default or an order passed *ex parte* in applications under order XI rr 97 and 100 on sufficient cause being shown since there is no justification in taking resort to s 151 when other remedies already exist A I R 1929 Mad 757=52 M 899=57 M L J 387=30 L W 424=120 Ind Cas 567

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Attachment like any other order can also be revived by the court under s 151 if it is necessary in the interest of justice A I R 1922 Nag 267=4 N L J 118=18 N L R 152=64 Ind Cas 400. There is inherent power in court to release property from illegal attachment apart from order 21, rule 56, the code not being exhaustive in that respect A I R 1921 Pat 499=2 P L F 240=(1921) Pat 205=61 Ind Cas 922. To restore execution application under s 151 strong grounds are necessary as would be required for application for review A I R 1922 Oudh

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**Ex parte order**—There is no inherent power in Court to set aside *ex parte* decree passed by itself, it can do so only under Order IX rule 13 A I R 1923 Lah 147=73 Ind Cas 660, A I R 1927 Lah 372=101 Ind Cas 617, A I R 1922 Pat 479=1 Pat 277, A I R 1922 All 441=19 A L J 907=64 Ind Cas 527, A I R 1921 Sind 38=15 S L R 61=63 Ind Cas 131. But it can not be laid down as a hard and fast rule that in no circumstances can power of Court under s 151 of the Code, be exercised except under provisions of Order IX, rule 13 A I R 1921 Pat 491=2 P L F 251=60 Ind Cas 368, see also 34 Bom L R 142=A I R 1932 Bom 634, 34 Bom L R 714=135 Ind Cas 248=A I R 1932 Bom 271=A L R 1932 Bom 595. The inherent power should be exercised *ex debito justitiae* on sound general principles and so as not to conflict with intentions of Legislature 43 M 94=37 M L J 597=26 M L T 377=10 L W 606=53. 847 (F B) *ex parte* order under Order XI, rule 90 can be set aside

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**Partition**—The inherent power should be applied where the decree of the lower Court directs partition in an impossible manner 27 N L R 341

**Consolidation of suits and appeals**—Courts are empowered to consolidate suits even without the consent of the parties A I R 1922 Pat 566=3 P L T 584=1 Pat 669=

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1923 Pat 215=70 Ind Cas 782 Effect of order declaring appeals to be analogous is not that of consolidation but merely that they shall be heard together and order in one does not unless so stated govern the other A I R 1925 Pat 765=7 P L T 431=4 Pat 448=1925 Pat 345=93 Ind Cas 129

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**Dismissal for default**—If an application under order 9 rule 9 is made when the period for it has expired, s 151 cannot be invoked to set aside a dismissal for default A I R 1931 Cal 319=52 C L J 23=129 Ind Cas 778, 23 N L R 183=107 Ind Cas 193=A I R 1928 Nag 91 Where in an application really purporting to be for restoration of a suit the word review is used the suit should be restored despite the technical objection 58 Ind Cas 748 An appeal

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Court A I R 1921 Pat 293=2 P L T 270=62 Ind Cas 113 The applicant is bound to show sufficient cause for his non appearance at the proper time otherwise it is only in exceptional circumstances that S 151 can be resorted to A I R 1927 Sind 223=103 Ind Cas 129 Under peculiar circumstances Court can under s 151 set aside *ex parte* decree at the instance of person not a party to the original suit and make him a defendant and allow him to defend the suit A I R 1928 Rang 273=6 Rang 694=113 Ind Cas 811, but see A I R 1922 Mad 193=42 M L J 563=15 L W 586=31 M L J 1 (H C) 118-68 Ind Cas 910 There is no remedy under s 151 if an applicant whose a decree of Small Cause Court has been dismissed go in revision under s 25, Provincial Small Cause Court Act 1906=98 Ind. Ca. 658 Extension of time granted - - application can be revoked or altered before the appeal is admitted 45 Ind Cas 725

**Expunging from record**—Irrelevant and scandalous matters can be expunged from the record by a person in exceptional cases of bad character and credit of the lower court unless the court is satisfied that the same are necessary for the proper understanding of the case. A A 401=20 A L J 261=4 U P L R (A) 165=23 Cr L J 349=66 Ind Cas 1005 Where sub judge amending 'Devasthanam Scheme petition' remarked, 'trustees did not care for Devasthanam', this is not a case where High Court can expunge the remark by exercising inherent power 33 Ind Cas 608=3 L W 283 Where remarks in judgment cast a slur on a department of government and was uncalled for the remarks should be expunged from the judgment 146 Ind Cas. 215=34 P L R 919=A I R 1933 Lah 711

**Extension of time**—Ordinary period of limitation cannot be extended under s 151 A I R 1922 Pat 479=1 Pat 277=65 Ind Cas 341, see also A I R 1928 Nag 913=23 N L R 183=107 Ind Cas 193, A I R 1926 Lah 135=89 Ind Cas 427, L R 1A 73 Rev., 27 P W R. 1920=116 P L R 1920=55 Ind Cas 55, 19 M L T 192=(1916) 1 M W N 179=3 L W 271=33 Ind Cas 996 Time fixed by a decree for *specific performance* of a contract to sell cannot be extended for appellate court under s 151 19 M L T 137=3 Ind Cas 509, A I R 1926 Cal 467 Time fixed by decree, 151 15 N I R 39=15 Ind Cas 16 Under s 151

49 Ind Cas 840, 42 A L J 1031—Where an application to the commissioner's report in a petition for a decree for specific performance of a contract to sell cannot be extended for appellate court under s 151 19 M L T 137=3 Ind Cas 509, A I R 1926 Cal 467 Time fixed by decree, 151 15 N I R 39=15 Ind Cas 16 Under s 151

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not for review A I R 1923 Pat 153=60 Ind Cas 175 be disturbed as court has application for extension and in case of deliberate default of payment time cannot be extended under this section 1933 M W N 879.

**Fraud.**—This section can be resorted to to prevent any miscarriage of justice by reason of any reason of fraud by the parties A I R 1927 Mad 813=39 M L T 34=16 L W 481 Consent decree can be set aside by a court under s 151 on the ground that the consent was caused by fraud A I R 1923 Pat 483=(1923) Pat 197=2 Pat 731=77 Ind Cas 14, but see A I R 1929 Cal 470=33 C W N 883=115 Ind Cas. 177, A I R 1929 Nag 111=118 Ind Cas 61, A I R 1924 Ali 398=46 A L J 245=22 A L J 113=82 Ind Cas 1022 Question of fraud should not be locked into except when it works injustice 48 Ind. Cas 135=20 Bom L R 922 Execution of *ex parte* decree can be stayed under s 151 on the ground that it was obtained by fraud but it can be so done under order XVI, rule 29 A I R 1923 Lah 314=75 Ind Cas 419 Court has inherent jurisdiction under this section to vacate an order obtained by decree holder by misrepresentation A I R 1931 Sindh 111=131 Ind Cas 717 Amendment of decree obtained by fraud upon the court can be made under this section But if the fraud has been practised upon the party, the remedy is by way of suit A I R 1934 Pat 229



**Injunction**—Court possesses inherent powers to act *ex debito justitiæ*. A strong case must be made out and it must be shown that there is no other remedy open to which party can protect himself from consequences of injury complained of. Court will issue temporary injunction, if it is shown to be appropriate relief and unless defendant is forthwith restrained irreparable injury will follow. 2 Lah L J 283=55 Ind Cas 403, see also A I R 1925 Lah 242=78 Ind Cas 802, A I R 1927 Lah 833=9 Lah L J 536=100 Ind Cas 544. Injunction against government officers not subordinate to it cannot be granted by court as they have no such inherent power. A I R 1926 Lah 284=27 P L R 11=96 Ind Cas 540. If necessary for some reason Court has inherent power to issue temporary mandatory injunction but it should not act under order 39, rule 2. A I R 1927 Mad 210=24 L W 854=99 Ind Cas 566. Section 151 cannot be resorted to for giving injunction on restraining execution of decree as other provisions for the same remedy is open. A I R 1927 Mad 592=32 M L J (70)=38 M L T 364=(1927) M W N 259=102 Ind Cas 396. see also 102 Ind Cas 700=A I R 1927 Mad 687=38 M L T 358=26 L W 899. If a person not within the jurisdiction of a court submits to its jurisdiction, an injunction can be issued as against such person to meet the error of justice. A I R 1926 Pat 171=6 P L T 540=85 Ind Cas 842. Only chartered High Court in which suit was filed has inherent powers to issue injunction in certain cases restraining executing court from executing decree. A I R 1925 Lah. 618=7 Lah L J 457=26 P L R 561=92 Ind Cas 259. The High court has inherent power to order an injunction against a person living within the jurisdiction of another High Court where the circumstances so require. 130 Ind Cas 252=57 Cal 1280=A I R 1931 Cal 279. But when this jurisdiction is invoked, it is necessary for the plaintiff to establish a strong *prima facie* case that there is no other remedy open to him to protect himself and that if the injunction asked for is not granted irreparable injury or inconvenience would result. 140 Ind Cas 843=34 P L R 51=A I R 1933 Lah 73.

339=131 A I R 1922 Cal 1=80 Ind Cas 192

**Issues, framing of**—Court can frame such issue and give a decision thereon even after the case has been closed as cut at the root of the subject matter of the suit. A I R 1922 Pat 514=2 Pat 52=4 P L T 239=68 Ind Cas 383.

**Errors and mistakes**—This section can always be resorted to correct mistakes obvious in the face of the record. A I R 1923 Mad 392=17 C W 254=74 Ind Cas 416. Arithmetical or clerical error in the judgment can be corrected under this section. A I R 1927 All 585=102 Ind Cas 124, A I R 1924 Oudh 144=71 Ind Cas 563. Court can correct error committed by it not owing to

ertain facts. A I R 1926 7 Ind Cas 1008, see also 67. Though there may be no power to correct its own L W 629=91 Ind Cas 727 a subsequent stage. A I A I R 1924 Nag 58=69 Ind should not be corrected if

third parties have acquired right in the interval. A I R 1924 Oudh 408=11 O L J 227=78 Ind Cas 96=80 Ind Cas 833. The Court has power to correct the mistake committed inadvertently even apart from s 151. A I R 1925 All 622=47 A 546=23 A L J 405=87 Ind Cas 227, A I R 1922 Mad 483=31 M L T 215. Where a wrong decree was filed in the memo of appeal s 151 can be invoked for the correction of the mistake. A I R 1925 Rtn 188=3 Bur L J 325=85 Ind Cas 196. Accidental mistake corrected under s 151. 8 Lah L J 391= has inherent power to set right a wrong belief that the plaintiff had fulfilled terms. Ind Cas 879. Section 151 cannot be after three years so as to affect a *bona fide* 236=47 A 304=22 A L J 1119=84 Ind Cas 1119=84

Court A I R 1921 Pat 293=2 P L T 270=62 Ind Cas 113 The applicant is bound to show sufficient cause for his non appearance at the proper time otherwise it is only in exceptional circumstances that S 151 can be resorted to A I R 1927 Sind 223=103 Ind Cas 129 Under peculiar circumstances Court can under S 151 set aside *ex parte* decree at original suit and make him a defendant A I R 1928 Rang 273=6 Rang 694=113 Ind 42 M L J 563=15 L W 586=31 M . ad 193= There *ex parte* decree of Small Cause Court has been dismissed does not avail himself of right to go in revision under s 25, Provincial Small Cause Courts Act A I R 1927 Nag 95=98 Ind, Ca 658 Extension of time granted for filing an appeal on an *ex parte* application can be revoked or altered before the appeal is admitted 45 Ind Cas 725

**Expunging from record**—Irrelevant and scandalous matters can be expunged from the judgment of a Lower Court by a High Court on a application by a person not a party to the case But this power is to be exercised only in exceptional cases character and credit of court unless the court unless the

401=20 A L J Where sub-judge amending 'Devasthanam Scheme petition' remarked, trustees did not care for Devasthanam', this is not a case where High Court can expunge the remark by exercising inherent power 33 Ind Cas 608=3 L W 283 Where remarks in judgment cast a slur on a department of government and was uncalled for the remarks should be expunged from the judgment 146 Ind Cas 215=34 P L R 919=A I R 1933 Lah 711

**Extension of time**—Ordinary period of limitation cannot be extended under s 151 A I R 1922 Pat 479=1 Pat 277=65 Ind Cas 341, see also A I R 1928 Nag 913=23 N L R 183=107 Ind Cas 193, A I R 1926 Lah 135=89 Ind Cas 427, L R 1A 73 Rev, 27 P W R 1920=116 P L R 1920=55 Ind Cas 55, 19 M L T 192=(1916) 1 M W N 179=3 L W 271=33 Ind Cas 996 Time fixed by a decree for specific performance of a contract to sell cannot be extended by a court of first instance or appellate court under s 151 19 M L T 137=3 ex 19 Time fixed by 15 N I R 39= 16 Under s 151

not for review A I R 1923 of payment time cannot be extended under this section 1933 M W N 879

**Fraud**—This section can be resorted to to prevent any miscarriage of justice by reason of any reason of fraud by the parties A I R 1927 Mad 813=39 M L T 34=26 L W 481 Consent decree can be set aside by a court under s 151 on the ground that the consent was caused by fraud A I R 1923 Pat 483=(1923) Pat 197=2 Pat 731=77 Ind Cas 14, but see A I R 1929 Cal 470=33 C W N 883 115 Ind Cas 177, A I R 1929 Nag 111=118 Ind Cas 61, A I R 1924 All 398=46 A 245=22 A L J 118=82 Ind Cas 1022 Question of fraud should not be looked into except when it works injustice 48 Ind Cas 135=20 Bom L R 929 Execution of *ex parte* decree can be stayed under s 151 on the ground that it was obtained by fraud but it can be so done under order XXI, rule 29 A I R 1923 Lah 514=7, Ind Cas 419 Court has inherent jurisdiction under this section to vacate an order obtained by decree holder by misrepresentation A I R 1931 of decree obtained by fraud upon the if the fraud has been practised upon R 1934 Pat 229

**Injunction**—Court possesses inherent powers to act *ex debito justitiæ*. A strong case must be made out and it must be shown that there is no other remedy open to which party can protect himself from consequences of injury complained of. Court will issue temporary injunction, if it is shown to be appropriate relief and unless defendant is forthwith restrained irreparable injury will follow. 2 Lah L J. 283=55 Ind Cas 403, see also A I R 1925 Lah 242=78 Ind Cas 802, A I R 1927 Lah 833=9 Lah L J 535=100 Ind Cas 544. Injunction against Government officers not subordinate to it cannot be granted by court as they have no such inherent power. A I R 1926 Lah 284=27 P L R 11=96 Ind Cas 540. If necessary for some reason Court has inherent power to issue temporary mandatory injunction but it should not act under order 39, rule 2. A I R 1927 Mad 210=24 L W 854=99 Ind Cas 565. Section 151 cannot be resorted to for giving injunction on restraining execution of decree as other provisions for the same remedy is open. A I R 1927 Mad 592=52 M L J (70=38 M L T 364=(1927) M W N 259=102 Ind Cas 396, see also 102 Ind Cas 700=A I R 1927 Mad 687=38 M L T. 358=26 L W 892. If a person not within the jurisdiction of a court submits to its jurisdiction, an injunction can be issued as against such person to meet the error  
 . . . . . d Cas 862 Only  
 . . . . . to issue injunction  
 . . . . . A I R 1925 Lah.  
 . . . . . The High court has  
 . . . . . him the jurisdiction  
 . . . . . so require 130 Ind Cas 252=57  
 . . . . . in this jurisdiction is invoked, it is  
 . . . . . on *prima facie* case that there is no  
 . . . . . d that if the injunction asked for is  
 not granted irreparable injury or inconvenience would result 140 Ind Cas 843=  
 34 P L R 51=A I R 1933 Lah 73

try modification  
 division is made  
 48=33 C. W.  
 - - - - - caused by resorting  
 to s 151 A I R 1922 Cal 1=80 Ind Cas 192

**Issues, framing of**—Court can frame such issue and give a decision thereon even after the case has been closed as cut at the root of the subject matter of the suit. A I R 1922 Pat 514=2 Pat 52=4 P L T 239=68 Ind Cas 383

**Errors and mistakes**—This section can always be resorted to correct mistakes obvious in the face of the record. A I R 1923 Mad 392=17 C W 254=74 Ind Cas 416. Arithmetical or clerical error in the judgment can be corrected under this section. A I R 1927 All 585=102 Ind Cas 124, A I R 1924 Oudh 144=71 Ind Cas 563. Court can correct error committed by it not owing to negligence of party but owing to it not being aware of certain facts. A I R 1926 Mad 980=50 M 97=51 M L J 219=26 C W 878=97 Ind Cas 1008, see also A I R 1929 All 147=50 A 859=114 Ind Cas 867. Though there may be no express provision for such mistakes Court has inherent power to correct its own proceedings where misled. A I R 1926 Mad 119=22 L W 629=91 Ind Cas 727. Court can correct an obvious mistake in his judgment at a subsequent stage. A I R 1925 Cal 178=40 C L J 24=82 Ind Cas 382, A I R 1924 Nag 58=69 Ind Cas 112. But accidental error in erroneous judgments should not be corrected if third parties have acquired right in the interval. A I R 1924 Oudh 408=11 O L J 227=78 Ind Cas 96=80 Ind Cas 833. The Court has power to correct the mistake committed inadvertently even apart from s 151. A I R 1925 All 622=47 A 546=23 A L J 405=87 Ind Cas 227, A I R 1922 Mad 485=31 M L T 215. Where a wrong decree was filed in the memo of appeal s 151 can be invoked for the correction of the mistake. A I R 1925 Rang 188=3 Bur L J 325=85 Ind Cas 196. Accidental mistake in name of party can be allowed to be corrected under s 151. 8 Lah L J 391=27 Pat L R 648=96 Ind Cas 11. Court has inherent power to set right a wrong done by mistake in ordering execution in belief that the plaintiff had fulfilled terms of decree. A I R 1923 Oudh 16=72 Ind Cas 879. Section 151 cannot be invoked to correct mistake in execution sale after three years so as to affect a *bona fide* purchaser for value. A I R 1925 All 236=47 A 304=22 A L J 1119=84 Ind Cas 746. Order of court based on mis

taken basis can be corrected by it in its inherent power 31 C L J 48=56 Ind Cas 4 Mistake committed by oversight or otherwise injurious to either party can be corrected and the decree amended under s 151 169 P W R 1916-37 Ind Cas 378 Result which amounts to an abuse of the process of court can be corrected under s 151 1 P L W 551=2 P L J 361=39 Ind Cas 763 Order failing to give effect to the intention can be corrected under s 151 40 M 259=21 M L T 82=32 M L J 477=37 Ind Cas 414 It is illegal to appoint guardian *ad litem* without notice to natural guardian and court has inherent power to correct errors or mistakes committed by itself A I R 1922 Mad 485=31 M L J 215=70 Ind Cas 867 Insolvency court has jurisdiction to correct mistake of clerk or parties upon question of fact when it is proved 1 U P L R (H C) 69=51 Ind Cas 55 Court has inherent power to rectify its own or party's errors inadvertently committed 145 Ind Cas 607=1933 A L J 1318=A I R 1933 All 517, see also 1933 M W N 1309, 33 Bom L R 365=144 Ind Cas 901=A I R 1933 Bom 200 1933 A L J 509=A I R 1933 All 608

**Parties, addition of.**—In proper case court has inherent power to add parties to appeals whatever its power under order XXI r 20 A I R 1928 Pat 343=7 Pat 510=9 L T 267=103 Ind Cas 609 If justice demands parties can be added or transferred from one category to another by High Court even if the application is time barred A I R 1921 Cal 722=34 C L J 405=67 Ind Cas 10, 31 C L J 130=56 Ind Cas 720, A I R 1927 Cal 37=44 C L J 243=98 Ind Cas 822, 1933 A L J 1512, see also A I R 1932 Cal 782, A I R 1929 Mad 269, 38 M 406

interval between the submission of it and where an arbitrator is used only in exceptional circumstances A I R 1925 Sind 102=105 L W 78 Ind Cas 84

**Re construction of Records.**—Records destroyed can be reconstructed by court under its inherent power Appellate court has inherent power to re construct records of court from which appeal lies to it A I R 1923 Mad 647 (F B)=46 M 679=44 M L J 675=18 L W 21=32 M L T 382=(1923) M W N 471=73 Ind Cas 1050 A decree can be drawn in accordance with the deposition of a credible witness as to the decision contained in the judgment or part of it A I R 1923 Rang 113=4 U B R 135=77 Ind Cas 258

**Refund.**—Refund of excess court fees paid by mistake can be ordered under s 151 3 P L J 452=(1918) Pat 273=46 Ind Cas 271, A I R 1930 All 471= (1930) A L J 805=122 Ind Cas 188, 38 L W 983, 142 Ind Cas 633=34 P L R 1=A I R 1933 Lah 351, 34 P L R 270=A I R 1933 Lah 135=141 Ind Cas, 400, 35 M 641=A I R 1932 Mad 438=62 M L J 541, 136 Ind Cas 559=33 P L R 54=A I R 1932 Lah 219 Court has inherent power to order refund of sum taken in excess by person failing to deduct the smaller sum due by him to the other person under order 41, rule 19 24 C W N 465=56 Ind Cas 753 Executing court is competent to order refund of deposit withdrawn by a person having no fund of value of stamps used on memo of 356=(1922) Pat 53=3 P L T 754=65

granted by High Court under its inherent power A I R 1923 Pat 600=4 P L T 504=72 Ind Cas 405 Where a court sale is subsequently confirmed, the auction purchaser is bound to refund the purchase money withdrawn by him from court when the sale was originally set aside 5 Pat L W 131=(1918) Pat 281=46 Ind Cas 275, see also 1 P L W 551=2 P L J 361=39 Ind Cas 763, A I R 1933 Lah 850 Where property is sold in execution of prior mortgage decree and is resold in execution of subsequent mortgage decree in proceeding to which judgment debtor decreeholder and previous and subsequent purchasers are all parties Court can direct decree holder to refund price paid by auction purchaser A I R 1926 All 274=4 P L T 504=72 Ind Cas 571 Where order under Order XXII, r 6 directing next friend to refund money drawn from the bank without the permission of the court passed on the authority of s 151, no appeal lies from the order it having been passed under s 151 A I R 1930 Lah 476=31 P L R 171=131 Ind Cas 287 After disposal of appeal the court cannot recover the deficit court fee on cross-objections 142 Ind Cas 25=1933 M W N 350=37 L W 300=A I R 1933 Mad 321

**Remand**—Court can remand case under its inherent power even where Order XXI, Rule 23, does not apply. A I R 1930 Mad 72=119 Ind Cas 466. Appellate Court has inherent power to remand case not falling within Order XXI, r 23. 2 U P L R (Pat) 48=190 Pat 222=58 Ind Cas 444. Courts should be very cautious in resorting to inherent power where there are express powers. Court has inherent power to remand in cases not covered by Order XXI, r 23. C P Code 37 M L J 536=10 L W 359, 52 Ind Cas 985=29 C L J 419, see also 43 Ind Cas 959=3 P L J 253=4 P L W 450, 5 Pat L J 146=58 Ind Cas 654, A I R 1922 Cal 426=35 C L J 34, 70 Ind Cas 547, A I R 1924 Lah 245=73 Ind Cas 915, A I R 1925 Cal 1157=87 Ind Cas 575, 138 Ind Cas 202=33 P L R 28, A I R 1932 Lah 311, A I R 1932 Lah 443=33 P L R 487=159 Ind Cas 126, A I R 1933 Pat 705, A I R 1933 Lah 157=143 Ind Cas 685, 141 Ind Cas 400=34 P L R 20=A I R 1931 Lah 12=34 P L R 270, 14 Pat L T 138=A I R 1933 Pat 270, R 169=133 Ind Cas 127, A I R 1931 Mad Lah 299=134 Ind Cas 495. Power under s 151. 1 where a remand can be granted under another provision of law by which case is covered is not competent to grant it under s 151. A I R 1926 Lah 537=95 Ind Cas 107. If justice so demands remand can be ordered under s 151. A I R 1922 Cal 279=80 Ind Cas 172, 56 Ind Cas 834=2 U P L R (Pat) 156. Order of remand under s 151 should be made and not under XXI, Rule 25 in a second appeal involving general difficult points. A I R 1923 Cal 521=37 C L J 122=74 Ind Cas 392. Where trial Court has fully tried and decided all issues, it is not proper for Appellate Court coming to different decision on one issue to remand the case. A I R 1923 Mad 113=30 M L T 314=16 L W 593=70 Ind Cas 665. Power of remand to be exercised in a limited way. Section does not restrict inherent powers under s 151. 44 C 99=1 C W N 877=6 C L J 49 (B B)=41 Ind Cas 598. Only course for Appellate Court thinking addition of other parties as defendants and inclusion of other properties in suit necessary is to remand suit under its inherent power for fresh trial from beginning. A I R 1926 Cal 1076=43 C L J 601 97 Ind Cas 188. Where the case is remanded by the lower Appellate Court for trial upon issues framed by it the remand order is one under s 151 and not under order XXI r 23. A I R 1927 Pat 296=6 Pat 380=103 Ind Cas 722. Remand given under s 151 is not without jurisdiction and hence no

refused appellate Court has power to set aside decree and order retrial. 23 Bom L R 769=63 Ind Cas 478. The correctness of a remand order can be investigated even though appeal has been preferred against it. A I R 1925 Pat 336=78 Ind Cas 466.

Remand under s 151 can be allowed in cases not covered by order XXIII or XLI. But it shall not be so allowed where it is specifically disallowed by other provisions of the Code. Hence order of remand is not irregular or invalid where it does nothing which is prohibited by the Court. A I R 1930 Lah 224=31 P L R 50=11 Lah L J 507=122 Ind Cas 473. 32 C W N 101=105 Ind Cas 512=A I R 1928 Cal 814. A I R 1928 Mad 991=112 Ind Cas 1. But improper order -119 Ind Cas 705. mention is made of necessarily follow that it is one under s 151. A I R 1928 Lah 116=9 Lah L J 543=29 P L R 300=105 Ind Cas 842, see also A I R 1928 Lah 774=30 P L R 531=112 Ind Cas. 736. Inherent power of remand a case can be exercised only when trial court has not tried a case properly. A I R 1934 Pat 284.

**Restitution**—Scope of section is not enlarged by s 151 and an application for relief which has nothing to do with restitution can not be changed into one for restitution. 4 L W 400=34 Ind Cas 774. If restitution is not possible under s 144 it may so be given under s 151 for the purpose of doing justice. A I R 1931 Cal 42=52 C L J 505=34 C W N 746=130 Ind Cas 236, 58 C 1070=134 Ind Cas 906=35 C W N 483, 55 A 221=A I R 1933 A 218, A I R 1926 Lah 685=96 Ind Cas 804, A I R 1924 All 718=46 A 767=22 A L J 673=84 Ind



**Remand.**—Court can remand case under its inherent power even where Order XLI, Rule 23, does not apply. A I R 1930 M 1 72=119 Ind Cas 466. Appellate Court has inherent power to remand case not falling within Order XLI, r 23. 2 U P L R (Pat) 48=190 Pat 222=58 Ind Cas 446. Courts should be very cautious in resorting to inherent power where there are express powers. Court has inherent power to remand in cases not covered by Order XI, r 23. C. P. Code 37 M L J 336=10 L W 339, 52 Ind Cas 985=29 C L J 419, see also 43 Ind Cas 959=3 P L J 253=4 P L W 450, 5 Pat L J 146=58 Ind Cas 654, A I R 1922 Cal 436=35 C L J 345=70 Ind Cas 547, A I R 1924 Lah 245=73 Ind Cas 915, A I R 1925 Cal 1157=87 Ind Cas 575, 158 Ind Cas 202=33 P L R 285=A I R 1932 Lah 311, A I R 1932 Lah 443=33 P L R 487=137 Ind Cas 126, A I R 1933 Pat 705. A I R 1933 Lah 157=143 Ind Cas 685, 141 Ind Cas 400=34 L R 200=A I R 1933 Lah 135=34 P L R 270, 14 Pat L T 138=A I R 1933 Lah 100. A I R 1931 Lah 302=32 P L R 162=133 Ind Cas 127, A I R 1931 M 1 771=60 M L J 475, A I R 1931 Lah 297=134 Ind Cas 495. Power under s 151 is to be used in exceptional cases and where a remand can be granted under another provision of law by which case is covered is not competent to grant it under s 151. A I R 1926 Lah 537=95 Ind Cas 107. If justice so demands remand can be ordered under s 151. A I R 1922 Cal 277=80 Ind Cas 172, 56 Ind Cas 834=2 U P L R (Pat) 136. Order of remand under s 151 should be made and not under XLI, Rule 23, in a second appeal involving general difficult points. A I R 1923 Cal 321=37 C L J 122=74 Ind Cas 392. Where trial Court has fully tried and decided all issues, it is not proper for Appellate Court coming to different decision on one issue, to remand the case. A I R 1923 Mad 113=30 M L T 374=16 L W 593=70 Ind Cas 665. Power of remand to be exercised in a limited way. Section does not restrict inherent powers under s 151. 44 C 99=1 C W N 877=26 C L J 49 (1 B)=41 Ind Cas 598. Only course for Appellate Court thinking addition of other parties as defendants and inclusion of other properties in suit necessary is to remand suit under its inherent power for fresh trial from beginning. A I R 1926 Cal 1076=43 C L J 601=97 Ind Cas 188. Where the case is remanded by the lower Appellate Court for trial upon issues framed by it the remand order is one under s 151 and not under order XXI r 23. A I R 1927 Pat 296=6 Pat 380=103 Ind Cas 466. Without jurisdiction and hence no s 52 M L J 90=25 L W 197. Appellate Court has inherent power to make a Patent but can be questioned.

Cas 466

**Remand under s 151** can be allowed in cases not covered by order XXIII or XLI. But it shall not be so allowed where it is specifically disallowed by other provisions of the Code. Hence order of remand is not irregular or invalid where it does nothing which is prohibited by the Court. A I R 1930 Lah 224=31 P L R 50=11 Lah L J 507=122 Ind Cas 473. 32 C W N 101=105 Ind Cas 512=A I R 1928 Cal 814, A I R 1928 Mad 991=112 Ind Cas 1. But improper order for remand is open to revision. A I R 1929 Mad 205=119 Ind Cas 705. Where a case has been remanded by the Appellate Court but no mention is made of the law under which order of remand was passed it does not necessarily follow that it is one under s 151. A I R 1928 Lah 116=9 Lah L J 543=29 P L R 300=105 Ind Cas 842, see also A I R 1928 Lah 774=30 L R 541=112 Ind Cas 736. Inherent power of remand a case can be exercised only when trial court has not tried a case properly. A I R 1934 Pat 284.

**Restitution.**—Scope of section is not enlarged by s 151 and an application for relief which has nothing to do with restitution can not be changed into one for restitution. 4 L W 400=34 Ind Cas 774. If restitution is not possible under s 144 it may so be given under s 151 for the purpose of doing justice. A I R 1931 Cal 42=52 C L J 505=34 C W N 746=130 Ind Cas 236. 58 C 1070=134 Ind Cas 906=35 C W N 483, 55 A 221=A I R 1933 A 218. A I R 1926 Lah 685=96 Ind Cas 804, A I R 1924 All 718=46 A 767=22 A L J 673=84 Ind

Cas 75, A I R 1933 Pat 564 A I R 1933 Mad 888=38 L W 874, 83 Ind Cas 138=A I R 1925 Mad 365, A I R 1924 Lah 583=75 Ind Cas 858, 61 P R 1917=98 P W R 1917=41 Ind Cas 910, 63 Ind Cas 43 (Lah), A I R 1922 Mad 99=42 M L J 473=1922 M W N 184=15 L W 421 Application for compensation by judgment debtors for period during which they were kept out of

.. 2 Pat L J 206=3 Pat L W  
can be granted to the judgment-  
1922 Nag 82=18 N L R 24=  
of sale in execution of decree  
ree remaining intact is one under

s 151 and not under s 144 A I R 1930 Pat 280=11 P L T 156=9 Pat 685=122 Ind Cas 589 Execution application dismissed for default can be restored under S 151 if necessary on the interest of justice without notice to other side. A I R 1924 Lah 350=69 Ind Cas 506 Where judgment debtors were entitled to the refund of the amount claimed and section 144 does not permit restoration s 151 can always be resorted to in the interest of justice A I R 1922 Cal 28=26 C W N 408=35 C L J 53=64 Ind Cas 864 Stranger purchaser cannot claim refund of money in cases where the proceeds of the execution sale have been ratably distributed among several decree holders and the execution sale is set aside A I R 1922 Mad 228=42 M L J 308=15 L W 303=67 Ind Cas 369 High Court can under s 151 in proper case order the respondent to furnish security for restitution although the respondents may have obtained possession thereof without giving any security A I R 1928 Pat 187=9 P L T 87=109 Ind Cas 323 Equitable restitution is only claimable when complete restoration to the *status quo ante* is possible A I R 1928 Mad 945=108 Ind Cas 639 Where a Court jurisdiction which s 144 gives it the order C W N 103=53 C L J 49=134 Ind Cas for restitution of mesne profits passed on an appeal Court passed on application for stay is open to appeal 146 Ind Cas 301=34 P L R 938=A I R 1933 Lah 485 Court have inherent power to grant restitution A I R 1934 Lah 322, A I R 1934 Pat 150

**Restoration of suits**—Court has inherent jurisdiction to restore dismissed suit under this section upon sufficient cause being shown A I R 1929 Cal 158=48 C L J 596=114 Ind Cas 672, see also A I R 1930 Lah 440=129 Ind Cas 755, 34 Bom L R 356=138 Ind Cas 748=34 Bom L R 714=A I R 1932 Bom 271, 122 Ind Cas 585, A I R 1929 All 906=120 Ind Cas 559, A I R 1929 All 811=122 Ind Cas 585, A I R 1929 All 624=(19-9) A L J 1082=118 Ind Cas 669, A I R 1929 A L J 1183=119 Ind Cas 15, 34 Bom L R 714=A I R 1932 Bom 271=138 Ind Cas 248, A I R 1929 All 624=(19-9) A L J 1082=118 Ind Cas 669, A I R 1933 Rang 406, A I R 1928 Lah 534=108 Ind Cas 603, A I R 1927 Lah 622=28 P L R 554=103 Ind Cas 425, A I R 1927 Rang 58=5 Bur L J 139=69 Ind Cas 151 95 Ind Cas 533=A I R 1926 Sind 248, A I R 1923 Pat 354=4 P L T 261=2 Pat 501=72 Ind Cas 69, A I R 1926 Nag 409=9 N L R 145, 63 Ind Cas 440 (Cal) 47 Ind Cas 137=5 O L J 259, 39 A 8=14 A L J 818=36 Ind Cas 366 A I R 1930 All 644=(1930) A L J 938=128 Ind

.. 91 Ind Cas 213 Section 151 can  
er 18 Rule 13 Where an *ex parte*  
13 and s 15 the order is irregular  
Hence the order is subject to  
4=34 C W N 419=128 Ind. Cas  
121 Ind Cas 659=26 N L R  
L F 136=A I R 1927 Pat 369  
n no sufficient cause existed, is  
e invoked when specific provisions  
Cal 137=34 C W N 222=126

Ind Cas 779, see also A I R 1927 Cal 534=54 C 40=31 C W N 576=103 Ind Cas 69, 143 Ind. Cas 158=A I R 1933 Fesh 39, A I R 1933 Mad 485 Order by the successor in office admitting a suit rejected under Order VII, Rule 13 is neither one which could be viewed as a review nor can such an order be passed under s 151 and hence should be reversed 1929 M W N 140 *Ex parte* decree was passed against tenant but set aside on the ground of minority and non-representation in the suit Landlord's application for restoration of suit on the tenant's attaining majority can be allowed under s. 151 A I R 1928 Nag 106=106 Ind Cas 575 The Court has no inherent power to restore an application to restore



a suit after that application was itself time barred 143 Ind Cas 240=1933 M W N 216=37 L W 48=A I R 1933 Mad 258=65 M L J 193

**Restoration of application**—Section 151 can be resorted to in case of restoration application dismissed for default A I R 1925 All 773=22 A L J 817=89 Ind Cas 30, A I R 1923 Bom 386=80 Ind Cas 182, A I R 1926 Pat 218=7 P L T 13=5 Pat 361 (F B)=93 Ind Cas 939, 107 Ind Cas 729=A I R 1928 Cal 179=57 C L J 87, A I R 1929 All 721=(1929) A L J 1078=51 A 901=119 Ind Cas 851, A I R 1929 Cal 17=32 C W N 31=115 Ind Cas 357, A I R 1922 Nag 267=18 N L R 152=4 N L J 118=64 Ind Cas 420, 1931 A L J 622=A I R. 1931 All 594.

**Restoration of execution petition**—Court has inherent power to restore execution application dismissed for default and I should do so if satisfied that it should exercise it *ex debito iustitie* A I R 1926 Lah 534=95 Ind Cas 924, see also A I R 1930 Nag 154=120 Ind Cas 405, A I R 1930 Lah 20=11 Lah 93=31 P L R 32=119 Ind Cas 424, 142 Ind Cas 686=34 P L R 70=13 Lah 761=A. I R 1931 Lah 99 117 Ind Cas 372 Lah, A I R 1928 Oudh 478=5 O W N. 895=141 Ind Cas 1 1933 A L J 10 . . . . . Cas. 643, 143 Ind C . . . . . Lah 67=2 Lah 6 . . . . . 335=52 M L J 12 . . . . . missed for default . . . . . time barred Mere . . . . . claiming relief under . . . . . granting relief unde . . . . . (1926) M W N 890 . . . . . missed for default . . . . . fresh execution 5 P L W 208=4 Pat L J 330=(1918) Pat 265=47 Ind Cas 154

**Restoration of appeal**—In case of miscarriage of justice High Court can under ss 151 and 115 set aside order of dismissal and direct restoration and re-hearing of appeal 9 L W 513=52 Ind Cas 540 Court has inherent power to restore and re-hear appeal where it has been disposed of an assumption that matters could be fully investigated in separate suit but were not so tried 31 C L J 48=56 Ind Cas 4 To exercise inherent power, laches of advocate or careless mistake of clerk is not good ground to restore appeal dismissed for default A I R 1926 Rang 50=3 Rang 488=92 Ind Cas 208 In a suit dismissed under order XXVII, rule 3 appeal was preferred but dismissed for want of subsisting decree During the pendency of an appeal application for restoration was allowed but in revision preferred by the defendant against order restoring the suit was set aside Appeal was revised and it was held that there was sufficient ground to restore the appeal under s 151 A I R 1930 All 105=122 Ind Cas 402 Appeal dismissed for default can be re-admitted under s 151 A I R 1921 Bom 20=45 B 649=23 Bom L R 110 Appeal dismissed for default of payment of printing charges can be restored under this section in a suitable case A I R 1931 Sind 153=134 Ind Cas 1169

**Retrial**—When adequate procedure is not provided for retrial can be ordered by Appellate Court in exceptional circumstances under s 151 64 Ind Cas 599 Appellate Court apart from provision of order XLI rr 33 and 23 can grant retrial under this section whenever it finds necessary in the interest of justice A I R 1922 Bom 267=46 B 184=23 Bom L R 769=63 Ind Cas 428, see also A I R 1921 All 335=19 A I R 1923 Ind Cas 501, A I R 1927 Lah 480=9 Lah . . . . . in appeal in ignorance of party's . . . . . ordered to be re-heard paying due . . . . . 23 Cal 676=37 C L J 491=14 Ind . . . . . Cas 545 Re-hearing under s 151 cannot be asked of case where r 3 Chapter 7. Allahabad High Court Rules has not been complied with being a mere irregularity not affecting case on merits A I R 1929 All 403=(1929) A L J 713=116 Ind Cas 23

**Review**—Court can under s 151 review its judgment by setting aside order passed under mistake or by fraud upon the Court 32 Ind Cas 527, A I R 1925 Rang 192=2 Rang 659=85 Ind Cas 284, A I R 1924 Pat 673=5 P L T 423 3 Pat 930=80 Ind Cas 667, A I R 1923 Pat 354=2 Pat 504=4 P L T 26 72 Ind Cas 629, 53 Ind Cas 56=37 M L J 162, 1932 M W N 72=35

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57=A I R 1932 Mad 223, 30 C L J 1=53 Ind Cas 39 But order properly made can not be set aside under s 151 unless express power to that effect is given 9 S L R 132=32 Ind Cas 575, A I R 1926 All 50-48 A 162=23 A L J 1029 =89 Ind Cts 946 Review cannot be granted under s 151 if forbidden by C P Code or other statutory provision 45 C 519=26 C L J 325=32 C W N 416=42 Ind Cts 711, A I R 1927 Cal 920=36 C W N 822=104 Ind Cas 136 Appellate Court in a proper case restore appeal and re hear it 47 Ind Cts 917 Where powers under other provision of R 1974 Cal 1054=28 C W N 9 on the ground that order has b Cal 162=48 C L J 594=115 h orders can be revised under s 151 come in language of order XLVII A I R 1930 Bom 294=32 Bom L R 665=125 Ind Cas 690 Court has no power under s 151 to review its order dismissing plaintiff's suit under order XI, rule 21 the order being appealable A I R 1927 Cal 158=98 Ind Cas 70 Where a Judge refuses to exercise his discretion under s 151 C P Code and grant a review his order not being a judgment is not subject to 139 rant 188

=34 P L R 88=A I R 1933 Lah 169

**Stay of proceedings**—High Court can order stay of suit to avoid multiplicity or for the ends of justice A I R 1926 All 212=24 A L J 375=48 A 356=93 Ind Cas 285, 7 O W N 386=123 Ind Cas 50, A I R 1929 Oudh 341=4 Luck 573=7 O W N 157=114 Ind Cas 775 55 B 801=133 Ind Cas 864=33 Bom L R 702=A I R 1931 B 384 A I R 1929 Lah 12=10 Lah L J 470=113 Ind Cas 783 54 A 344=1932 A L J 43=A I R 1932 All 238, 1932 A L J 861 A I R 1928 Lah 912=110 Ind Cas 912 Superior Court can under s 151 stay proceedings under s 476 Cr Pro Code pending in lower Court A I R 1925 Lah 323=7 Lah L J 73=26 Cr L J 1166=88 Ind Cas 526 Power under s 151 is not to be capriciously or arbitrarily exercised It is to be exercised to facilitate proper administration of justice Court can under s 151 order stay of cross suit or postpone the hearing pending the decision of a selected action A I R 1924 Cal 757=28 C W N 295=86 Ind Cas 1073 If the order under s 151 staying the suit is passed without jurisdiction it can be set aside in revision A I R 1927 Bom 79=51 B 26=28 Bom L R 1442=101 Ind Cas 154 Order refusing stay of suit or its execution is an interlocutory order and cannot therefore be revised under s 151 A I R 1930 Lah 525=31 P L R 174=128 Ind Cas 49 Criminal case of which subject matter is same as in Civil suit should be stayed pending trial of the latter A I R 1927 Lah 17=27 Cr L J 1114=97 Ind Cas 426 Where an order passed under this section amounts to refusal of jurisdiction conferred on Court under order 21, rr 97 and 98 it should not be passed A I R 1929 Lah 694=119 Ind Cts 488 Where order staying execution would merely impede execution of final decree without good and sufficient cause High Court should not exercise its inherent power to pass such order 89 Ind Cas 558 Stay of execution should be ordered where to do so is not detrimental to the interest of the decree holder A I R 1925 Mad 42=48 M 494=20 L W 175=84 Ind Cas 134 High Court has inherent power as Court of Appeal to stay proceedings in lower court as ancillary to its power of reversing lower court's order (1919) Pat 145=4 Pat L J 185 Execution of decree can be stayed under s 151 prior to 216=82 Ind Cas 739 Pending insolvency s should be ordered where the property of such a nature that the delay would 380, but see 32

seriously depreciate :  
Ind Cts 897=3 L

under s 151 and order it having been set aside in *ex parte* decree orders re hearing of the suit A I R 1931 Cal 79=34 C W N 631=129 Ind Cas 833 In a fit case where order 41, rule 5 does not apply the court is competent to order stay under s 151 1932 A L J 582=A I R 1932 All 655, see also 65 M L J 138=38 L W 20=A I R 1933 Mad 563=applicable to the stay of a suit connected with its inherent jurisdiction to stay the suit if that 144 Ind. Cas. 107=A I R 1933 Lah 50 Where the case does not attract the provisions of s 10 C P Code and it appears that the

subject matter of the two suits are different the court cannot exercise its power under s 151 to stay one suit till the disposal

as distinct from the stay of execution of a decree. A I R 1934 All 585 Where there has been an appeal to the Privy Council against the preliminary mortgaged decree High Court can stay further proceedings as to final decree under s 151. A I R 1934 Lah 238

**Security for cost**—The mere fact the corners of order 25 does not prevent the *justit* and to prevent the abuse of its  
S L R 71=140 Ind Cas 233=A I R 1932 Sind 33

**Set off**—The provisions as to set off contained in order 21 r 18 are exhaustive. So this section can not be invoked for granting set off on grounds not mentioned in rule 18. 138 Ind Cas 285=33 P L R 671=A I R 1932 Lah 537

**Surety bond**—Where a surety bond does not fall under s 145, the Court has inherent power to enforce the bond with a suit. 145 Ind Cas 1004=1933 M W N 1005=A I R 1933 Mad 722=38 L W 450=65 M L J 507, see also 56 M 989=145 Ind Cas 1011=1933 M W N 985=38 L W 385=A I R 1933 Mad 691=65 M L J 342

**Strike out pleadings etc**—Court can strike out pleadings and proceed *ex parte* when the costs for adjournments are not paid. A I R 1925 All 280=47 A. 538=73 A L J 212=86 Ind Cas 862, see also 34 L W 864=61 M L J 477. Where a suit was declared to be not within the jurisdiction of Civil Courts but within the jurisdiction of Revenue Court s 151 can not be resorted to, to bring the same within the jurisdiction of Civil Court. 85 Ind Cas 702. Order of Court in striking out evidence on persistent failure of defendant to attend Court when ordered to do so and even an attempt by Court to persuade him to appeal, is not objectionable as Court has inherent power to do so. A I R 1908 Oudh 262=50 W N 291=111 Ind Cas 473

**Transfer of a** on  
the ground of exp. Ind  
Cas 876=32 P L utter  
disregard of convenience of both parties,  
his position as *dominus lites* the High Co  
power, determine which of the two Court  
1933 A L J 1507

**Appeal**—An appeal lies under s 151 where Court exercises the same jurisdiction as under s 144. 35 C W N 105=53 C L J 49, see also A I R 1927 Cal 285=31 C W N 290=100 Ind Cas 735. Ordinarily an order under s 151 is not appealable. But if it is in substance purports to be under some other provision from which an appeal lies, then an appeal lies from it. A I R 1930 Lah 468=127 Ind Cas 159, see also 119 Ind Cas 883=A I R 1929 Pat 232. A I R 1930 Nag 199=124 Ind Cas 246=26 N L R 187, A I R 1929 Lah 834=123 Ind Cas 876, A I R 1930 Lah 20=11 Lah 93. 31 P L R 375=119 Ind Cas, 494, A I R 1930 Lah 789=31 P L R 477=12 Lah L J 71=122 Ind Cas 102, see also A I R 1927 Cal 167=104 Ind Cas 331, A I R 1928 Lah 802, A I R 1934 Lah 349, A I R 1927 Mad 859=103 Ind Cas 670, A I R 1927 Mad 1190=1927 M W N 286=102 Ind Cas 28, A I R 1922 Cal 450=37 C L J 99=73 I C 306, 73 P L R 1916=10, P W R 1916=55 Ind Cas 633. Refusal to act under section 151 can not be appealed against. A I R 1922 Pat 479=65 Ind Cas 341=1 Pat 277. Order of remand is appealable only when it amounts to a decree. A I R 1926 Pat 457=6 Pat 160=7 P L T 535=(1926) Pat 333=97 Ind Cas 125, see also A I R 1928 Cal 211=117 Ind Cas 678. If the order of remand is passed under the inherent powers of the Court given by section 151 it is not appealable. A I R 1929 Mad 205=119 Ind Cas 705, see also A I R 1929 Lah 245=118 Ind Cas 550=230 P L R 604, A I R 1926 Pat 516=7 P L T 811=(1926) Pat 307=96 Ind Cas 440, 92 Ind Cas 684=A I R 1925 Pat 760. Right to appeal is determined by what it ought to have been done, hence order of remand under order LI r 23 which in reality should have been under s 151 can be appealed from. A I R 1908



subject matter of the two suits are different the court cannot exercise its power under s 151 to stay one suit till the disposal of the other suit by another court. 132 Ind Cas 257=14 O L J 430=8 O W N 644=A I R 1931 Oudh 313, see also 133 Ind Cas 222=53 C L J 619=A I R 1931 Cal 779 Order 45 rule 13 has no application where the party applied for the stay of proceedings in the court below as distinct from the stay of execution of a decree A I R 1934 All 585 Where there has been an appeal to the Privy Council against the preliminary mortgaged decree High Court can stay further proceedings as to final decree under s 151 A I R 1934 Lah 238

**Security for cost**—The mere fact that corners of order 25 does not prevent the *justice* and to prevent the abuse of its,  
S L R 21=140 Ind Cas 233=A I R 1932 Sind 33

r 18 are exhaustive  
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**Surety bond**—Where a surety bond does not fall under s. 145, the Court has inherent power to enforce the bond with a suit 145 Ind Cas 1004=1933 M W N 1005=A I R 1933 Mad 722=38 L W 450=65 M L J 507, see also 56 M 989=14, Ind. Cas 1011=1933 M W N 985=38 L W 383=A I R 1933 Mad 691=65 M L J 342

**Strike out pleadings etc**—Court can strike out pleadings and proceed *ex parte* when the costs for adjournments are not paid A I R 1925 All 280=47 A 538=73 A L J 712=86 Ind Cas 862 see also 34 L W 804=61 M L J 477 Where a suit was declared to be not within the jurisdiction of Civil Courts but within the jurisdiction of Revenue Court s 151 can not be resorted to, to bring the same within the jurisdiction of Civil Court 85 Ind Cas 702 Order of Court in striking out evidence on pers c t failure of defendant to attend Court when ordered to do so and even an attempt by Court to persuade him to appeal is not objectionable as Court has inherent power to do so A I R 1928 Oudh 262=50 W N 291=111 Ind Cas 473

**Transfer of a case**—Transfer of a case under this section can be allowed on the ground of expression of strong opinion by judge regarding evidence 133 Ind Cas 876=32 P L R 388 If it appears that the plaintiff has chosen a *forum* in utter disregard of convenience of both parties, for some ulterior object and in abuse of his position as *dominus litis* the High Court can in the exercise of its inherent power, determine which of the two Courts having jurisdiction should try the suit 1933 A L J 1507

**Appeal**—An appeal lies under s 151 where Court exercises the same jurisdiction as under s 144 35 C W N 105=53 C L J 49, see also A I R 1927 Cal 285=31 C W N 290=100 Ind Cas 735 Ordinarily an order under s 151 is not appealable But if it in substance purports to be under some other provision from which an appeal lies then an appeal lies from it A I R 1930 Lah 463=127 Ind Cas 159 see also 119 Ind Cas 883=A I R 1929 Pat 232 A I R 1930 Nag 199=124 Ind Cas 246=26 N L R 187, A I R 1929 Lah 834=123 Ind Cas 876, A I R 1930 Lah 20=11 Lah 93, 31 P L R 375=119 Ind Cas, 494, A I R 1930 Lah 789=31 P L R 477=12 Lah L J 71=122 Ind Cas 102, see also A I R 1927 Cal 167=101 Ind Cas 331, A I R 1928 Lah 802, A I R 1934 Lah 349, A I R 1927 Mad 859=103 Ind Cas 670, A I R 1927 Mad 1190=1927 M W N 286=102 Ind Cas 28, A I R 1922 Cal 450=37 C L J 99=73 I C 306, 73 P L R 1916=103 P W R 1916=55 Ind Cas 633 Refusal to act under section 151 can not be appealed against A I R 1922 Pat 479=65 Ind Cas 341=1 Pat 277 Order of remand is appealable only when it amounts to a decree A I R 1926 Pat 457=6 Pat 160=7 P L T 535=(1926) Pat 333=97 Ind Cas 125, see also A I R 1928 Cal 211=117 Ind Cas 678 If the order of remand is pressed under the inherent powers of the Court given by section 151 it is not appealable A I R 1929 Mad 205=119 Ind Cas 705, see also A I R 1929 Lah 245=118 Ind Cas 550=230 P L R 604, A I R 1926 Pat 516=7 P L T 811=(1026) Pat 307=96 Ind Cas 440, 92 Ind Cas 684=A I R 1925 Pat 760 Right to appeal is determined by what it ought to have been done, hence order of remand under order XLII r 23 which in reality should have been under s 151 can be appealed from A I R 1928 Lah,

341=107 Ind Cas 284 An order made under s 151, is not subject to an appeal and if a Judge having no jurisdiction to entertain the appeal entertains one, his judgment is *coram non iudice* and must be set aside 12 Lah 602=134 Ind Cas 292=32 P I R 863=A I R 1931 Lah 344 An order passed under inherent power is not appealable But under special circumstances memorandum of appeal may be taken as a petition for revision A I R 1933 Pat 564, 34 P L R 51=A I R 1933 Lah 73

### Appellate Court—

special leave to appeal,  
Presidency Towns Insolv.

1923 Bom

is not given

a decision

=104 Ind Cas 504

*pauperis* can be exercised only if Court is of opinion on passing decree and judgment that the decree is contrary to law (1920) M W N 277=38 M L J 146=10 L W 659=54 Ind Cas 761

ent power to grant

under s 106 (a)

involved A I R

Cas 261 Decision not appealed against

so demand, appellate Court can set aside

A I R 1927 Oudh 455=4 O W N 862

appellant to continue appeal in *forma*

of opinion on passing decree and

(1920) M W N 277=38 M L J

146=10 L W 659=54 Ind Cas 761

**Limitation**—An application for restitution either under s 144 or under s 151 is subject to the rule of limitation as mentioned in Art 181 of the Limitation Act 3 P 371=78 Ind Cas 200=A I R 1925 Pat 1 (F B)

**152 [New.]** Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

**Scope**—This section applies both to judgments and decrees A I R 1929 Lah 400 Decree in conformity with judgment cannot be amended A I R

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was heard A I R 1929 Mad 830=123 Ind Cas 355 Ordinarily where there is a discrepancy between the decree and the judgment and the decree holder accepts payment of the amount due under the decree he is not by that circumstance alone debarred from taking proper steps to have the decree brought in accordance with the judgment A I R 1929 Mad 830=(1929) M W N 729=123 Ind Cas 355 Where final decree omitted clause regarding interest in the preliminary decree for sale, omission can be rectified at any time by court A I R 1926 Oudh 223=91 Ind Cas 29 Court can add a necessary direction in its judgment accidentally omitted after the judgment is signed A I R 1927 Pat 25=3 P L T 81=97 Ind Cas 386 Correction involving payment of larger amount should not be allowed long after satisfaction was recorded A I R 1926 Mad 516=(1926) M W N 180=50 M L J 655=94 Ind Cas 453 Where a decree is drawn up in pursuance of a judgment, successor of the Judge cannot amend the decree so as to bring it in conformity with it A I R 1926 Cal 1100=96 Ind Cas 195 Under certain circumstances a decree in conformity with judgment can be amended A I R 1927 Mad 435=1927 M W N 38=92 Ind Cas 655 Where property is sold at a Court sale and made over to the auction purchaser, the Court which has ordered the sale, cannot set it aside under its inherent powers on the ground that the sale was ordered by a mistake for a sum larger than what was due under the decree A I R 1925 Bom 389=27 Bom L R 657=89 Ind Cas 589 Dower decree making all defendants liable jointly and severally for the whole dower debt can be amended A I R 1924 All 690=82 Ind Cas 627, see also A I R 1923 Bom 414=80 Ind Cas 180, 76 Ind Cas 198=A I R 1924 Lah 621 Court can correct mistake in final form in order due to original mistake in party's application A I R 1924 All 520=22 A L J 215=78 Ind Cas 166

Court cannot amend decree when it is in conformity with the judgment, even if there is an error apparent on the face of the judgment A I R 1924 Mad 225=13 L W 876=33 M L T 221=76 Ind Cas 786 Section 152 is the widest possible law

Court the revision was held incompetent—A I R 1923 Mad 663=18 L W, 105=

=3 Lah L J 341=66 Ind Cas 992 Application to correct decree as to costs can be made under s 152 54 Ind Cas 821, see also 57 Ind Cas 739 Decree passed on award embodying terms as to costs not contained in award, can not be amended the only way to cure the defect being an appeal or application for review 3 L W 499=34 Ind Cas 787 An error in its final decree copied from High Court's preliminary decree cannot be amended by District Court 31 Ind Cas 320 The remedy where decree does not accord with the judgment is amendment of decree and not a suit to set aside 43 C 217=19 C W N 1228=31 C 13 A decree against a person can not be amended so as to add another as judgment debtor against whom a decree is not passed 40 Ind Cas 47 Parties are not to be driven to subsequent suit where delivery of properties not covered by decree is ordered Court should correct its mistake 49 Ind Cas 1948 This section is available not only in cases where the mistake or error arose for the first time in the plaint or after the institution of the suit but is also available where the mistake originates in a document which has been copied into the plaint or at some time anterior to the plaint There is nothing which limits the power of the Court under s 152 to correcting errors, mistakes or omissions which arise in the suit 131 Ind Cas 6=34 L W 955=A I R 1933 Mad 60=61 M L J 805 An order setting aside an *ex parte* decree is a judgment within the meaning of s 2(9) and cannot be lightly set aside save as provided by s 152 or on review 145 Ind Cas 302=10 C W N 794=A I R 1933 Oudh 385

**Clerical or Arithmetical errors**—Section 152 deals with amendments of clerical errors in orders or decrees of Court itself which are drawn up and which do not properly represent what the Court decides A I R 1927 All 585=102 Ind Cas 124 A I R 1928 All 458=26 A L J 1323=111 Ind Cas 245, 24 Ind Cas 283, 12 A L J 185=23 Ind Cas 344, 29 Ind Cas 144, 22 Ind Cas 774=15 M L T 102=(1914) M W N 107, 7 S L R 53=21 Ind Cas 540, 16 C L J 517, 9 Ind Cas 433, 108 Ind Cas 737, A I R 1925 All 187=47 A 44=82 Ind Cas 1030, A I R 1923 Pat 218=81 Ind Cas 295, 62 Ind Cas 652=14 L W 445, 1 U P L R (H C) 69=51 Ind Cas 55, 4 Pat L J 205=50 Ind Cas 497, 44 Ind Cas 248=7 L W 8 A I R 1932 A L J 587=1932 A L J 784, 12 L R 383=8 O W N 1238, 140 Ind Cas 113

**Accidental slip or omission**—Where omission is not a deliberate one but is merely due to inadvertence, the judgment and the decree based on it can be amended even where the right of appeal was not availed of A I R 1930 Lah 210=125 Ind Cas 110 A I R 1931 Mad 260=141 Ind Cas 6 The Judicial Committee

583=(1931) M W N 620=131 Ind Cas 309 After confirmation of lower court's decree in appeal, jurisdiction of that Court to amend decree ceases A I R 1929 Mad 830=(1929) M W N 729=123 Ind Cas 355, see also A I R 1930 Nag 138=120 Ind Cas 735 Amendment of decree prejudicing rights of third parties should not be allowed A I R 1931 Mad 399=54 M 184=32 L W 919=124

empowers court not only to  
arise therein from any  
iv time and even without

A 572=(1929) A L J 305=119 Ind Cas 287, 108 Ind Cas 737, 108 Ind Cas 622=A I R 1928 Lah 636, A I R 1927 Pat 25, 13 O C 114, 91 Ind Cas 29, 37 A 323=13 A L J 449, A I R 1931 Oudh 422=8 O W N 1121, 4 O L J 475=42 Ind Cas 66 67 Ind Cas 310=A I R 1923 Nag 109, A I R 1919 All 14, 10 A S C 114 Ind Cas 867, A I R 1928 Lah 636=108 Ind Cas 622 93 Ind Cas 70 A I R 1917 Rang 57=4 Rang 347, A I R 1917 Pat 25=51 P L 1 81=97

386, 1925 Oudh 418=12 O I J 246=2 O W N 218=37 Ind Cas 937, A I R 1925 Oudh 373=12 O L J 141=87 Ind Cas 333, 73 Ind Cas 679=A I R 1923 Lah 147, A I R 1921 Oudh 193=8 O L J 416=66 Ind Cas 633, A I R 1922 Mad 192=15 L W 393, A I R 19 4 Rang 104=74 Ind Cas 1020, A I R 1924 All 127=74 Ind Cas 842, 1932 A L J 764=A I R 1932 All 587=139 Ind Cas 491, 136 Ind Cas 850=1931 M W N 1329=35 L W 322=A I R 1932 Mad 275  
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 Pat L T 466=A  
 This section is wide  
 parties 1932 A L J  
 ment of a decree s  
 54 M 184=129 Ind Cas 818=1930 M W N 1152=32 L W 919=A I R 1931  
 Mad 399=60 M L J 721

**May at any time corrected**—Although there is no limitation for a case under s 152, no amendment should be allowed where laches may disentitle a party to relief A I R 1928 Nag 149=109 Ind Cas 727 but see A I R 1974 Oudh 408=78 Ind Cas 96=11 O L J 227=80 Ind Cas 833 (where amendment was granted after 20 years), A I R 1924 Cal 89=28 C W N 873=80 Ind Cas 55 Court is not bound to grant application for amendment in every case Court can dismiss application filed 3 years after full satisfaction of mortgage decree A I R 1925 All 556=23 A L J 518=88 Ind Cas 396 Application for amendment under s 152 is not maintainable after discharge and satisfaction of a decree A I R 1925 All 556=23 A L J, 518=88 Ind Cas 396 Exercise of power to amend under s 152 is discretionary and necessarily so when no period of limitation is provided for application for its exercise. An application for amendment should therefore be rejected as too late if the rights of third parties acting in good faith have intervened A I R 1923 Mad 57=16 L W 623=43 M L J 559=69 Ind Cas 977, A I R 1924 Oudh 408=78 Ind Cas 96=11 O L J 227=80 Ind Cas 842 A decree can be brought into conformity with judgment even after the lapse

10 O W N 938, see 10 O W N 1087=A I R 1933 Oudh 529, 146 Ind Cas 310=10 O W N 884=A I R 1933 Oudh 466, 15 N L R 124=142 Ind Cas 880

**Consent decree**—Consent decree cannot be amended without consent A I R 1931 Cal 51=130 Ind Cas 907=57 C 1143 Application to amend consent decree on the ground of fraud is outside s 152 A I R 1929 Cal 470=33 C W N 883=124 Ind Cas 525 Where suit is compromised in appeal but the judgment omitted certain terms of compromise Court would pass an order correcting the omission under s 152 A I R 1928 Lah 352=9 Lah 176=50 P L R 135=119 Ind Cas 257 In an application by judgment debtor for amendment of compromise decree decree-holder cannot plead that compromise was obtained by fraud A I R 1929 Lah 40  
 R 1929 Lah  
 for amendment  
 the intention

Apparently was to pass a decree in terms of compromise but the decree was passed contrary to the judgment and the terms of the compromise, an application for amendment should be allowed 8 O W N 1121=134 Ind Cas 1009=A I R 1931 Oudh 422, see also A I R 1933 Pat 135

**Power of Court passing the decree**—A court cannot set aside its own decree except under s 152 or on review A I R 192, Pat 36=3 Pat 778=6 P L 1 307=84 Ind Cas 30 If the error has been committed deliberately, s 152 cannot be invoked for the purpose of correcting it A I R 1924 Oudh 408=78 Ind Cas 96=11 O L J 227=80 Ind Cas 833 Court can amend a record even after an appeal is brought A I R 1924 Pat 528=21 Pat I R Civ 6=5 P L 588=78 Ind Cas 794, A I R 1924 All 127=74 Ind Cas 842 When lower court's decree has been superseded by that of Appellate Court lower court cannot amend its decree A I R 1911 U B 5=4 U B 11=66 Ind Cas 792, 63 Ind Cas 840, A I R 1921 All 130=19 A I J 375=62 Ind Cas 910. Application by the plaintiff to amend the decree so as to bring its terms in



conformity with judgment must be made to the Court which passed it and not to be Appellate Court 57 Ind Cas 710 When decree is confirmed on appeal, appellate Court alone can amend the decree even when appeal is dismissed under Order XLII r 11 55 Ind Cas 303, see also 43 Ind Cas 360 When High Court refuses to revise decree of Small Cause Court it must remain as the decree of the Court for the amendment of it must be made to the Court Lah 342=56 P L R 1921=81 P W R

Lower Court's decree has been superseded by amendment should be made to the High Court 42 Ind Cas 970, A I R 1921 All 130=19 A L J 375=62 Ind Cas 910, 31 M L J 435=(1916) 2 M W N 249=4 L W 225=35 Ind Cas 891, 16 A L J 451=46 Ind Cas 36 45 Ind Cas 245 Successor in office of Judge can rectify an accidental error in judgment of his predecessor 18 A L J 501=2 U P L R All 195=55 Ind Cas 95, see also 44 C 28=18 Ind Cas 101, 18 Ind Cas 903=

presiding

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of origin

When the trial Court's decree is merged into appellate decree then only the jurisdiction of the original Court is ousted 1931 A L J 536=1 I R 1931 All 736, see also 36 C W N 665 Where an appeal has been summarily dismissed under Order 41 rule 11 by the High Court, the application for amendment of the decree should be made to the lower Court 11 Pat 407=13 Ind Cas 903=13 Pat L T 487=A I R 1925 Pat 587

**Appeal and revision**—No appeal lies against order amending decree nor can order directing amendment be challenged in appeal against amended decree 120 Ind Cas 174 see also 30 C 679 A I R 1927 Lah 68=68 Ind Cas 883, 73 Ind Cas 69 97 Ind Cas 66=A I R 1926 Lah 664 But where Court wrongly declines to amend decree it is failure to exercise jurisdiction vested in it A I R 1929

g decree without

to show cause

against it is open to review A I R 1926 All 384=48 A 281=24 A L J 266=94 Ind Cas 877 Where the order is under Order 47 and not under s 152 an appeal lies

decree

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Ind Cas 528=36 C W N 97=A I R 1932 Cal 563

**153 [New]** The Court may at any time, and on such terms as to

costs or otherwise as it may think fit, amend  
General power to amend any defect or error in any proceeding in a suit,  
and all necessary amendments shall be made for the purpose of determining  
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is passed in appeal A I R 1906 All 304=48 A 224=24 A L J 149=92 Ind Cas 264, but see A I R 1924 Bom 166=25 Bom L R 888=77 Ind Cas 171 Where a mistake as to description of village in which mortgage property is situate is found in appeal the appellate Court should allow amendment of plaint to rectify the mistake A I R 1922 All 81=20 A L J 159=66 Ind Cas 208 A clerical error in the plaint about description of property can be corrected by the Court and it is

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A party should not be punished for inapt procedure when its right is clear there can be no misunderstanding, surprise or prejudice to other side 11

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the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf

**Scope**—Section 157 C P Code is an enabling and not a repealing section. The words "so far as they are inconsistent with this Code" which occur in this section do not impliedly repeal rules framed under s 26 C P Code of 1882 24 M L J 637=20 Ind Cas 775 (F B). The term "rules made" means rules made by the proper authority having jurisdiction. Rules under the old Code which were then *ultra vires* are not valid because they could be made under the new Code 29 M L J 63-31 Ind Cas 924

**153 [S 3 second para]** In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this code or to its corresponding Part, Order, section or rule

**Scope**—Alterations in procedure are always retrospective unless there be some good reasons against it 7 Ind Cas 11. In the absence of provisions to the contrary the expired or the repealed Act is considered to have never been in existence except as to matters and transactions past and closed *Suttees v Ellison*, 9 B & C 752 *Churchill v Crease*, 5 Bng 177. But a repeal does not affect any right privilege obligation, or liability acquired accrued or incurred under any enactment so repealed *Lewis v Hughes* (1916) 1 K B 813 C A

## THE FIRST SCHEDULE

### ORDER I

#### *Parties to Suits*

#### RULES

- 1 Who may be joined as plaintiffs
- 2 Power of Court to order separate trials
- 3 Who may be joined as defendants
- 4 Court may give judgment for or against one or more of joint parties
- 5 Defendant need not be interested in all the relief claimed
- 6 Joinder of parties liable on same contract
- 7 When plaintiff in doubt from whom redress is to be sought
- 8 One person may sue or defend on behalf of all in same interest
- 9 Misjoinder and nonjoinder
- 10 Suit in name of wrong plaintiff  
Court may strike out or add parties  
Where defendant added, plaint to be amended
- 11 Conduct of suit
- 12 Appearance of one of several plaintiffs or defendants for others
- 13 Objections as to nonjoinder or misjoinder

### ORDER II

#### *Frame of Suit*

#### RULES

- 1 Frame of suit
- 2 Suit to include the whole claim  
Relinquishment of part of claim  
Omission to sue for one of several reliefs
- 3
- 4 for
- 5 administrator or heir
- 6 Power of Court to order separate trials
- 7 Objections as to misjoinder

### ORDER III

#### *Recognised Agents and Pleadings*

- 1 Appearances etc. may be in person, by recognised agent or by pleader
- 2 Recognized agents
- 3 Service of process on recognized agent
- 4 Appointment of pleader.
- 5 Service of process on pleader
- 6 Agent to accept service.  
Appointment to be in writ  
be filed in Court

parties and the Court have understood real amended in suitable form A I R 1921 All 321  
 It is an abuse of the process of the Court to be returned for presentation to proper Court A I R 1925 All 142=83 Ind Cas 1  
 Where an appeal is presented against a person who was dead at the date of presentation the cause title may be amended or the appeal memo may be returned for amendment and re presentation A I R 1925 Mad 1210=49 M L J 590-49 M 18=23 L W 418, see also 75 Ind Cas 739=43 M L J 231 An amendment asked for before any prejudice could have arisen and which would raise no question of limitation should be allowed A I R 1922 Mad 417=43 M L J 184=16 L W 178=(1922) M W N 514=70 Ind Cas 743

Notice by Court should be given by Court to judgment debtor in case of application for amendment of sale certificate by the auction purchaser A I R 1922 Mad 63=(1922) M W N 130=16 L W 760=65 Ind Cas 732 Rules of Courts are only provisions intended to secure the proper administration of justice and they should therefore be subordinate to that purpose so that full powers of amendment must be enjoyed and should always be exercised liberally but nonetheless one distinct cause of action cannot be substituted for another nor can the subject matter of the suit be changed by amendment A I R 1922 P C 249-24 Bom L R 682=30 M L T 28=48 I A 214=48 C 832=(1921) M W N 396 (P C)=63 Ind Cas 914 Ss 151 152 and 153 are very salutary provisions of law and are meant to invest the Court with authority to see that the object for which the Court exists is carried out and that the merest technicality may not be allowed to stand in the way of substantial justice 55 A 216=A I R 1933 All 295=145 Ind Cas 437=1933 A L J 110

154. [S 3 third para] Nothing in this Code shall affect any Saving of present right of present right of appeal which shall have accrued to any party at its commencement.

Scope—The right of appeal is substantive right and as such this section does not touch the right existing at the passing of the statute *Colonial Sugar Refining Co v Irving* (1905) A C 369=74 L J P C see also 54 I A 421=47 C L J 1=A I R 1 pending rights of appeal do not imply repeal Mad 126=13 L W 37=(1921) M W N 181=6 execution sale took place and the application

W N 515n Section 154 of the code shows that the Legislature in enacting it argument that such be imperilled over ssed in March 1903 ded opportunity to all persons having rights under the old code to enforce them before the new code came into operation 17 C W N 62 Section 154 means that nothing shall prejudicially affect any present right of appeal It can have no bearing on the powers of an appellate court in dealing with appeals before it 9 Ind Cas 815, see also 9 M L T 259=21 M L J 631=9 Ind Cas 937 8 Ind Cas 8=7 A L J 1070, 15 Ind Cas 725=84 P W R 1912, 16 C W N 1015

155 [Nc o] The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in Amendment of certain Acts the fourth column thereof

156 [Repeals] Repealed by s3 and Schedule II of the Second Repealing and Amending Act, 1914 (VII of 1914)

157. [S 3 second sentence] Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Continuance of order under repealed enactments Act VIII of 1859 or under any Code of Civil Procedure or any Act amending

the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf

Scope—Sect on 157 C P Code is an enabling and not a repealing section. The words 'so far as they are consistent with this Code' which occur in this section do not impliedly repeal rules framed under s 269 C P Code of 1882 24 M L J 637=20 Ind Cas 775 (F B). The term 'rules made' means rules made by the proper authority having jurisdiction. Rules under the old Code which were then *ultra vires* are not valid because they could be made under the new Code 29 M L J 63-31 Ind Cas 924

153 [S 3 second para] In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this code or to its corresponding Part, Order, section or rule

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THE FIRST SCHEDULE

ORDER I

*Parties to Suits*

RULES

- 1 Who may be joined as plaintiffs
- 2 Power of Court to order separate trials
- 3 Who may be joined as defendants
- 4 Court may give judgment for or against
- 5 Joinder of parties liable on same contract
- 6 Joinder of parties liable on same contract
- 7 When plaintiff in doubt from whom redress is to be sought
- 8 One person may sue or defend on behalf of all in same interest
- 9 Misjoinder and nonjoinder
- 10 Joinder of parties liable on same contract
- 11 Joinder of parties liable on same contract
- 12 Appearance of one of several plaintiffs or defendants for others
- 13 Objections as to nonjoinder or misjoinder

ORDER II

*Frame of Suit*

RULES

- 1 Frame of suit
- 2 Suit to include the whole claim
- 3 Relinquishment of part of claim
- 4 Omission to sue for one of several reliefs
- 5 Joinder of causes of action
- 6 Only certain claims to be joined for recovery of immoveable property
- 7 Claims by or against executor, administrator or heir
- 8 Power of Court to order separate trials
- 9 Objections as to misjoinder

ORDER III

*Recognized Agents and Pleadings*

- 1 Appearances, etc., may be in person by recognised agent or by pleader
- 2 Recognized agents
- 3 Service of process on recognized agent
- 4 Appointment of pleader
- 5 Service of process on pleader
- 6 Agent to accept service
- Appointment to be in writing and to be filed in Court.

## ORDER IV

*Institution of Suits*

## RULES

- 1 Suit to be commenced by plaintiff
- 2 Register of suits

## ORDER V

*Issue and Service of Summons**Issue of summons*

- 1 Summons
- 2 Copy or statement annexed to summons
- 3 Court may order defendant or plaintiff to appear in person
- 4 No party to be ordered to appear in person unless resident within certain limits
- 5 Summons to be either to settle issues or for final disposal
- 6 Fixing day for appearance of defendant
- 7 Summons to order defendant to produce documents relied on by him
- 8 On issue of summons for final disposal, defendant to be directed to produce his witnesses

*Service of Summons*

- 9 Delivery or transmission of summons for service
- 10 Mode of Service
- 11 Service on several defendants
- 12 Service to be on defendant in person when practicable or on his agent
- 13 Service on agent by whom defendant carries on business

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- 16 Person served to sign acknowledgment
- 17 Procedure when defendant refuses to accept service or cannot be found
- 18 Endorsement of time and manner of service
- 19 Examination of serving officer
- 20 Substituted service
- Effect of substituted service
- Where service substituted time for appearance to be fixed
- 21 Service of summons where defendant resides within jurisdiction of another Court
- 22 Service, within Presidency towns and Rangoon, of summons issued by Courts outside
- 23 Duty of Courts to which summons is sent
- 24 Service on defendant in prison.

## Rules

- 25 Service where defendant resides out of British India and has no agent
- 26 Service in foreign territory through Political agent or Court
- 27 Service on civil public officer or on servant of railway company or local authority
- 28 Service on soldiers
- 29 Duty of persons to whom summons is delivered or sent for service
- 30 Substitution of letter for summons

## ORDER VI

*Pleading generally*

- 1 Pleading
- 2 Pleading to state material facts and not evidence
- 3 Forms of pleading
- 4 Particulars to be given where necessary
- 5 Further and better statement, or particulars
- 6 Condition precedent
- 7 Departure
- 8 Denial of contract
- 9 Effect of document to be stated
- 10 Malice, knowledge, etc
- 11 Notice
- 12 Implied contract, or relation
- 13 Presumptions of law
- 14 Pleading to be signed
- 15 Verification of pleadings
- 16 Striking out pleadings
- 17 Amendment of pleadings
- 18 Failure to amend after order

## ORDER VII

*Plaint*

- 1 Particulars to be contained in plaint
- 2 In money suits
- 3 Where the subject matter of the suit is immovable property
- 4 When plaintiff sues as representative
- 5 Defendant's interest and liability to be shown
- 6 Grounds of exemption from limitation law
- 7 Relief to be specifically stated
- 8 Relief founded on separate grounds
- 9 Procedure on admitting plaint
- Concise statements
- 10 Return of plaint
- Procedure on returning plaint
- 11 Rejection of plaint
- 12 Procedure on rejecting plaint
- 13 Where rejection of plaint does not preclude presentation of fresh plaint

## Rules

- Documents relied on in plaintiff's case*
- 14 Production of document on which plaintiff sues
  - List of other documents
  - 15 Statement in case of documents not in his possession or power
  - 16 Suits on lost negotiable instruments
  - 17 Production of shop book.
  - Original entry to be marked and returned
  - 18 Inadmissibility of document not produced when plaint filed

## ORDER VIII

*Written Statement and Set off*

- 1 Written statement
- 2 New facts must be specially pleaded
- 3 Denial to be specific
- 4 Evasive denial
- 5 Specific denial
- 6 Particulars of set off to be given in written statement.
- Effect of set-off
- 7 Defence or set off founded on separate grounds
- 3 New ground of defence
- 9 Subsequent pleadings
- 10 Procedure when party fails to present written statement called for by Court

## ORDER IX

*Appearance of parties and Consequence of Non appearance*

- 1 Parties to appear on day fixed in summons for defendant to appear and answer
- 2 Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs
- 3 Where neither party appears, suit to be dismissed
- Plaintiff may bring fresh suit or Court may restore suit to file
- 5 Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons
- 6 Procedure when only plaintiff appears
- When summons duly served
- When summons not duly served
- When summons served, but not in
- 7.
- non appearance
- 8 Procedure where defendant only appears

## Rules

- 9 Decree against plaintiff by default bars fresh suits
- 10 Procedure in case of non attendance of one or more of several plaintiffs
- 11 Procedure in case of non attendance of one or more of several defendants
- 12 Consequence of non attendance, without sufficient cause shown, of party ordered to appear in person
- Setting aside Decrees ex parte*
- 13 Setting aside decree *ex parte* against defendant
- 15 No decree to be set aside without notice to opposite party

## ORDER X

*Examination of Parties by the Court*

- 1
- 2
- 3 Opinion of party
- 3 Substance of examination to be written
- 4 Consequence of refusal or inability of pleader to answer

## ORDER XI

*Discovery and Inspection*

- 1 Discovery by interrogatories
- 2 Particular interrogatories to be submitted
- 3 Costs of interrogatories
- 4 Form of interrogatories
- 5 Corporations
- 6 Objections to interrogatories by answer
- 7 Setting aside and striking out interrogatories
- 8 Affidavit in answer filing
- 9 Form of affidavit in answer
- 10 No exception to be taken
- 11 Order to answer or answer further
- 12 Application for discovery of documents
- 13 Affidavit of documents
- 14
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- 17 Time for inspection when notice given
- 18 Order for inspection
- 19 Verified copies
- 20 Premature discovery
- 21 Non compliance with order for discovery
- 22 Using answers to interrogatories at trial
- 23 Order to apply to minors

## ORDLR IV

*Institution of Suits*

## RULES

- 1 Suit to be commenced by plaint
- 2 Register of suits

## ORDER V

*Issue and Service of Summons*  
*Issue of summons*

- 1 Summons
- 2 Copy or statement annexed to summons
- 3 Court may order defendant or plaintiff to appear in person
- 4 No party to be ordered to appear in person unless resident within certain limits
- 5 Summons to be either to settle issues or for final disposal
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- 7 Summons to order defendant to produce documents relied on by him
- 8 On issue of summons for final disposal, defendant to be directed to produce his witnesses

*Service of Summons*

- 9 Delivery or transmission of summons for service
- 10 Mode of Service
- 11 Service on several defendants
- 12 Service to be on defendant in person when practicable or on his agent
- 13 Service on agent by whom defendant carries on business
- 14 Service on agent in charge in suits for immoveable property
- 15 Where service may be on male member of defendant's family
- 16 Person served to sign acknowledgment
- 17 Procedure when defendant refuses to accept service or cannot be found
- 18 Endorsement of time and manner

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## Court

- 22 Service within Presidency towns and Rangoon, of summons issued by Courts outside
- 23 Duty of Courts to which summons is sent
- 24 Service on defendant in prison.

## Rules

- 25 Service where defendant resides out of British India and has no agent
- 26 Service in foreign territory through Political agent or Court
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- 10 Concise statements
- 10 Return of plaint
- 11 Procedure on returning plaint
- 11 Rejection of plaint
- 12 Procedure on rejecting plaint
- 13 Where rejection of plaint does not preclude presentation of fresh plaint



## Rules

- 6 Contents of decree
- 7 Date of decree
- 8 Procedure where Judge has vacated office before signing decree
- 9 Decree for recovery of immoveable property
- 10 Decree for delivery of moveable property
- 11 Decree may direct payment by instalments  
Order, after decree, for payment by instalments
- 12 Decree for possession and mesne profits
- 13 Decree in administration suit
- 14 Decree in pre-emption suit
- 15 Decree in suit for dissolution of partnership
- 16 Decree in suit for account between principal and agent
- 17 Special directions as to accounts
- 18 Decree in suit for partition of property or separate possession of a share therein
- 19 Decree when set-off is allowed  
Appeal from decree relating to set-off
- 20 Certified copies of judgment and decree to be furnished

## ORDER XXI

### Execution of Decrees and Orders

#### Payment under Decree

1. Modes of paying money under decree
2. Payment out of Court to decree-holder

### Courts executing Decrees

- 3 Lands situate in more than one juris-  
diction
- 4 Transfer to Court of Small Causes
- 5 Mode of transfer
- 6 Procedure where Court desires that  
its own decree shall be executed by  
another Court

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### Application for execution

## 10 Application for execution

- 11  
12 ble property not in judgment-deb-  
13 tors possession.  
Application for attachment of immo-  
14 veable property to contain certain  
particulars

## Rules

## ORDER XII

*Admissions*

- 1 Notice of admission of case
- 2 Notice to admit documents
- 3 Form of notice
- 4 Notice to admit facts
- 5 Form of admissions
- 6 Judgment on admissions.
- 7 Affidavit of signature
- 8 Notice to produce documents
- 9 Costs

## ORDER XIII

*Production Impounding and Return of Documents*

- 1 Documentary evidence to be produced at first hearing
- 2 Effect of non production of documents
- 3 Rejection of irrelevant or inadmissible documents
- 4 Endorsements on documents admitted in evidence
- 5 Endorsements on copies of admitted entries in books, accounts and records
- 6 Endorsements on documents rejected as inadmissible in evidence
- 7 Recording of admitted and return of rejected documents
- 8 Court may order any document to be impounded
- 9 Return of admitted documents
- 10 Court may send for papers from its own records or from other Courts
- 11 Provisions as to documents applied to material objects

## ORDER XIV

*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon*

- 1 Framing of issues
- 2 Issues of law and of fact
- 3 Materials from which issues may be framed
- 4 Court may examine witnesses or documents before framing issues
- 5 Power to amend, and strike out issues
- 6 Questions of fact or law may by agreement be stated in form of issues
- 7 Court if satisfied that agreement was executed in good faith may pronounce judgment

## Rules

## ORDER XV

*Disposal of the Suit at the first hearing*

- 1 Parties not at issue
- 2 One of several defendants not at issue
- 3 Parties at issue
- 4 Failure to produce evidence

## ORDER XVI

*Summoning and Attendance of Witnesses*

- 1 Summons to attend to give evidence or produce documents
- 2 Expenses of witness to be paid into Court on applying for summons
- 3 Experts
- 4 Scale of expenses
- 5 Tender of expenses to witness.
- 6 Procedure where insufficient sum paid in
- 7 Expenses of witnesses detained more than one day
- 8 Time place and purpose of attendance to be specified in summons
- 9 Summons to produce document
- 10 Power to require persons present in Court to give evidence or produce document
- 11 Summons how served
- 12 Time for serving summons
- 13 Procedure where witness fails to comply with summons
- 14 If witness appears attachment may be withdrawn
- 15 Procedure if witness fails to appear
- 16 Mode of attachment
- 17 Court may of its own accord summon
- 18 Procedure where witness apprehended cannot give evidence or produce document
- 19 No witness to be ordered to attend in person unless resident within certain limits
- 20 Consequence of refusal of party to give evidence when called on by Court
- 21 Rules as to witnesses to apply to parties summoned

## ORDER XVII

*Adjournments*

- 1 Court may grant time and adjourn hearing
- Costs of adjournment

## RULES

- 2 Procedure if parties fail to appear on day fixed
- 3 Court may proceed notwithstanding either party fails to produce evidence etc

## ORDER XVIII

*Hearing of the Suit and Examination  
of witnesses*

- 1 Right to begin
- 2 Statement and production of evidence
- 3 Evidence where several issues
- 4 Witnesses to be examined in open court
- 5
- 6
- 7
- 8 " " " " " "
- 9 taken down by Judge
- 10 When evidence may be taken in English
- 11 Any particular question and answer may be taken down
- 12 Questions objected to and allowed by Court
- 13
- 14
- 15 Power to deal with evidence taken before another Judge
- 16 Power to examine witness immediately
- 17 Court may recall and examine witness
- 18 Power of Court to inspect

## ORDER XIX

### Affidavits

1. Power to order any point to be proved by affidavit
2. Power to order attendance of deponent for cross examination
3. Matters to which affidavits shall be confined

## ORDER XX.

### Judgment and Decree

- 1 Judgment when pronounced
- 2 Power to pronounce judgment writ  
ten by Judge's predecessor
- 3 Judgment to be signed
- 4 Judgments of Small Cause Courts  
Judgments of other Courts
- 5 Court to state its decision on each  
issue

## Rules

- 6 Contents of decree
- 7 Date of decree.
- 8 Procedure where Judge has vacated  
office before signing decree
- 9 Decree for recovery of immoveable  
property
- 10 Decree for delivery of moveable  
property
- 11 Decree may direct payment by in-  
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Appeal from decree relating to set-  
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- 20 Certified copies of judgment and  
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## ORDER XXI

*Execution of Decrees and Orders*  
*Payment under Decree*

1. Modes of paying money under decree
2. Payment out of Court to decree-holder

### Courts executing Decrees

- 3 Lands situate in more than one jurisdiction

- 4  
5  
6

- 7 Court receiving copies of decree etc,  
to file same without proof  
8 Execution of decree or order by  
Court to which it is sent  
9 Execution by High Court of decree  
transferred by other Court

### Application for execution

- 10 Application for execution  
11 Oral application  
Written application  
12 Application for attachment of movable property not in judgment debtor's possession  
13 Application for attachment of judgment debtor's real property

## RULES

- 14 Power to require certified extract from Collector's register in certain cases
- 15 Application for execution by joint decree holder
- 16 Application for execution by transferee of decree
- 17 Procedure on receiving application for execution of decree
- 18 Execution in case of cross decrees
- 19 Execution in case of cross claims under same decree
- 20 Cross decrees and cross claims in mortgage suits
- 21 Simultaneous execution
- 22 Notice to show cause against execution in certain cases
- 23 Procedure after issue of notice

*Process for execution*

- 24 Process for execution
- 25 Endorsement on process

*Stay of execution*

- 26 When Court may stay execution. Power to require security from, or impose conditions upon judgment debtor
- 27 Liability of judgment debtor discharged
- 28 Order of Court which passed decree or of appellate Court to be binding upon Court applied to
- 29 Stay of execution pending suit between decree holder and judgment debtor

*Mode of execution*

- 30 Decree for payment of money
- 31 Decree for specific moveable property
- 32 Decree for specific performance for restitution of conjugal rights or for an injunction
- 33 Discretion of Court in executing decrees for restitution of conjugal rights
- 34 Decree for execution of documents or endorsement of negotiable instrument
- 35 Decree for immoveable property
- 36 Decree for delivery of immoveable property when in occupancy of tenant.

*Arrest and detention in the civil prison*

- 37 Discretionary power to permit judgment debtor to show cause against detention in prison
- 38 Warrant for arrest to direct judgment debtor to be brought up
- 39 Subsistence allowance

## RULES

- 40 Proceedings on appearance of judgment debtor in obedience to notice or after arrest

*Attachment of property*

- 41 Examination of judgment-debtor as to his property
- 42 Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined
- 43 Attachment of moveable property other than agricultural produce in possession of judgment debtor
- 44 Attachment of agricultural produce
- 45 Provisions as to agricultural produce under attachment
- 46 Attachment of debt, share and other property not in possession of judgment-debtor

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- 51 Attachment of negotiable instruments

- 52 Attachment of property in custody of Court or public officer

- 53 Attachment of decrees

- 54 Attachment of immoveable property

- 55 Removal of attachment after satisfaction of decree

- 56 Order for payment of coin or currency notes to party entitled under decree

- 57 Determination of attachment

*Investigation of claims and objections*

- 58 Investigation of claims to, and objections to attachment of, attached property

*Postponement of sale*

- 59 Evidence to be adduced by claimant

- 60 Release of property from attachment

- 61 Disallowance of claim to property attached

- 62 Continuance of a attachment subject to claim of incumbrancer

- 63 Saving of suits to establish right to attached property

*Sale generally*

- 64 Power to order property attached to be sold and proceeds to be paid to person entitled

- 65 Sales by whom conducted and how made

- 66 Proclamation of sales by public auction

## RULES

- 67 Mode of making proclamation
- 68 Time of sale
- 69 Adjournment or stoppage of sale
- 70 Saving of certain sales
- 71 Defaulting purchaser answerable for loss on re-sale
- 72 Decree holder not to bid for or buy property without permission  
Where decree holder purchases amount of decree may be taken as payment
- 73 Resistance on bidding or purchase by officers  
*Sale of moveable property*
- 74 Sale of agricultural produce
- 75 Special provisions relating to growing crops
- 76 Negotiable instrument and shares in corporations
- 77 Sale by public auction.
- 78 Irregularity not to vitiate sale, but any person injured may sue
- 79 Delivery of moveable property, debts and shares
- 80 Transfer of negotiable instruments and shares
- 81 Vesting order in case of other property  
*Sale of immoveable property*
- 82 What Courts may order sales
- 83 Postponement of sale to enable judgment debtor to raise amount of decree.
- 84 Deposit by purchaser and resale on default
- 85 Time for payment in full of purchase-money
- 86
- 87
- 88
- 89 Application to set aside sale on deposit
- 90 Application to set aside sale on ground of irregularity or fraud
- 91 Application by purchaser to set aside sale on ground of judgment debtor having no saleable interest
- 92 Sale when to become absolute or be set aside
- 93 Return of purchase money in certain cases
- 94 Certificate to purchaser
- 95 Delivery of property in occupancy of judgment debtor
- 96 Delivery of property in occupancy of tenant

*Resistance to delivery of possession to decree holder or purchaser*

97

98

ment debtor

## RULES

- 99 Resistance or obstruction by non-suit claimant
- 100 Dispossession by decree holder or purchaser
- 101 Non-suit claimant to be restored to possession
- 102 Rules not applicable to transferee *tenent's life*
- 103 Orders conclusive subject to regular suit

## ORDER XXII

*Death, Marriage and Insolvency of Parties*

- 1 No abatement by party's death, if suit to set aside
- 2 No estate where one of several plaintiffs or defendants dies and right to sue survives
- 3 Procedure in case of death of one of several plaintiffs or of sole plaintiff
- 4 Procedure in case of death of one of several defendants or of sole defendant
- 5 Determination of question as to legal representative
- 6 No abatement by reason of death after hearing
- 7 Suit not abated by marriage of female party
- 8 When plaintiff's insolvency bars suit  
Procedure where assignee fails to continue suit or give security
- 9 Effect of abatement or dismissal
- 10 Procedure in case of assignment before final order in suit
- 11 Application of Order to appeals.
- 12 Application of Order to proceed ings

## ORDER XXIII

*Withdrawal and Adjustment of suits*

- 1 Withdrawal of suit or abandonment of part of claim
- 2 Limitation law not affected by first suit
- 3 Compromise of suit
- 4 Proceedings in execution of decrees not affected

## ORDER XXIV

*Payment into Court*

- 1 Deposit by defendant of amount in satisfaction of claim
- 2 Notice of deposit
- 3 Interest on deposit not allowed to plaintiff after notice
- 4 Procedure where plaintiff accepts deposit as satisfaction in part
- 5 Procedure where he accepts it as satisfaction in full

## RULES

## ORDER XXV

*Security for Costs*

- 1 When security for costs may be required from plaintiff
- 2 Residence out of British India
- 3 Effect of failure to furnish security

## ORDER XXVI

*Commissions**Commissions to examine witnesses*

- 1 Cases in which Court may issue commission to examine witness
- 2 Order for commission.
- 3 Where witness resides within Court's jurisdiction
- 4 Persons for whose examination commission may issue
- 5 Commission or Request to examine witness not within British India
- 6 Court to examine witness pursuant to commission
- 7 Return of commission with depositions of witnesses
- 8 When depositions may be read in evidence

*Commissions for local investigations*

- 9 Commissions to make local investigations
- 10 Procedure of Commissioner Report and depositions to be evidence in suit
- Commissioner may be examined in person

*Commissions to examine accounts*

- 11 Commission to examine or adjust accounts
- 12 Court to give Commissioner necessary instructions
- Proceedings and report to be evidence
- Court may direct further inquiry

*Commissions to make partitions*

- 13 Commission to make partition of immovable property
- 14 Procedure of Commissioner

*General provisions*

- 15 Expenses of commission to be paid
- 16
- 17
- 18 Parties to appear before Commissioner
- 19 Commission issued at the instance of foreign tribunals

## RULES

## ORDER XXVII

- 1 Suits by or against Government
- 2 Persons authorized to act for Government
- 3 Plaints in suits by or against Government
- 4 Agent for Government to receive process.
- 5 Fixing of day for appearance on behalf of Government
- 6 Attendance of person able to answer questions relating to suit against Government
- 7 Extension of time to enable public officer to make reference to Government
- 8 Procedure in suits against public officer

## ORDER XXVIII

*Suits by or against Military Men or Airmen*

- 1 Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.
- 2 Persons so authorized may act personally or appoint pleader
- 3 Service on person so authorized, or on his pleader, to be good service

## ORDER XXIX

*Suits by or against Corporations*

- 1 Subscription and verification of pleading
- 2 Service on corporation
- 3 Power to require personal attendance of officer of corporation

## ORDER XXX

*Suits by or against Firms and Persons carrying on business in names other than their own*

- 1 Suing of partners in name of firm.
- 2 Disclosure of partners names
- 3 Service
- 4 Right of suit on death of partner
- 5 Notice in what capacity served
- 6 Appearance of partners
6. No appearance except by partners
- 8 Appearance under protest.
- 9 Suits between co partners
- 10 Suit against person carrying on business in name other than his own

## Rules

## ORDER XXXI

*Suits by or against Trustees, Executors and Administrators*

- 1 Representation of beneficiaries in suits concerning property vested in trustees, etc.
- 2 Joinder of trustees, executors and administrators
- 3 Husband of married executrix not to join

## ORDER XXXII

*Suits by or against Minors and Persons of Unsound Mind*

- 1 Minor to sue by next friend
- 2 Where suit is instituted without next friend, plaint to be taken off the file
- 3 Guardian for the suit to be appointed by Court for minor defendant
- 4 Who may act as next friend or be appointed guardian for the suit
- 5 Representation of minor by next friend or guardian for the suit
- 6 Receipt by next friend or guardian for the suit of property under decree for minor
- 7 Agreement or compromise by next friend or guardian for the suit
- 8 Retirement of next friend
- 9 Removal of next friend
- 10 Stay of proceedings or removal, etc. of next friend
- 11 Retirement removal or death of guardian for the suit
- 12 Course to be followed by minor plaintiff or applicant on attaining majority
- 13
- 14
- 15
- 16 Saving for Princes and Chiefs

## ORDER XXXIII

*Suits by Paupers*

- 1 Suits may be instituted in forma pauperis
- 2 Contents of application
- 3 Presentation of application
- 4 Examination of applicant
- 5 If presented by agent Court may order applicant to be examined by
- 6
- 7
- 8
- 9 Dispaupering

## Rules

- 10 Costs where pauper succeeds
- 11 Procedure where pauper fails
- 12 Government may apply for payment of court fees
- 13 Government to be deemed a party
- 14 Copy of decree to be sent to Collector
- 15 Refusal to allow applicant to sue as pauper to bar subsequent application of like nature
- 16 Costs

## ORDER XXXIV

*Suits relating to Mortgages of Immoveable Property*

- 1 Parties to suits for foreclosure, sale and redemption
- 2 Preliminary decree in foreclosure suit
- 3 Final decree in foreclosure suit
- 4 Preliminary decree in suit for sale
- 5 Final decree in suit for sale
- 6 Recovery of balance due on mortgage in suit for sale
- 7 Preliminary decree in redemption suit
- 8 Final decree in redemption suit
- 8A Recovery of balance due on mortgage in suit for redemption
- 9 Decree where nothing is found due or where mortgage has been overpaid
- 10 Costs of mortgages subsequent to decree
- 11 Payment of interest
- 12 Sale of property subject to prior mortgage
- 13 Application of proceeds
- 14 Suit for sale necessary to being mortgaged property to sale
- 15 Mortgages by the deposit of title deeds and charges

## ORDER XXXV

*Interpleaders*

- 1 Plaintiff in interpleader suit
- 2 Payment of thing claimed into Court
- 3 Procedure where defendant is a plaintiff
- 4 Procedure at first hearing
- 5 Agents and tenants may institute interpleader suit
- 6 Charge for plaintiff's costs

## ORDER XXXVI

*Special Case*

- 1 Power to state a special case

## Rules

- 2 Where value of subject matter must be stated
- 3 Agreement to be filed and registered as suit
- 4 Parties to be subject to Court's jurisdiction
- 5 Hearing and disposal of case

## ORDER XXXVII

*Summary procedure on Negotiable Instruments*

- 1 Application of order
- 2 Institution of summary suits upon bills of exchange, etc
- 3 Defendant showing defence on merits to have leave to appear
- 4 Power to set aside decree
- 5 Power to order bill, etc to be deposited with officer of Court
- 6 Recovery of cost of nothing non acceptance of dishonoured bill or note
- 7 Procedure in suits

## ORDER XXXVIII

*Arrest and attachment before judgment*  
*Arrest before judgment*

- 1 Where defendant may be called upon to furnish security for appearance
- 2 Security
- 3 Procedure on application by surety to be discharged
- 4 Procedure where defendant fails to furnish security or find fresh security

*Attachment before judgment*

- 5
  - 6
  - 7
  - 8
  - 9
  - 10
  - 11
  - 12
  - 13
- Attachment before judgment not to affect rights of strangers nor bar decree holder from applying for sale
- Property attached before judgment not to be re attached in execution of decree.
- Agricultural produce not attachable before judgment
- Small Cause Court not to attach immovable property

## RULES

## ORDER XXXIX

*Temporary Injunctions and Interlocutory Orders**Temporary injunctions*

- 1 Cases in which temporary injunction may be granted
- 2 Injunction to restrain repetition or continuance of breach
- 3 Before granting injunction, Court to direct notice to opposite party
- 4 Order for injunction may be discharged, varied or set aside
- 5 Injunction to corporation binding on its officers

*Interlocutory orders*

- 6 Power to order interim sale.
- 7 Detention preservation, inspection, etc., of subject matter of suit
- 8 Application for such orders to be after notice
- 9 When party may be put in immediate possession of land the subject matter of suit
- 10 Deposit of money, etc., in Court

## ORDER XL

*Appointment of Receivers*

- 1 Appointment of receivers
- 2 Remuneration
- 3 Duties
- 4 Enforcement of receiver's duties
- 5 When Collector may be appointed receiver

## ORDER XLI

*Appeals from Original Decrees*

- 1 Form of appeal
- What to accompany memorandum
- Contents of memorandum.
- 2 Grounds which may be taken in appeal
- 3 Rejection or amendment of memorandum
- 4 One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all

*Stay of proceedings and of execution*

- 5 Stay by Appellate Court
- Stay by Court which passed the decree
- 6 Security in case of order for execution of decree appealed from
- 7 No security to be required from the Government or a public officer in certain cases



## Rules

- 8 Exercise of powers in appeal from order made in execution of decree

*Procedure on remission of appeal*

- 9 Registry of memorandum of appeal  
Register of appeals.  
10 Appellate Court may require appellant to furnish security for costs

- 11  
12  
13

Transmission of papers to Appellate Court

Copies of exhibits in Court whose decree appealed from

- 14 Publication and service of notice of day for hearing appeal  
Appellate Court may itself cause notice to be served  
15 Contents of notice

*Procedure on Hearing*

- 16 Right to begin.  
17 Dismissal of appeal for appellant's default  
Hearing appeal *ex parte*  
18 Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs  
19 Re-admission of appeal dismissed for default  
20 Power to adjourn hearing, and direct persons appearing interested to be made respondents  
21 Re-hearing on application of respondent against whom *ex parte* decree made

- 22 Upon hearing respondent may object to decree as if he had preferred separate appeal  
Form of objection and provisions applicable thereto

- 23 Remand of case by Appellate Court  
24 Where evidence on record sufficient, Appellate Court may determine case finally

- 25 Where appellate Court may frame issues and refer them for trial to Court whose decree appealed from  
26 Findings and evidence to be put on record

- Objections to finding  
Determination of appeal  
27 Production of additional evidence in Appellate Court

- 28 Mode of taking additional evidence  
29 Points to be defined and recorded

*Judgment in appeal*

- 30 Judgment when and where pronounced

## Rules

- 31 Contents, date and signature of judgment

- 32 What judgment may direct

- 33 Power of Court of Appeal

- 34 Dissent to be recorded

*Decree in appeal*

- 35 Date and contents of decree  
Judge dissenting from judgment need not sign decree

- 36 Copies of judgment and decree to be furnished to parties

- 37 Certified copy of decree to be sent to Court whose decree appealed from

## ORDER XLII

*Appeals from Appellate Decrees*

- 1 Procedure

## ORDER XLIII

*Appeals from Orders*

- 1 Appeals from orders  
2 Procedure

## ORDER XLIV

*Pauper Appeals*

- 1 Who may appeal as pauper  
Procedure on application for admission of appeal  
2 Inquiry into pauperism

## ORDER XLV

*Appeals to the King in Council*

- 1 'Decree' defined  
2 Application to Court whose decree complained of  
3 Certificate as to value or fitness  
4 Consolidation of suits  
5 Remission of dispute to Court of first instance  
6 Effect of refusal of certificate  
7 Security and deposit required on grant of certificate  
8 Admission of appeal and procedure thereon  
9 Revocation of acceptance of security  
9A Power to dispense with notices in case of deceased parties  
10 Power to order further security or payment  
11 Effect of failure to comply with order.  
12 Refund of balance deposit  
13 Powers of Court pending appeal

## Rules

- 2 Where value of subject matter must be stated
- 3 Agreement to be filed and registered as suit
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- 7 Procedure in suits

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Arrest before judgment*

- 1 Where defendant may be called upon to furnish security for appearance
- 2 Security
- 3 Procedure on application by surety to be discharged
- 4 Procedure where defendant fails to furnish security or find fresh security

*Attachment before judgment*

- 5 Where defendant may be called upon to furnish security for produce

- 6
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- 9
- 10
- 11 Property attached before judgment not to be re-attached in execution of decree
- 12 Agricultural produce not attachable before judgment
- 13 Small Cause Court not to attach immovable property

## RULES

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*Stay of proceedings and of execution*

- 5 Stay by Appellate Court
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- 6 Security in case of order for execution of decree appealed from
- 7 No security to be required from the Government or a public officer in certain cases

## Rules

- 8 Exercise of powers in appeal from order made in execution of decree

*Procedure on admission of appeal*

- 9 " " "
- 10 " " "
- 11 Power to dismiss appeal without
- 12 " " "
- 13 " " "

## Court

Copies of exhibits in Court whose decree appealed from

- 14 Publication and service of notice of day for hearing appeal  
Appellate Court may itself cause notice to be served
- 15 Contents of notice

*Procedure on Hearing*

- 16 Right to begin
- 17 Dismissal of appeal for appellant's default

18

failure to deposit costs

- 19 Re admission of appeal dismissed for default
- 20 Power to adjourn hearing, and direct persons appearing interested to be made respondents
- 21 Re hearing on application of respondent against whom *ex parte* decree made
- 22 Upon hearing respondent may object to decree as if he had preferred

23

- 24 Where evidence on record sufficient, Appellate Court may determine case finally

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Judge dissenting from judgement need not sign decree
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- 2 Procedure

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- 1 Who may appeal as pauper.  
Procedure on application for admission of appeal
- 2 Inquiry into pauperism

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- 8 Admission of appeal and procedure thereon
- 9 Revocation of acceptance of security
- 9A Power to dispense with notices in case of deceased parties
- 10 Power to order further security or payment
- 11 Effect of failure to comply with order.
- 12 Refund of balance deposit
- 13 Powers of Court pending appeal.

## Rules

14. Increase of security found inadequate.
15. Procedure to enforce orders of King in Council
16. Appeal from order relating to execution

## ORDER XLVI

*Reference*

1. Reference of question to High Court
2. Court may pass decree contingent upon decision of High Court
3. Judgment of High Court to be transmitted, and case disposed of accordingly
4. Costs of reference to High Court
5. Power to alter, etc. decree of Court making reference
6. Power to refer to High Court questions as to jurisdiction in small causes
7. Power to district Court to submit for revision proceedings had under mistake as to jurisdiction in small causes

## ORDER XLVII

*Review*

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
7. Objections to review
8. Registry of application granted, and order for rehearing
9. Bar of certain applications

## Rules

## ORDER XLVIII

*Miscellaneous*

1. Process to be served at expense of party issuing
- Costs of service
2. Orders and notices how served.
3. Use of forms in appendices

## ORDER XLIX

*Chartered High Courts*

1. Who may serve process of High Courts
2. Savings in respect of Chartered High Courts
3. Application of Rules

## ORDER L

*Provincial Small Cause Courts*

1. Provincial Small Cause Courts

## ORDER LI

*Presidency Small Cause Courts*

1. Presidency Small Cause Courts

## APPENDICES TO THE FIRST SCHEDULE FORMS

## A—PLEADINGS

1. Titles of suits
2. Description of parties in particular cases
3. Plaints
4. Written statements

## B—PROCESS

## C—DISCOVERY, INSPECTION AND ADMISSION

## H—MISCELLANEOUS

— IEW

## THE FIRST SCHEDULE

## ORDER I

*Parties to Suits*

## 1. [S 26 R S C O]

Who may be joined  
plaintiffs

to exist, whether jointly,

brought separate suits, any common question of law or fact would arise.

in one suit  
relief in res  
or transac-  
is alleged  
such persons

**Scope**—This rule in the main is based upon order XVI rule 1 of the Supreme Court Practice and s 26 of the old code. According to *Lord Justice Bowen* it is not the intention of the rule to allow writs to be issued under which any number of plaintiffs might join any number of causes of action, or that a writ should be like an omnibus travelling on a certain route into which any number of persons may get as passengers for the journey (1893) 2 Q B 422. This rule relates only to joinder of parties on the same causes of action (1834) A C 491, (1899) 1 Q B 840, but see (1907) 1 K B 264, 274, per *Cosens Hardy L.J.* "Rule 1 order 1, of Act V of 1908, which brings the Indian practice into line with English rule, provides as follows. It seems to their lordships that under this rule the contingent reversioners may be joined as plaintiffs in the presumptive reversioner's suit" *Per Amir Ali J* in 19 C W N 641 P C = 38 M 406 = 17 Bom L R 468. According to recent decision in England this rule relates to joinder of causes of action as well (1907) 1 K B 264 (274), (1910) 2 K B 354 (361). So the joinder of plaintiffs is allowed in cases where (1) the right to relief claimed by them arises in each of their cases out of the same transaction or series of of transactions and where (2) some common question of law or fact arises. Conditions must be complied with, Joinder of several plaintiffs. *Per* 52), *Oxford and Cambridge*

however, it seems necessary that the whole of a transaction should be involved in each of the cause of action joined (1898) arrears of maintenance by two widows is by suit and as such each relief arises out of the

128 = A I R 1933 Pat  
Joinder of persons and each  
those persons they should  
in bringing a joint suit  
32 All 401 = 138 Ind Cas  
77 Joinder of the two plaintiffs and the causes of actions is not allowed in a suit unless the reliefs claimed therein arise out of the same act or transaction or series of acts or transactions. A I R 1933 Pat 411 = 73 Ind Cas 71. Co plaintiffs claiming alternatively can be joined provided common question of law is raised 10 P R 1916 = 69 P L R 1917 = 204 P W R 1915 = 32 Ind Cas 526, see also A I R 1922 Mad 174 = (1922) M W N 316 = 16 L W 186 = 43 M L J 277 = 70 Ind Cas 684

**Joint interest**—This rule is permissive and not mandatory 24 C 388, 9 A 491. Where two different sets of persons join together to eject a trespasser there is no misjoinder. A I R 1929 All 790. The *karta* of a joint Hindu family can effectively represent all other members of the family. A I R 1929 Pat 741 = 8 Pat 788 = 11 P L T 237 = 121 Ind Cas 330. Co sharers can also join. A I R 1929 All 668 = (1929) A L J 1098 = 51 A 994 = 122 Ind Cas 602. All living joint promisees must join in suit to enforce a debt due to them under s 45 of the Contract Act. A I R 1928 Bom 191 = 30 Bom L R 117 = 109 Ind Cas 99, see also A I R 1927 Mad 84 = 51 M L J 648 = 98 Ind Cas 549. Persons having joint right must join in an action to assert their right and one or two of them cannot bring a suit for the assertion of that right on behalf of all without joining them as defendants. A I R 1927 Mad 984 = 39 M L J 442 = 106 Ind Cas 140, see also A I R 1928 Sind 16 = 105 Ind Cas 544, A I R 1927 Oudh 484 = 1 Luck Cas 546 = 105 Ind Cas 473, A I R 1927 Mad 491 = 52 M L J 318 = 25 L W 388 = 100 Ind Cas 616, A I R 1927 Lah 129 = 99 Ind Cas 565, A I R 1925 Bom 542 = 27 Bom L R 1107 = 90 Ind Cas 558, A I R 1925 Nag 288 = 8 N L J 3 = 89 Ind Cas 888, A I R 1926 Cal 188 = 89 Ind Cas 177, A I R 1926 Cal 417 = 42 C L J 30 = 87 Ind Cas 159, A I R 1924 Rang 201 = 3 Bur L J 266 = 83 Ind Cas 329, A I R 1925 Oudh 71 = 80 Ind Cas 285, A I R 1925 Sind 181 = 17 S L R 324 = 79 Ind Cas 914, A I R 1923 Mad 35 = 16 L W 527 = 68 Ind Cas 927, A I R 1922 Sind 13 = 15 S L R 152 = 65 Ind Cas 26, A I R 1927 Mad 337 = 17 L W 241 = 44 M L J 249 = 72 Ind Cas 63, A I R 1921 Pat 53 = 2 P L T 217 = 6 Pat L J 48 = 63 Ind Cas 788, A I R 1921 Nag 9 = 4 N L J 58 = 63 Ind Cas 419, 33 Ind Cas 564, 1 P L J 573 = 1 P L W 35 = 35 Ind Cas 866, 38 Ind Cas 13 = 1 Pat L J 437 = 3 Pat L W 31, 42 Ind Cas 92, 37 M L J 483 = 17 A. L J 997 = (1919) M W N 821 = 22 Bom L R 1 = 24 C W N 197 = 46 I A

272=53 Ind Cas 131 (P. C.), 58 C. L. J. 133, A. I. R. 1931 Lah 447=32 P. L. R. 385=133 Ind Cas 871, 35 C. W. N. 473, 56 Ind Cas 761

**Suit for ejectment**—In a suit for ejectment of trespasser all the joint owners are not necessary parties. A. I. R. 1933 Lah 997. Co-owner in sole possession can alone sue for trespass. 3 L. W. 542=3, Ind Cas 147, A. I. R. 1926 Mad 809=24 L. W. 181=176 M. W. N. 398=95 Ind Cas 856, 95 Ind Cas 121=A. I. R. 1926 Lah 545, A. I. R. 1925 Mad 63=75 Ind Cas 112

**Necessary party**—In a suit for rent of temple property

Cas 52. Mortgage suit by L. W. 120=39 Ind Cas 427

other parties in addition to the parties in possession were added as *proforma* defendants the procedure was condemnable. 1 P. W. R. 1919=21 Bom. L. R. 232=24 M. L. J. 429=28 C. L. J. 530=28 P. L. R. 1919 P. C.=48 Ind. Cas. 540. Unnecessary parties should not be joined. A. I. R. 1918 P. C. 49=22 Bom. L. R. 232=28 C. L. J. 530=28 P. L. R. 1919=48 Ind. Cas. 540 (P. C.) Joining as co-plaintiffs of persons having rival claims is not contemplated. 57 Ind. Cas. 784. Other co-parceners are not necessary parties in a suit by manager of undivided family on a promissory note. A. I. R. 1922 Bom. 281=46 B. 358=23 Bom. L. R. 1135=64 Ind. Cas. 966. Persons with derivative interest are not entitled to be associated in a decree in favour of person having the real title, merely because added as co-plaintiffs. A. I. R. 1925 P. C. 168=6 Lah. 388=23 L. W. 304=30 C. W. N. 56 P. C.=26 P. L. R. 524=23 A. L. J. 643=52 I. A. 211=(1925) M. W. N. 534=50 M. L. J. 118=88 Ind. Cas. 198. The fact that the *benamidar* is a party to suit does not make the real owner party to the suit. A. I. R. 1930 Cal. 263=33 C. W. N. 997=125 Ind. Cas. 861. Dormant partner is not a necessary party in a suit by firm on contract. (1915) M. W. N. 864=31 Ind. Cas. 913

2. [R. S. C. O. 16 r. 1] Where it appears to the Court that any

Power of Court to order joinder of plaintiffs may embarrass or delay the separate trials trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient

**Notes**—Where 59 plaintiffs sued as reversioners and nearly 20 other parties in addition to the parties in possession were added as *pro forma* defendants the procedure is condemnable. 1 P. W. R. 1919=21 Bom. L. R. 232=9 L. W. 416=24 M. L. J. 429=28 C. L. J. 530=28 P. L. R. 1919 (P. C.)=48 Ind. Cas. 540. see also *Peninsular and Oriental Steam Navigation Co. v. Kijima* (1895) A. C. 661, *Smurthwaite v. Hannay*, (1894) A. C. 494. This rule does not refer to election of causes of action joined. Order of election must be reversed. A. I. R. 1922 Mad. 436=43 M. L. J. 218=16 L. W. 175=(1922) M. W. N. 453=69 Ind. Cas. 966

8 [S. 28.] All persons may be joined as defendants against whom any

Who may be joined as defendants right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise

**Scope**—This rule applies to joinder

of persons in a suit in which the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise

transaction or series of acts or transactions against the defendants jointly, severally, or in the alternative, and if common questions of law or fact are likely to arise, the

suit would not be liable to be dismissed on the ground of misjoinder of causes of action. In a suit for possession all persons claiming by derivative titles from a trespasser as a common source may be joined as defendants 33 Bom L R 624=A I R (1931) Bom 350 Unless the right to relief against all the defendants arises out of the same act or transaction or series of acts or transactions, they cannot be joined in the same suit, even though the question of law or fact which arising between the plaintiff and the two sets of defendants are identical A I R 1923 Pat 653, see also A I R A I R 1933 Lah 901, A L R 1933 Mad 147, A I R 1932 Bom 1=156 Ind Cas 497 681, not to be agitated in a mortgage suit since it introduces a different cause of action, in which only some of the several defendants are likely to be substantially interested 39 C 543 A I R 1932 Cal 512=158 Ind Cas 671 The strangers to a trust are not proper or necessary parties to a suit under s 92 for the administration of trust 10 Rang 342=140 Ind Cas 317=A I R 1932 Rang 132 To make parties defendants common interest in cause of action and involving same question of law and facts a essential If by joinder of party misjoinder of causes of action results it is material irregularity A I R 1926 Mad 135=90 Ind Cas 721, see also A I R 1926 Sind 66=19 S L R 395=90 Ind Cas 97, A I R 1930 All 180=1930 A L J 90=123 Ind Cas 324 A plaintiff may not only join different causes of action against the same defendants when such defendants are jointly interested, but he may also join different causes of action against different defendants if covered by the purview of order 1 rule 3, A I R 1926 Sind 66=19 S L R 395=90 Ind Cas 90 see also A I R of parties and causes 21 C W N 794 27 C not whether the decree there is against the suit

no misjoinder where in a suit against a fraudulent trustee for embezzlement of money his several agents who had connived at breach of trust were also impleaded A I R 1934 Mad 361

**Necessary parties**—In a suit for specific performance of contract of sale and not for delivery of possession persons claiming adverse possess on is not a necessary or proper parties (1916) 2 M W N 191=4 L W 397=35 Ind Cas 868 In partition suit strangers are not necessary parties though they may be in a suit for possession 15 L W 207=39 Ind Cas 160 In a suit to declare marriage of Hindu minor invalid both the parties to marriage are necessary parties 119 P L R 1917=158 P W R 1917=42 Ind Cas 420 Where the right of irrigation from a private water course of a canal is claimed but no relief is asked against Government the latter is not a necessary party 177 P W R 1918=50 Ind Cas 299 Unnecessary parties should not be joined A I R 1918 1 C 49=22 Bom L R 232=28 C L J 530=28 P L R 1919=48 Ind Cas 340 P C In a suit for dissolution of partnership person not in partnership as members of firm but in superior partnership with whole firm as other partner need not be joined A I R 1927 P C 70=33 M L J 245=4 O W N 491=31 C W N 857=25 A L J 487=26 L W 263=101 Ind Cas 17 (P C), see also A I R 1927 Bom 470=29 Bom L R 937=51 B 800=104 Ind Cas 764 In a suit by an adopted son against the widow of adoptive father for possession of property remote reversioner need not be a party A I R 1926 Nag 354=94 Ind Cas 918

In a partition suit persons not having present interest are not the necessary parties though all the share holders must be represented before the Court A. I. R. 1973 Cal 221=49 C 1043=56 C L J 217=70 Ind Cas 687, 2 O C 62=7 O L J 158=56 Ind Cas 304 In a suit for partition by transferee, co sharer vendors are proper though not necessary parties A. I. R. 1923 Pat 162=68 Ind Cas 804 Where a tenancy is not represented in its in a suit for arrears of rent decree against such of the tenants as are Court cannot be passed 25 C W N 525=62 Ind Cas 464 Remotely persons in the subject matter of the suit is not a necessary party th

272=53 Ind Cas 131 (P C), 58 C L J, 133, A I R 1931 Lah 447=32 P L R  
385=133 Ind Cas 871, 35 C W N 478, 56 Ind Cas 761

**Suit for ejectment**—In a suit for ejectment of trespasser all the joint owners are not necessary parties A I R 1933 Lah 999 Co owner in sole possession can alone sue for trespass 3 L W 542=3, Ind Cas 147, A I R 1926 Mad 809=24 L W, 181=1926 M W N 398=95 Ind Cas 856, 95 Ind Cas 121=A I R 1926 Lah 545, A I R 1925 Mad 63=75 Ind Cas 112

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Cas 52 Mortgage suit by  
L W, 120=39 Ind Cas 427  
other parties in addition to the parties in possession were added as *proforma* defendants the procedure was condemnable 1 P W R 1919=21 Bom L R 232=24 M L T 429=28 C L J 530=28 P L R 1919 P C=48 Ind Cas 540  
**Unnecessary parties** should not be joined A I R 1918 P C 49=22 Bom L R 232=28 C L J 530=28 P L R 1919=48 Ind Cas 540 (P. C.) Joining as co plaintiffs of persons having rival claims is not contemplated 57 Ind Cas 784  
**Other co parceners** are not necessary parties in a suit by manager of undivided family on a promissory note A I R 1922 Bom 281=46 B 358=23 Bom L R 1135=64 Ind Cas 966 Persons with derivative interest are not entitled to be associated in a decree in favour of persons having the real title, merely because added as co plaintiffs A I R 1925 P C 168=6 Lah 388=22 L W 304=30 C W N 56 P C=26 P L R 524=23 A L J 643=52 L A 211=(1925) M W N 534=50 M L J 118=88 Ind Cas 198 The fact that the *benamidar* is a party to suit does not make the real owner party to the suit A I R 1930 Cal 263=33 C W N 997=125 Ind Cas 861 Dormant partner is not a necessary party in a suit by firm on contract (1915) M W N 864=31 Ind Cas 913

**2 [R S C. O 16 r 1]** Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

**Notes**—Where 59 plaintiffs sued as reversioners and nearly 20 other parties in addition the procedure 24 M L T 429= and (C) *Peninsular* may, (1894) Order of A C 494 election must be reversed A I R 1922 Mad 436=43 M L J 218=16 L W 17, = (1922) M W N 453=69 Ind Cas 966

**3 [S 28.]** All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise

**Explanation**—This rule applies to joinder

*Ibid.* This rule not only refers to parties to actions but also to causes of action  
A person from whom a claim is made by another in a transaction or series of acts or transactions against the defendants jointly, severally, or in the alternative, and if common questions of law or fact are likely to arise, the



suit would not be liable to be dismissed on the ground of misjoinder of causes of action. In a suit for possession all persons claiming by derivative titles from a common ancestor as defendants 33 Bom L R 100. It is to relief against all the defendants in a series of acts or transactions, that the question of law or fact which arises between the plaintiff and the two sets of defendants are identical. A I R 1933 Pat 653, see also A I R 1933 All 957, A I R 1933 All 147, A I R 1933 Lah 901, A L R 1933 Mad 303=144 Ind Cas 202=37 L W 681, A L R 1932 Bom 1=136 Ind Cas 497. A question of paramount title ought not to be agitated in a mortgage suit since it introduces a different cause of action, in which only some of the several defendants are likely to be substantially interested. 59 C 548=A I R 1932 Cal 512=138 Ind Cas 671. The strangers to a trust are not proper or necessary parties to a suit under s 92 for the administration of trust. 10 Rair 342=140 Ind Cas 317=A I R 1932 Rang 132. To make parties defendants common interest is cause of action and involving same question of law and facts are essential. If by joinder of party misjoinder of causes of action results it is material irregularity. A I R 1926 Mad 135=90 Ind Cas 721, see also A I R 1906 Sind 66=19 S L R 395=90 Ind Cas 97, A I R 1930 All 180=1930 A L J 50=123 Ind Cas 324. A plaintiff may not only join different causes of action against the same defendants when such defendants are jointly interested, but he may also join different causes of action against different defendants if covered by the purview of order 1, rule 3. A I R 1926 Sind 66=19 S L R 395=90 Ind Cas 97. see also A I R 1926 Sind 66=19 S L R 395=90 Ind Cas 97. of parties and causes. 21 C W N 794=27 C W N 794. not whether the decree is against the said parties or any other party to render in respect of the same act or transaction. 13 S L R 183=53 Ind Cas 32. Causes of action can be joined in a suit for share of rent by co-sharer landlord against tenant and other co-sharers alternatively. 48 Ind Cas 726. Liability joint or several for one cause of action and involving some question of law or fact are conditions of joining parties. A I R 1925 Oudh 75=77 Ind Cas 1028. Whether joinder of cause of action is proper is to be determined with reference to facts of each case. A I R 1934 Mad 367. There was no misjoinder where in a suit against a fraudulent trustee for embezzlement of money his several agents who had connived at breach of trust were also impleaded. A I R 1934 Mad 361.

**Necessary parties**—In a suit for specific performance of contract of sale and not for delivery of possession persons claiming adverse possession is not a necessary or proper parties (1916) 2 M W N 191=4 L W 397=35 Ind Cas 868. In partition suit strangers are not necessary parties though they may be in a suit for possession. 15 L W 207=39 Ind Cas 160. In a suit to declare marriage of Hindu minor invalid, both the parties to marriage are necessary parties. 119 P L R 1917=158 P W R 1917=42 Ind Cas 420. Where the right of irrigation from a private water course of a canal is claimed but no relief is asked against Government the latter is not a necessary party. 177 P W R 1918=50 Ind Cas 299. Unnecessary parties should not be joined. A I R 1918 P C 49=22 Bom L R 232=28 C L J 530=28 P L R 1919=48 Ind Cas 540 P C. In a suit for dissolution of partnership person not in partnership as members of firm but in superior partnership with whole firm as other partner need not be joined. A I R 1927 P C 70=53 M L J 245=4 O W N 491=31 C W N 857=25 A L J 487=26 L W 265=101 Ind Cas 17 (P C), see also A I R 1927 Bom 470=29 Bom L R 937=51 B 800=104 Ind Cas 764. In a suit by an adopted son against the widow of adoptive father for possession of property remote reversioner need not be a party. A I R 1926 Nag 354=94 Ind Cas 918.

In a partition suit persons not having present interest are not the necessary parties though all the share holders must be represented before the Court. A I R 1923 Cal 221=49 C 1043=36 C L J 217=70 Ind Cas 687, 2 O C 62=7 O L J 158=56 Ind Cas 304. In a suit for partition by a transferee, co-sharer vendors are proper though not necessary parties. A I R 1923 Pat 162=68 Ind Cas 804. Where a tenancy is not represented in its entirety in a suit for arrears of rent, decree against such of the tenants as are before the Court cannot be passed. 25 C W N 525=62 Ind Cas 464. Remotely interested persons in the subject matter of the suit, is not a necessary party thereto. 39 Ind.

Cas 292 Receiver appointed in a suit for dissolution of partnership need not be joined in a suit against partnership 14 S L R 171=60 Ind Cas 279

In a suit for damages by the real owner against the creditor of an insolvent at whose instance the Receiver took possession of the property as belonging to the insolvent, and an objection was restored to the real owner Receiver is not a necessary party 43 A 45=19 A L J 277=60 Ind Cas 821 Heirs in possession are the only necessary parties in a suit for arrears of rent for the period that they were in possession and not the other heirs of the tenant 48 C 518=63 Ind Cas 949 Easement suit must be dismissed in which one of the defendants being a minor, is not represented for no effective decree can be passed thereon 64 Ind Cas 90 In a suit for removal of obstruction to the exercise of easement right, non obstructing servient owners need not be made parties A I R 1926 Cal 462=88 Ind Cas 970 Landlord is a necessary party in a suit between lessees for possession A I R 1926 Oudh 422=94 Ind Cas 3 In an administration suit the debtors to the estate of the deceased are not necessary parties A I R 1926 Mad 110=24 L W 425=98 Ind Cas 838 In a suit for accounts every partner must be made a party A I R 1930 Mad 714=58 M L J 613=31 L W 757=130 Ind Cas 453 All persons entitled to easement are not necessary parties unless their right is interfered with Question of parties is to be determined from pleadings A I R 1924 Cal 1050=40 C L J 74=84 Ind Cas 467 Owners of servient tenement not resisting plaintiff's right of easement are not necessary parties A I R 1926 Cal 1201=96 Ind Cas 665 Partition can be effected only of that part of the property of which all the co sharers are made parties to the suit for partition A I R 1925 Cal 754=85 Ind Cas 662, see also 91 Ind Cas 567=A I R 1926 Cal 744 Joinder by permission of Court should not be allowed to prejudice the party A I R 1924 Oudh 337=27 O C 35=83 Ind be joined alienees can be joined s independent title in a suit is necessary and proper party A I R 1929 Cal 967=33 C W N 687=123 Ind Cas 657 Where only by one contract a master and a number of servants agree that they will work together and that the whole profits would be divided among them in certain proportion, the suit can be maintained against all of them if all others also are made parties 13=31 L W 757-130 Ind Cas 453 each other should not be ordered to sue, causes of action should not be consolidated A I R 1930 Lah 84=31 P L R 976=127 Ind Cas 353

Co heirs of mortgagee claiming independent title may be joined as defendant A I R 1931 Nag 20=26 N L R 359=130 Ind Cas 105 In a suit for possession of a house sold in execution by third person against purchaser decree holder is not necessary party A I R 1930 Lah 45=116 Ind Cas 186 Where tenant pleads payment of rent to third person such person is invariably impleaded as co defendants A I R 1929 Oudh 459=113 Ind Cas 794 Reversioners can implead all the alienees of the widows A I R 1926 Nag 11=12 Ind Cas 111=12 Ind Cas 111 tenants are not necessary parties in several suits in plaintiff's suit 1237=49 Ind Cas 111 can be joined R 1928 Bom 91=9 Bom L R 162=109 Ind Cas 191 In an administration suit person alleging to be adopted son must be joined even in stage of appeal A I R 1927 Rang 192 should be joined see his alienee Impleading per se does not vitiate the suit 1 Ind Cas 40 regularity but correction of entry and for possession all persons recorded as in possession are necessary parties A I R 1925 Pat 218=82 Ind Cas 204

In a suit to set aside alienations to various persons on different occasions, all alienees can be joined in one suit 40 B 351=18 Bom L R 45=33 Ind Cas 950 Suit for damages against several persons making defamatory statements will not lie unless defendants acted jointly 41 Ind Cas 12 In a suit for specific performance of a contract by a member of an undivided Hindu family to sell his share other

members of the family cannot be joined as defendants 31 M L J 575=40 M 365=5 L W 797=21 M L T 385 (F B)=40 Ind Cas 429

Sub partners are not necessary parties in a suit for dissolution of partnership (1916) M W N 18=41 W 10=70 M L R 3 A suit for used by different J 809=42 Ind can be implead-

gave money A I R 1921 Cal 633=33 C L J 369=63 Ind Cas 244 In a claim for easements all owners of servient tenements must be made parties but co sharers may not be impleaded A I R 1924 Cal 369=69 Ind Cas 183 The landlord can sue all the heirs of the deceased tenant for the entire rent without making the other tenant a party thereto A I R 1923 Cal 615=27 C W N 521=77 Ind Cas 364 Persons in possession and not persons in receipt of rent and profits should be made parties in ejectment suit A I R 1924 Cal 172=72 Ind Cas 1033 Several persons resisting possession of several parts of same plots on different grounds can be joined in one suit A I R 1924 Nag 55=19 N L R 178=77 Ind Cas 761 In a suit for possession by mortgagor transferees from mortgagee may be made parties A I R 1922 Bom 330=24 Bom L 762=46 B 993=68 Ind Cas 487 Simple suit against different persons in respect of different holdings causes misjoinder of causes of action 1 Pat L 456=81 Ind Cas 648. In a partition suit by sons, sons-in-laws are not necessary parties A I R 1922 Pat 96=1 Pat 361=3 P L 1 233 Heirs of deceased tenants not in possession are not necessary parties to suit for rent against heirs in possession accrued during their possession A I R 1921 Cal 81=48 C 518=63 Ind Cas 946 Unobstructing servient owners are not necessary parties in easement suit A I R 1923 Pat 65=4 P L T 81=2 Pat 110=69 Ind Cas 917 In a suit for declaration of rights in a *shamilat*, all proprietors are necessary parties A I R 1934 Lah 366 In a suit for declaration that collector's appointment of defendant as *Karnam* is wrongful the collector is a proper party and in his absence dismissal of suit is proper A I R 1934 Mad 293 Where in a suit against a pleader for wrongful act of substitution of defendant, pleader pleads authority of plaintiffs' Naib and Patwari, Naib and Patwari should also be impleaded as defendants in as much as common question would arise if separate suits be brought against them A I R 1934 Cal 405

Court may give judgment for 4 [Ss 26, 28] Judgment may be given or against one or more of joint parties without any amendment—

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to.

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant need not be interested in all the relief claimed 5 [R S C O 16 r 5] It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him

Scope—Defendants liable in the alternative may be joined (1896) 2 Q B 464, (1903) 2 K B 533, (1867) 2 Ex D P 305, (1918) 87 L J Ch 335

6 [S 29.] The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes

Contractual instrument C 541 In a suit for some goods for same journey all the carriers are necessary parties 108 Ind Cas 591= A I R 1928 Cal 490



this section is covered by s 99 A I R 1929 Cal 445=49 C L J 357=125 Ind Cas 299.

**Numerous**—There is nothing in this rule which justifies that numerous persons mean person capable of being ascertained A I R 1933 Lah 749=143 Ind Cas 742=34 P L R 658 This rule applies if there are about 100 persons interested in the suit A I R 1919 Mad 44=27 L W 212=107 Ind Cas 789 Representative suit is not maintainable for damages suffered by an unincorporated association by publication of libel A I R 1930 Rang 177=8 Rang 250=132 Ind Cas 277 Suit on behalf of a community is competent A I R 1928 Cal 741=48 C L J 276=114 Ind Cas 411, 24 C W N 296=54 Ind Cas 742, see also 21 C 180, 31 C 839, 23 M 28, 22 A 269 72 Ind Cas 95=A I R 1923 Mad 434=44 M L J 240=1923 M W N 33 Ind Cas 264, A I R 1921 Mad 682=33 618 This rule is an enabling rule for the purpose trial a suit in which numerous persons would whose number might make the trial embarrass

ing 33 B L R 1575

**Same interest**—Substance of the suit and not the form of the pleading decides the nature of the suit A I R 1928 Mad 445=54 M L J 587=27 L W 769=109 Ind Cas 199 Representatives must have the same interest as those whom he represents A I R 1917 All 95=98 Ind Cas 553, A I R 1926 Pat 321=5 Pat 539=7 P L T 679=94 Ind Cas 433 Common interest is absolutely necessary A I R 1914 Mad 883=47 M L J 449=(1924) M W N 512=82 Ind Cas 492 Any of the persons having a common interest may bring a representative suit and the decree if obtained shall be equally shared 37 Ind Cas 384, see also 22 B 646 Consultation with the community need not be proved A I R 1929 Mad 44=27 L W 212=107 Ind Cas 789

**Permission of Court**—Representative suit is not maintainable unless Court's permission is obtained This provision is imperative A I R 1929 All 806=(1930) A L J 197 122 Ind Cas 750 Implied permission may be inferred from Court's proceedings A I R 1929 Mad 451=117 Ind Cas 725=(1928) M W N 867 Where Court orders publication of notice, permission may be inferred *Ibid*, see also A I R 1927 Cal 608=101 Ind Cas 738 Where suit was entertained without permission permission obtained afterwards gives the Court jurisdiction A I R 1927 Rang 134=6 Bur L J 16=101 Ind Cas 200 Permission to sue need not necessarily be obtained before the suit is filed A I R 1928 Nag 39=10, Ind Cas 113 Permission may be implied I R 1933 Lah 382=143 Ind Cas 742=34 P L R 608=A I R 1933 Lah 749, but see 9 Bur L T 247=38 Ind Cas 572, 44 C 258=21 C W N 1144=39 Ind Cas 773 The really effective parties to the litigation in such a case are the persons who have been permitted to sue or be sued, on behalf of, or for the benefit of all the persons equally interested with them and, until the persons who have been permitted to be so represented or some of them choose to apply under sub rule (2) to put an end to their representation by the persons appointed under sub rule (1) and have themselves placed on the record as effective parties the persons appointed under sub rule (1) are the only necessary parties for the conduct of the suit and the others need not be shown as parties at all or if they are so shown it is done merely for facility of reference and with a view to have a record of the persons who are to be ultimately bound by the decree A I R 1931 Lah 610=132 Ind Cas 657=13 Lah 195 Leave to sue is unnecessary if interested persons have notice of suit and may be given after institution of the suit A I R 1923 Bom 395=25 Bom L R 689=47 B 809=83 Ind Cas 856, see also A I R 1924 Cal 998=84 Ind Cas 79 Fresh permission is unnecessary for the purposes of an appeal where permission is validly granted for the suit A I R 1927 Cal 608=101 Ind Cas 733 A person can be ordered to represent the public even against his wishes A I R 1917 Cal 608=101 Ind Cas 738 Authority to represent must be legally expressed and the representatives must be capable in law to represent A I R 1927 All 122=98 Ind Cas 998 In case of withdrawal of some representatives after leave fresh leave is necessary A I R 1921 Cal 547=80 Ind Cas 26

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6,7=A I R 1933 P C.  
46 B 132=23 Bom L R  
(F B)=65 Ind Cas. 259  
mitted to represent others.

A I R 1927 Cal 608=101 Ind. Cas 738 In case of defective notice decree

binding as against persons appearing and contesting the suit. A I R 1927 Cal. 608=101 Ind Cas 738, see also A I R 1927 Pat 221=8 P L T 267=101 Ind Cas 500 Notice is not a mere matter of formality but failure to give it does not incur dismissal of suit A I R 1925 Cal 547=80 Ind Cas 26, see also 34 P L R 608=143 Ind Cas 742=A I R 1933 Lah 749 Under order 1 rule 8, it is the duty of the Court to give notice to all persons whom the plaintiff claims to represent A I R 1933 Pat 302=14 P L T 361=145 Ind Cas 387, see also 143 Ind Cas 742=34 P L R 608=A I R 1933 Lah 749 Notice must be given in the language of the persons whom the plaintiffs claim to represent 34 P L R 608=A I R 1933 Lah 749 In application for filing award of Arbitration without intervention of court in representative action, two separate notices under order 1, rule 8 and sh 2, para 20 are not necessary A I R 1934 Bom 6 In the absence of leave and notice the suit is not representative but is one between named plaintiffs and named defendants A I R 1934 Lah 366

**Death of one of the parties**—Where sanction is originally given by the Court to a certain number of persons either to prosecute or defend a suit in a representative capacity and one of them dies his heirs are not competent to continue the suit because the sanction was accorded to certain persons and not to their heirs In such a case the proper procedure is for the remaining persons to apply to the Court for direction as to whether the remaining number is sufficient or whether it is necessary that additional persons who need not necessarily be the legal representatives of the deceased person should be joined 54 M 527=34 L W 214=130 Ind Cas 761=1931 M W N 353=A I R 1931 Mad 452=61 M L J 135, see also A I R 1931 Lah 610=132 Ind Cas 657 The same is applicable if any of the representative defendants dies 59 C 961=138 Ind Cas 4=55 C L J 8=A I R 1932 Cal 275 In a representative suit death of one of the two parties does not entail the dismissal of the suit Any person interested may be added as a party (1916) 1 M W N 402=31 M L J 279=40 M 110=3 L W 305=34 Ind Cas 328 A I R 1926 Lah 31=89 Ind Cas 328 f of a body, fresh sanction of the Court to continue the suit is not necessary on the death of one of the plaintiffs A I R 1925 Lah 598=7 Lah L J 517=26 P L R 732=88 Ind Cas 478

**Sub rule (2)**—When the Court once gives permission to sue under order 1, rule 8, it is not permissible to the Court to dismiss the suit on the ground that some persons object to the proper procedure is to bring those persons on the ground of the rule A I R 1932 Bom 65=33 Bom L an application under this sub rule has been dismissing the petition is not subject to interference by the High Court under s 115 114 Ind Cas 604=A I R 1933 All 154

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**Individual suit for public right**—No individual can sue for declaration of a public right unless he suffers, some special damages in exercising it (1918) M W N 175=8 L W 377=44 Ind Cas 367, 62 Ind Cas 888=A, I R 1921 Lah 76 No leave of the court is required for a suit by the worshippers of a mosque even when no special damage be caused to prove the invalidity of the transfers 23 C W N 115=49 Ind Cas 355 58 Ind Cas 585=1920 M W N 393=38 M L J 226=43 M 410, see also A I R 1921 Lah 76=3 Lah L J 384=62 Ind Cas 888, 13 Bur L T 183=63 Ind Cas 963, 1922 Oudh 1=9 O L J 111=26 O C 82, 66 Ind Cas 415=A I R 1922 Oudh 142=8 O L J 395, A I R 1923 Mad 276=33 M L T 133=1923 M W N 84=17 L W 14=44 M L J 116=71 Ind Cas 463, A I R 1923 Pat 475=9 Pat 391=4 P L T 675=74 Ind Cas 403

This rule in no way debars a member of a community from maintaining a suit in his own right, although the act complained of may also be injurious to the whole community 56 M 657 P C = 37 C L J 528 = 37 C W N 8, 3 = 35 Bom L R 827 = 1933 A L J 762 = A I R 1933 P C 183 = 143 Ind Cas 665

**When representative is competent**—Devotees of mutt can bring a representative suit for the possession of a wrongful transfer 41 M 124 = 33 P L R 1035 = 146 Ind Cas 84

Under this section some of the managing committee of a school are not competent to bring a representative suit 37 C W N 497 = 60 C 794 = A I R 1933 Cal 329 = 143 Ind Cas 457 Where plaintiff has no especial interest, the permission of the Court is necessary A I R 1934 Cal 345

**9 [S 31]** No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it

**Scope**—Non joinder or mis joinder of parties is not fatal to a suit A I R 1922 All 404 = 70 Ind Cas 613 Nonjoinder or mis joinder is not fatal only where the Court can deal with the matter in controversy with regard to the rights and the interests of the parties actually before it 1 U P L R (H C) 7 = 52 Ind Cas 18, 215 P L R 1914 A suit in which no effective decree can be made in the absence of an interested party must not be entertained A I R 1921 Cal 673 = 25 C W N 249 = 62 Ind Cas 423, see also 24 Ind Cas 831 = 10 N L R 72 35 A 441 = 11 A L J 630 Non joinder of parties is matter in before it have no t has been jings, and

he has had ample opportunity of remedying it in India (1931) A L J 797 = A I R (1931) 229 = 35 C W N 977 = 54 C L J 274 = 61 M L J 294

**Misjoinder of parties**—Where misjoinder has not in any way prejudiced defence, the Court is not justified in dismissing the suit on that ground 50 P L R 1092 = 59 Ind Cas 522, see also 12 Ind Cas 206 = 4 Bur L T 255, 17 C W N 128 = 18 Ind Cas 117, 6 C 815, 67 P R 1894 This section provides against dismissal in case of non joinder or mis joinder of parties The only course open to the Court under such circumstances is formally to call upon the plaintiff to make his election and confine the suit to one set of defendants 142 Ind Cas 542 = 15 N L J 111

**Non joinder of parties**—Non joinder of parties does not cause the dismissal of the suit 19 C L J 316, 19 C L J 455, 41 C 81, A I R 1930 Rang 295 = 129 Ind Cas 508 The parties must be allowed to amend the plaint The Court of appeal cannot of its own accord take objection for non joinder A I R 1930 Rang 295 = 129 Ind Cas 508 In case of non joinder of parties Court should either add them of its own motion or direct the plaintiff to do so but should not dismiss the suit for that reason 80 L J 310 = 63 Ind Cas 548 A suit by some of several servient owners for a declaration of their right should not be dismissed for non joinder of the other servient owners Court can adjudicate on the rights of the parties actually before it A I R 1924 Pat 303, 72 Ind Cas 431, see also A I R 1924 Cal 1050 = 40 C L J 74 = 84 Ind Cas 467 The view of the Calcutta High Court is that a mortgagee is not a necessary party to a partition suit provided the question of the mortgagor's interest is not in controversy 134 Ind Cas 307 = 35 C W N 296 = A I R 1931 Cal 594 An appeal can not be dismissed for non joinder of parties 32 Ind Cas 749 In a suit for partition in a joint Hindu family, the grandsons are not necessary parties and are represented by their father A I R 1922 Pat 4 = 3 P L T 238 = 67 Ind Cas 156 The puisne mortgagee is a proper but not a necessary party to the suit by a prior mortgagee and the suit cannot be dismissed if he is brought on record after the period of limitation A I R 1922 Pat 651 = 4 P L T 698 = 2 Pat 175 = 69 Ind Cas 677

In order that a defendant may be considered a necessary party there must be a right to some relief against him in respect of the matter involved in the suit, and

secondly, his pres  
upon and settle

Pat 326=4 Pat 1 4

for non joinder

to be so added A I R 1921 Oudh 148=8 O L J 310=63 Ind Cas 548 Where a plaintiff fails to add necessary parties or refuses to do so when so required by the Court, the Court can dismiss the suit 19 A L J 525=63 Ind Cas 548 Where in a suit for a declaration of a right of way and for removal of an obstruction, persons interested in servient tenement is not made a party, suit cannot be entertained 25 C W N 249=62 Ind Cas 425 In case of mortgage suits order 1, rule 9 is controlled by order 34 rule 1 60 C 777 Where a party takes objection on the ground of non joinder he must show which of the parties are absent A I R 1934 Pat 44 In a suit for redemption by one heir of the mortgagor non joinder of other heirs is not fatal A I R 1934 Oudh 220

**Non joinder if fatal**—Where a Court directs the addition of parties under order 1, rule 10, the plaintiff must obey the order of Court, and cannot proceed with the suit as originally constituted 5 L W 207, 15 R D 657=39 Ind Cas 160 If a necessary party is not on record the proper course is to apply to have him joined If he is not brought on record or if when brought on record the suit against him is barred, the suit will be dismissed 35 Ind Cas 77 1930 A L J 247 Rule 9 which provides that no suit can fail for non joinder of parties does not mean that only one trustee may be sued in contravention of Order 31, rule 2, and a decree passed against the trustee singled out for the suit 55 A 687=1933 A L J 1933 Whether a person is a necessary party to the suit in the sense that it cannot proceed in his absence must depend upon whether the decision would necessarily affect the interest of that party A I R 1922 Pat 651=2 Pat 175=69 Ind Cas 677 In a suit by some of several trustees with regard to trust properties all co trustees must be made parties A I R 1922 Mad 317=15 L W 283=(1922) M W N 106=42 M L J 133=70 Ind Cas 645 If the defendants are in no way prejudiced by non joinder of plaintiffs, such non joinder is not fatal A I R 1922 Bom 354=48 B 1022=24 Bom L R 826 If a necessary party is not impleaded within limitation period the suit is barred A I R 1929 Cal 591=125 Ind Cas 109 A suit cannot be dismissed where the defect of multifariousness is patent on the face

L J 99=123 Ind Cas 324 This is no party on the one side present 88=30 P L R 41=110 Ind Cas subsequent mortgagee as a party to a mortgage suit for sale is not fatal to the suit suit can proceed only the decree cannot affect the rights and interests of the subsequent mortgagee A I R 1927 All 488=101 Ind Cas 775 But omission to join a real defendant with an interest to oppose the suit is fatal A I R 1927 All 290=100 Ind Cas 198 Non joinder of any party making it impossible to deal equitably and sufficiently with the matter in controversy between the parties to the appeal cannot be condoned by the Appellate Court under order 1, rule 9, read with s 107 A I R 1925 Oudh 606=87 Ind Cas 904 See also A I R 1927 Cal 208=44 C L J 557=99 Ind Cas 901 Non-compliance with the provisions of order 34 rule 1 is not fatal to a suit for enforcing a mortgage and the provisions of order 1, rule 9 are applicable to a mortgage suit.

J 468=36 Ind Cas 542 in a case where the defect from the very outset of the dying it in the previous stages which however, he failed to avail himself of 54 C L J 274=35 C W N 977= A I R 1931 P C 229=61 M L J 294 (P C)=1931 A L J 797 (P C)

**Amendment of plaint**—In case of non joinder or mis joinder of parties the suit should not be dismissed The 1 R 1930 Rang 295=129 Ind Ca P L R 1911=248 P W R 1911 247=122 Ind Cas 597 One of the in a suit for ejectment by the landlord does not require the plaintiff to amend his pleading A I R 1930 Cal 42=33 C W N 769=57 C 349=125 Ind Cas 726 A suit should not be dismissed for multifariousness opportunity should be given to the plaintiff to amend plaint and elect A I R 1934 Mad. 367.



## 10. [Ss. 27, 32, 33] (1) Where a suit has been instituted in the

Suit in name of wrong name of the wrong person as plaintiff or where  
 plaintiff it is doubtful whether it has been instituted in  
 the name of the right plaintiff, the Court may  
 at any stage of the suit, if satisfied that the suit has been instituted through  
 a *bona fide* mistake, and that it is necessary for the determination of the  
 real matter in dispute so to do, order any other person to be substituted or  
 added as plaintiff upon such terms as the Court thinks just.

(2) The Court may, at any stage of the proceedings, either upon or  
 without the application of either party, and  
 Court may strike out or add on such terms as may appear to the Court to  
 parties be just, order that the name of any party  
 improperly joined, whether as plaintiff or defendant, be struck out, and  
 that the name of any person who ought to have been joined, whether as  
 plaintiff or defendant, or whose presence before the Court may be necessary  
 in order to enable the Court effectually and completely to adjudicate upon  
 and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend  
 or as the next friend of a plaintiff under any disability without his consent

(4) Where a defendant is added, the plaint shall, unless the Court  
 otherwise directs, be amended in such manner  
 Where defendant added, as may be necessary, and amended copies of  
 plaint to be amended the summons and of the plaint shall be served  
 on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the \* Indian Limitation Act, 1877,†  
 section 22, the proceedings as against any person added as defendant shall  
 be deemed to have begun only on the service of the summons.

Scope of sub rule (1) — A sub rule (1) is taken from rule 2, order 16 of the  
 Supreme Court Practice. This sub rule deals with the substitution or addition of  
 plaintiffs after action is brought. To bring a case within the four corners of this  
 sub rule it must be shown (1) that the action was commenced in the name of the  
 original plaintiff by mistake, and (2) that the substitution or addition is necessary  
 for the determination of the real matter in dispute. Joinder of plaintiffs under order  
 1, rule 10 is subject to provisions under order 1, rule 1 A I R 1917 Mad 834 =

uit brought in  
 not maintain  
 ndment of the  
 he application  
 R 1928 Bom

191 = 30 Bom L R 117 = 109 Ind Cas 99 In a suit by a *benamidar* in his own  
 name, the Court can make the real owner a party, if it think that his presence  
 is necessary for the proper determination of the suit A I R 1919 Mad 248 =  
 55 M L J 856 = 29 L W 56 = 115 Ind Cas 340 A suit which is instituted in the  
 name of a sole plaintiff dead at the time of the institution of the suit can not be  
 amended in any way A I R 1927 Cal 880 = 104 Ind Cas 623 A person can not  
 be added or substituted as plaintiff without the consent of the existing plaintiff,  
 and before he can be so added or substituted it must be shown that the action  
 was commenced in the name of the original plaintiff by mistake and that the  
 substitution or addition is necessary for the determination of real matter in  
 dispute A I R 1927 Cal 340 = 42 C L J 146 = 101 Ind Cas 527,

and 59 = 16  
*e Travers v*  
 82, 17 C  
 to remodel  
 ling a new

\* See now the Indian Limitation Act 1908 (IX of 1908) s 22

† XV of 1877

co plaintiff without paying additional court fees cannot be allowed if the original plaintiff is proved to be incompetent 8 Bur L T 283=8 L B R 302=31 Ind Cas 33\*

A suit can be continued by substitution of right plaintiff if *bona fide* mistake was committed in the institution of it A I R 1923 Mad 180=1922 M W N 817=16 L W 826=69 Ind Cas 413, 50 Ind Cas 128 Due care and caution is not always necessary It is sufficient where mistake is made honestly and not deliberately 20 C W N 49=22 C L J 279=29 Ind Cas 680, 27 N L R 335 It is a *bona fide* one where different courts have taken different views on a point of law in which the plaintiff's case depends A I R 1923 Mad 180=(1922) M W, N 817=16 L W 836=69 Ind Cas 413 If a plaintiff who is a major is wrongly described as a minor, the court can strike off the name of such plaintiff A I R 1924 Oudh 428=11 O  
 f a minor by  
 of the suit  
 al represen-

tatives, especially when it is not shown that the mistake is *bona fide* A I R 1923 Lah 652=79 Ind Cas 284 The question of *bona fide* mistake arises only under cl (1) and not under cl (2) 137 Ind Cas 89=33 P L R 253=A I R 1932 Lah 214 The High Court has inherent power under s 151 to add parties or transpose a  
 7=44 C L J  
 812 Amend  
 d Cas 1200=  
 corrected 26  
 ough a *bona fide*  
 his next friend  
 her purporting  
 1 447=100 Ind

Cas 469

At any stage—This rule authorises substitution at any stage of the suit 25 B 433 (464), see also 20 M 467

Necessary for the determination of the real matter—In a suit by an administrator for account of *mesne profits* against the heir of the deceased intestate who had acted as executor *de son tort* the other heirs though not necessary parties are proper parties A I R 1929 Lah 753

Sub rule (2)—This sub rule is only intended to apply where either one or other of the parties makes an application to the Court or the Court itself is of opinion that some other person is ought to be brought into the proceedings in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit that is to say the questions which were involved in the suit as originally framed between the parties to the suit 59 C 329=138 Ind Cas 104=A I R 1932 Cal 448 The expression all the questions involved in the suit refers only to questions between the parties to the litigation A I R 1926 Mad 836=50 M 34=51 M L J 148=24 L W 738=95 Ind Cas 214 A suit by manager alone is valid though plaintiff not described as manager Comes afterwards A I R 1934 Bom 178 though Order 1 rule 10 does not apply parties are not impleaded due to gross A I R 1934 Lah 36 Legal representation be substituted A I R 1934 Nag 55 party has not been joined A I R 1934

Pat 106

Addition of parties—This rule for addition can not be invoked if such addition would alter the nature of the suit A I R 1925 Cal 26=28 C W N 805=82 Ind Cas 369 But the power under this rule can ordinarily be exercised only in proceedings not concluded by a decree unless the person to be added is a subsequent transferee A I R 1924 Oudh 33=26 O C 317=10 O L J 232=72 Ind Cas 1031 The power to add a party under order 1, rule 10 can be exercised at any stage even at such a late stage as the time of decree A I R 1929 Bom 337=31 Bom L R 476=122 Ind Cas 66 Before an application to be added as party under order 1 rule 10 to a suit under order 1 rule 8 can be allowed the applicant must prove that suit originally instituted was in the name of a wrong person though a *bona fide* mistake A I R 1924 Mad 883=47 M L J 540=82 Ind Cas 492 When parties are added under rule 10(2) the date when they are added is to be

deemed to be the date of the institution of suit so far as they are concerned for purposes of limitation A I R 1927 P C 252=26 A L J 371=30 Bom 237 cannot brought M L. he those ie Court olved in

the suit A I R 1923 Mad 521=44 M L J 322=17 L W 329=72 Ind Cas 156 The Court can impose terms on a person who seeks to be added as a party to the suit The Court can also allow a party to be added on condition that he can only intervene at a particular stage in a suit and cannot question an order passed before he applied to the Court 58 C 801=35 C W N 122=134 Ind Cas 1279=A I R 1931 Cal 580 The Court can allow a person to be added as a party even when it decided against the issue previously 33 Bom L R 601=A I R 1931 Bom 408=134 Ind Cas 365 In a partition suit, the Court can order the inclusion of a person as a party even after the preliminary decree when he is a proper party. 131 Ind Cas 643=33 L W 734=A I R 1931 Mad 357=60 M L J. 229 It is hardly in accordance with precedent that a Court of Appeal should after sending a case back to the trial judge for the purpose of having a necessary party brought before the Court to indicate the order which the trial judge should make when he tries the case in the presence of the proper parties 136 Ind Cas 632=56 L W 135=A I R 1932 P C 146=63 M L J 369 (P C) In a suit for partition of Hindu joint family properties alienees of joint family properties may be made parties A I R 1930 Mad 913=(1930) M W N 679=59 M L J 524=129 Ind Cas 235 Worshippers of a temple applying to be made parties to the suit for partition of joint family property alleging that a large fund in the hands of the family was really a fund held in trust for the benefit of the deity should be added as parties A I R 1931 Mad 357=60 M L J 229=131 Ind Cas 643 Costs of persons unnecessarily impleaded at the instance of a defendant should be directed to be paid by such defendant A I R 1930 Mad 315=50 M L J 524=129 Ind Cas 235

In a suit for rent by a landlord against a tenant a person alleging to be a transferee with consent of the landlord claiming to be real tenant of the holding can claim to be added as a party A I R 1930 Pat 323=11 P L T 43=1-5 Ind Cas 119 In a suit against a company liquidator or trustees in bankruptcy added as parties to the suit otherwise than under Order XXII, rule 10 must be considered to have been so added under Order 1, rule 10 A I R 1930 Cal 113=50 C L J 208=57 C 70=123 Ind Cas 250 A stranger who has no personal interest in any one of the reliefs claimed by the plaintiff in a suit cannot be joined as co-plainiff A I R 1930 Sind 73=120 Ind Cas 17 Before a person is added as party on his own motion the Court ought to see whether there is anything which cannot be determined owing to his absence or whether he will be prejudiced by his not being joined as a party A I R 1929 Mad 291=116 Ind Cas 137 In an administration suit, an order adding party to watch the proceedings is wrong and has no meaning A I R 1929 Cal 477=56 C 447=119 Ind Cas 21 A new party can be impleaded as defendant even against the consent of the plaintiff, even though such addition may enable him to counterclaim against the plaintiff A I R 1929 Mad 443=29 L W 753=118 Ind Cas 780 In a suit which is merely for compelling the registration of a certain document, motion A I R Ind. Cas 654 of tenant can be 10 P L T 442 A as a defendant to jurisdiction A I R 1928 Pat 281=10 P L T 427=107 Ind Cas 520 If in a suit between a *benamidar* and real purchaser adversely to the pleas own suit and he cannot claim to be 834=53 M L J 269=105 Ind Cas suit if such addition has the effect property in respect of which rent is claimed A I R 1927 Cal 340=45 C L J

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P C 88  
given up  
suit A I R 1926 Mad 836=51 M L J

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A I R 1926  
A defendant  
be party to the

The secretary of state is not a proper or necessary party to every suit in which a statute is sought to be declared *ultra vires* A I R 1926 Mad 836=51 M L J 148=24 L W 738=95 Ind Cas 214 If a matter has been referred to arbitration under s 19 of the Arbitration Act, it is found that the name of the plaintiff is wrong, and application is made to the Court for correcting the mistake, the correction of that name does not make it a new suit so as to deprive the arbitrators of their jurisdiction upon original reference A I R 1926 Cal 722=43 C L J 297=94 Ind Cas 182 In case of addition of parties, capacity in which, as also party at whose instance party is to be added are material considerations A I R 1925 Mad 836=51 M L J 148=24 L W 738=95 Ind Cas 214 In a mortgage suit added after the preliminary decree :

Addition of parties to a final rule 10(2) for jo no decree can t

A L J 365=11 can be joined

Cas 261 A P

addition subsequent

R 1927 Bom 424=29 Bom L R 418=103 Ind Cas 225 Application to bring on record legal representative wrongly impleaded, as such can be made under Order 1, rule 10 though rejected under Order XXII rule 4 32 Ind Cas 320 No new plaintiff was added where a person sued in his own name but after expiry of limitation period was allowed to amend the plaint suing in company's name 30 M L J 57=33 Ind Cas 557 A son of a hereditary trustee is a proper party in a suit against him for his removal 38 L W 9=(1917) M W N 550=38 Ind Cas 133 The question of addition of a party does not arise in a suit against a dead man which is a nullity 6 L W 359=1917 M W N 643=33 M L J 413=22 M L T 333=42 Ind Cas 530, see also 47 Ind Cas 874=6 O L J 546 Proper procedure in a case instituted by a next friend on behalf of a major who is wrongly assumed as a minor is to return the plaint for necessary amendment 50 M 743=41 Ind Cas 510

A person who could not have been originally joined, can not be made a co plaintiff either under r 10 or r 8 of Order 1 57 Ind Cas 784 Person promising indemnity against plaintiff to the defendant may be made a party at the instance of the defendant unless plaintiff objects and serious harm is likely to be caused thereby to him 46 C 48=50 Ind Cas 51 Person originally a defendant can be made a plaintiff to claim his share in an administration suit (1918) M W N 929=9 L W 79=26 M L T 140=49 Ind Cas 139 In a redemption suit by some of the heirs of the mortgagor, Court can make other heirs as defendants 45 B 1009=23 Bom L R 405=61 Ind Cas 590 It is not possible in a suit to make an opposing and contesting claimant a plaintiff nor is a decree possible in favour of contesting defendant against his co defendant A I R 1901 All 184=19 A L J 833=63 Ind Cas 773 Receiver being a representative of all the parties to the suit, must be made a party in all the proceedings affecting property but is not a party within this rule A I R 1923 Mad 144=43 M L J 211=16 L W 322=71 Ind Cas 293 In a suit against the widow in which the adoption by her is in question the reversioners are the proper parties though not necessary parties A I R 1923 Mad 521=17 L W 329=44 M L J 322=72 Ind Cas 156 Change of period of limitation due to amendment of the Limitation Act is a good ground for addition of parties after the period of limitation A I R 1925 Mad 347=78 Ind Cas 168 Persons whose case conflicts with the case of plaintiffs on record can not be added as co plaintiffs at the instance of the plaintiffs A I

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having a right to seek the  
in issue A I R 1925

Cal 125/=0, add a person interested in  
the equity of redemption is a party even after preliminary decree, and re open the

concerned A I R 1924 Mad 648=46 N 364=84 Ind Cas 122  
 a person claiming to have purchased the property at a prior sale from the executant is not a proper party, the title question not being strictly within the scope of s 76 A I R. 1925 Cal 1257=89 Ind Cas 56  
 Ordinarily the plaintiff has the choice of his opponent and a party can not be added as defendant at his will A I R 1925 Nag 373=87 Ind Cas 988  
 Fresh parties can not be added after compromise of the suit by the original parties and during proceedings under Order 23, rule 3 A I R 1926 Mad 341=50 M L J 59=92 Ind Cas 311 An attaching creditor of the mortgagor's interest in the mortgaged property applying to be made a party to mortgagee's suit, should not be added as a party if his sole aim in being so added is to challenge the validity of the mortgage A I R 1926 Nag 67=89 Ind Cas 446 A suit for rent against only some of the heirs of the deceased tenant is maintainable A I R 1925 Cal 1056 (F B)=29 C W N 400=42 C L J 232=53 C 197=90 Ind Cas 211 A Court can add parties after the suit has been remanded to it by the Court of appeal but the Court of Appeal cannot do so after passing the order A I R 1926 Rang 9=3 Rang 474=92 Ind Cas 125 Where a partner in a business refuses to be joined as a plaintiff, he should be made a defendant in the suit, but the suit should not be dismissed on that ground A I R 1925 Lah 501=7 Lah L J 280=26 P L R 699=92 Ind Cas 569.

**Striking out party**—Party against whom no cause of action is mentioned no relief claimed may be struck off from the suit A I R 1931 Mad 284=33 L W M 81=127 Ind Cas  
 me of a party off the sections the words 18 A 53, 20 M 360 are made obsolete

by the change Where an Appellate Court has joined a party as defendant the Lower Court can not strike off the same under order 1 r 10(2) on case being remanded. A I R 1930 All 303=126 Ind Cas 225 An order discharging a defendant who is not a proper party and against whom no relief is claimed amounts to striking out his name from the record A I R 1926 Lah 202=27 P L R. 194=93 Ind Cas 921 The Court may strike out the name of a deceased defendant 1926 Lah 153=89 Ind Cas 653 A 466=131 Ind Cas 548  
 defendant adjudged bankrupt in which he had interest before bankruptcy and he can rightly be removed from record A I R 1930 Cal 388=34 C W N 53=125 Ind Cas 851 Name of a deceased defendant, who was dead at the time of the institution of the suit should be expunged from the record A I R 1928 Lah 359=9 Lah 529=29 P L R 626=110 Ind Cas 281

**Substitution of parties**—In a fit case for the ends of justice Court can order substitution of parties 33 Bom L R 546=A I R 1931 Bom 388=133 Ind Cas 823, 15 R D 204=12 L R 63 (Rev) If the name of a dead person appears on the petition of appeal instead of his legal representative through a *bona fide* error, petition of appeal can be amended A I R 1930 All 131=123 Ind Cas 824 A substitute must enforce a single right pleaded in suit and not to bolster up a suit by pleading his own individual right A I R 1930 Sind 73=120 Ind. Cas 517 Where the respondent whose name is entered in the appeal as presented, is found to have died before the presentation, legal representative of the deceased can not be substituted, proper procedure is to file another appeal A I R 1924 Mad 56=45 M L J 231=18 L W 54=75 Ind Cas 739, see also A I R 1924 Mad 56=18 L W 54=45 M L J 231=75 Ind Cas 739 The Court can grant substitution of parties by virtue of inherent power as well 1933 A L J 1512 The ultimate reversioners are recognized by Courts of law, as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by a widow or other owner for life Where therefore the preliminary decree passed in favour of the original plaintiff (a widow) clearly touches the corpus of the estate, the order substituting the reversionary heirs (some of the defendants) in the place of the original plaintiff is in accordance with the rule but a co-widow of the plaintiff can not be transposed from the position of the defendant to that of plaintiff without

146. Where a defendant is discharged and again reinstated as defendant, the suit must be deemed to be instituted on the date of reinstatement A I R 196 P C 88=31 C W N 174=(1926) M W N 592=96 Ind Cas 887 A defendant given up but not struck off by amending plaint must be deemed to be party to the suit A I R 1927 Mad 253=98 Ind Cas 726

essary party to every suit in which  
A I R 1926 Mad 836=51 M L J  
ter has been referred to arbitration  
and that the name of the plaintiff is  
wrong, and application is made to the Court for correcting the mistake, the  
correction of that name does not make it a new suit so as to deprive  
the arbitrators of their jurisdiction upon original reference A I R 1926 Cal  
722=43 C L J 297=94 Ind Cas  
which, as also party at whose  
tions A I R 1925 Mad 836=5  
Cas 214 In a mortgage suit  
added after the preliminary decree  
Addition of parties to a final  
rule 10(2) for joining them does not amount to an order under order 1, rule 10 and  
no decree can be granted against such parties A I R 1927 All 465=49 A 664=25  
A L J 365=101 Ind Cas 868 In a suit under s 9 by co-trustees other co trustees  
can be joined as co defendants A I R 1927 Rang 180=5 Rang 263=103 Ind  
Cas 261 A plaintiff on the record cannot be given a good cause of action by the  
addition subsequently of a person as plaintiff who has a good cause of action A I  
R 1927 Bom 424=29 Bom  
record legal representative  
rule 10, though rejected un  
plaintiff was added where a  
period was allowed to amend the plaint suing in company's name 30 M L J  
57=33 Ind Cas 557 A son of a hereditary trustee is a proper party in a suit  
against him for his removal 38 L W 9=(1917) M W N 550=38 Ind  
Cas 133 The question of addition of a party does not arise in a suit against  
a dead man which is a nullity 6 L W 359=1917 M W N 643=33 M  
L J 413=22 M L T 333=42 Ind Cas 530, see also 47 Ind Cas 824=6  
O L J 546 Proper procedure in a case instituted by a next friend on behalf  
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plaintiff either under r 10 or r 8 of Order 1 57 Ind Cas 784 Person promising  
indemnity against plaintiff to the defendant may be made a party at the instance  
of the defendant unless plaintiff objects and serious harm is likely to be caused  
thereby to him 46 C 48=50 Ind Cas 51 Person originally a defendant can be  
made a plaintiff to claim his share in an administration suit (1918) M W N 929=  
9 L W 79=26 M L T 140=49 Ind Cas 139 In a redemption suit by some of  
the heirs of the mortgagor, Court can make other heirs as defendants 45 B 1009=  
23 Bom L R 405=61 Ind Cas 590 It is not possible in a suit to make an  
opposing and contesting claimant a plaintiff nor is a decree possible in favour of  
contesting defendant against his co defendant A I R 1921 All 184=19 A L J  
833=63 Ind Cas 773 Receiver being a representative of all the parties to the  
suit, must be made a party in all the proceedings affecting property but is  
not a party within this rule A I R 1923 Mad 144=43 M L J 211=  
16 L W 322=71 Ind Cas 293 In a suit against the widow in which the  
adoption by her is in question the reversioners are the proper parties though not  
necessary  
Cas 156  
is a good g  
9=44 M L J 372=72 Ind  
ent of the Limitation Act  
Imitation A I R 1925

Mad 347=78 Ind Cas 168 Persons whose case conflicts with the case of plain-  
tiffs on record can not be added as co plaintiffs at the instance of the plaintiffs  
A I R 1922 Cal 459=35 C L J 92=76 Ind Cas 915 The expression "proper  
party" means the party interested in the result of and having a right to seek the  
assistance of the court in coming to a decision on the point in issue A I R 1925  
Cal 1257=89 Ind Cas 57 Where necessary court may add a person interested in  
the equity of redemption as a party even after preliminary decree, and re open the

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not being strictly within the scope of s 76 A I R 1925 Cal 1257=89 Ind Cas 56  
Ordinarily the plaintiff has the choice of his opponent and a party can not be  
added as defendant at his will A I R 1925 Nag 373=87 Ind Cas 988  
Fresh parties can not be added after compromise of the suit by the original  
parties and during proceedings under Order 23 rule 3 A I R 1926 Mad  
541=50 M L J 59=92 Ind Cas 311 An attaching creditor of the mort-  
gagor's interest in the mortgaged property applying to be made a party to  
mortgagee's suit, should not be added as a party if his sole aim in being so  
added is to challenge the validity of the mortgage A I R 1926 Nag 67=89 Ind  
Cas 446 A suit for rent against only some of the heirs of the deceased tenant  
is maintainable A I R 1925 Cal 1056 (F B)=29 C W N 400=42 C L J  
232=53 C 197=90 Ind Cas 211 A Court can add parties after the suit has been  
remanded to it by the Court of appeal but the Court of Appeal cannot do so after  
passing the order A I R 1926 Rang 9=3 Rang 474=92 Ind Cas 125  
Where a partner in a business refuses to be joined as a plaintiff, he should  
be made a defendant in the suit, but the suit should not be dismissed on that  
ground A I R 1925 Lah 501=7 Lah L J 280=26 P L R 699-97 Ind  
Cas 569.

**Striking out party**—Party against whom no cause of action is mentioned no  
relief claimed may be struck off from

681 A I R 1930 Mad 817=59 M L

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used were "on or before the first he

(362) 9 P R 1906 71 P R 1907 are no longer good law as they are made obsolete  
by the change Where an Appellate Court has joined a party as defendant the  
Lower Court can not strike off the same under order 1 r 10(2) on case being  
remanded A I R 1930 All 303=126 Ind Cas 225 An order discharging  
a defendant who is not a proper party and against whom no relief is  
claimed amounts to striking out his name from the record A I R 1926  
Lah 202=27 P L R 194=93 Ind Cas 921 The Court may strike out the  
name of a deceased defend

1926 Lah 153=89 Ind Cas 6

53 A 466=131 Ind Cas 548

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in which he had interest before bankruptcy and he can rightly be removed  
from record A I R 1930 Cal 388=34 C W N 53=125 Ind Cas

851 Name of a deceased defendant who was dead at the time of the  
institution of the suit should be expunged from the record A I R 1928  
Lah 359=9 Lah 529=29 P L R 626=110 Ind Cas 281

**Substitution of parties**—In a fit case for the ends of justice Court can order  
substitution of parties 33 Bom L R 546=A I R 1931 Bom 388=133 Ind Cas 823,  
15 R D 204=12 L R 63 (Rev) If the name of a dead person appears on the  
petition of appeal instead of his legal representative through a *bona fide* error,  
petition of appeal can be amended A I R 1930 All 131=123 Ind Cas 824 A  
substitute must enforce a single right pleaded in suit and not to bolster up a suit  
by pleading his own individual right A I R 1930 Sind 73=120 Ind Cas 517  
Where the respondent whose name is entered in the appeal as presented, is found  
to have died before the presentation legal representative of the deceased can not be  
substituted, proper procedure is to file another appeal A I R 1924 Mad 56=45  
M L J 231=18 L W 54=75 Ind Cas 739 see also A I R 1924 Mad 56=  
18 L W 54=45 M L J 231=75 Ind Cas 739 The Court can grant substitution  
of parties by virtue of inherent power as well 1933 A L J 1512 The ultimate  
reversioners are recognized by Courts of law as having a right to demand that the  
estate be kept free from waste and free from danger during its enjoyment by a  
widow or other owner for life Where therefore the preliminary decree passed in  
favour of the original plaintiff (a widow) clearly touches the corpus of the estate,  
the order substituting the reversionary heirs  
of the original plaintiff is in accordance with the  
can not be transposed from the position of the

her consent A I R 1934 Cal 136 A suit can be continued by substitution of right plaintiff provided the suit was instituted by a wrong person as plaintiff 66 Ind Cas 823=16 S L R 71 see also 64 Ind Cas 413=A I R 1923 Mad 180

**Transposition of parties**—Transposition of parties may be ordered by the court in the interest of justice where the nature of the suit is not changed A I R 1922 Cal 459=76 Ind Cas 915, see also 20 C W N 752=34 Ind Cas 186, 45 B 983=23 Bom L R 391=61 Ind Cas 398 The courts have always liberally interpreted the provisions of law under order 1 r 10 as regards the transposition of

and to avoid multiplicity of proceedings A I R 1931 P C 162=1931 A L J 566=33 Bom L R 1273=35 C W N 870=54 C L J 137=61 M L J 632=132 Ind Cas 610 (P C) But transposition should not be allowed where the character of the suit would be changed 76 Ind Cas 915=36 C L J 92=A I R 1922 Cal 459 A party so transposed is not a new party and as such s 22 of the Limitation Act has no application 14 C 400, 22 B 672, 34 B 91 19 C W N 1269, 20 C W N 49, A I R 1927 Mad 204=52 M L J 33 When order for transposition has been ordered, necessary amendment of pleading may also be allowed A I R 1931 Cal 561=129 Ind Cas 860=58 C 561 An appellate Court has powers of transposition of parties similar to those exercised by original Court under Order 1 rule 10 A I R 1930 All 785=1930 A L J 926 Court has power to transfer a plaintiff to the category of defendants A I R 1925 Cal 328=82 Ind Cas 649 Such order can be made for a complete adjudication upon questions involved in the suit and to avoid multiplicity of suits 58 I A 228=54 C L J 137= R 1273=132 Ind Cas 610=1931 A L J 566=

defeating a valuable right acquired  
suit should not be allowed A I

Nag 32=97 Ind Cas 333  
L J 694 Transposing a defendant to the category of plaintiff is entirely within the discretion of the trial Court and if not objected to during the trial it cannot be interfered with in appeal A I R 1926 Nag 393=95 Ind Cas 171 Merely because transposition of some defendants as plaintiffs would raise the valuation of the suit beyond the pecuniary jurisdiction of the court is no reason for refusing the transfer Plaintiff can be returned for presentation of an application by such party  
C L J 535=43 N L R 21=49 Ind Cas 34 It is no ground for refusing the transposition of *proforma* defendant into a plaintiff that the effect would be to assist the plaintiff 14 Pat L T 252=A I R 1933 Pat 239 The Court cannot transpose a defendant to the array of plaintiffs without the party's consent and in the absence of an application to that effect 58 C L J 240 Transposition of parties in a partition suit can be made even after the withdrawal of a part of a claim and the suit thus can be continued 12 L W 563=60 Ind Cas 144

**At any stage**—In some circumstances it may be right and proper that the Court should add such parties to the proceedings even at the appellate stage persons who were not amongst the original parties by exception and must be such original parties to the suit that some issue is involved so that the matters original and finally determined as between the original parties to the suit 59 C 329=138 Ind Cas 104=A I R 1932 Cal 448 Under this rule the Court can add a party at any stage of the proceedings and it is competent for the Court to add a party after the case has been remanded to it on appeal 33 Bom L R 608=A I R 1931 Bom 408, see also 61 Ind Cas 378 59 Ind Cas 233=12 L W 25=30 M L J 31, 2 U P L R 96 Court has jurisdiction after the passing of the preliminary decree in a mortgage suit and before the final decree has been passed to implead as defendants to the suit persons who were not originally impleaded as defendants



and were not parties to the preliminary decree A I R 1927 All 465=49 A 664=25 A L J 369=101 Ind Cas 868 Under Order 1, r 10 any party may be joined before the passing of existing decree 13 N L R the suit after passing of the decree A I R 1923 Mad 472=44 M L J 282=17 L W 422=72 Ind Cas 284 Though unusual plaintiffs may be added to a suit after decree especially in representative suits so that persons interested might enforce in execution the direction in the scheme. A I R 1923 Mad 472=44 M L J 282=17 L W 422=32 L T 212=72 Ind Cas 284 A Court can order joinder of a new party even after a preliminary decree is passed A I R 1926 Sind 26=89 Ind Cas 609

**Appeal**—An order under r 10 striking out or adding a party is not appealable 1930 M W N 971=32 L W 766=60 M L J 237=A I R 1930 Mad 987=129 Ind Cas 44, 47 Ind Cas 725, 69 Ind Cas 961=45 M 199, 36 Ind Cas 919, 61 Ind Cas 111

in revision under s 115 Revision does not lie against an order refusing to add a party as plaintiff A I R 1926 Pat 207=93 Ind Cas 932=1 P L T 499, see also 50 A 276=2, A L J 991=108 Ind Cas 735=A I R 1928 All 97, but see A I R 1929 Mad 443=1929 M W N 67=118 Ind Cas 780 Revision lies against an order refusing to make a person as defendant A I R 1929 Oudh 148=6 O W N 118=116 Ind Cas 58 Whether persons should or should not be impleaded is a question of pure discretion An improper impleading on ground of illegality or material irregularity so as to 111 Ind Cas 141 Erroneous exercise of discretion on ground for interference under section 115(c) unless such exercise of discretion results in misjoinder of parties and misjoinder of causes of action A I R 1925 Mad 135=90 Ind Cas 721 An order under Order 1, rule 10(2) discharging a defendant from a suit does not operate as a decree and as such is not appealable A I R 1926 Nag 75=89 Ind Cas 331

**Sub rule (3)**—No person should be added as a plaintiff without his consent 13 O C 109 When he refuses to be made a plaintiff he can be made a defendant 7 C 242=9 C L R 13, 11 C 618, 17 C 160, 7 A 326, 46 P R 1911

**Sub rule (4)**—Such amendment is only allowed as is necessary for the addition of the defendant But no amendment would be allowed which would change the character of the suit 24 A 533, see also 25 Ind Cas 607 14 C L J 627=10 Ind Cas 503

**Sub clause (5)**—The provisions of s 22 (1) of the Limitation Act are made inapplicable to a case of transposition of parties by this sub clause 11 Pat 616=140 Ind Cas 572=A I R 1932 Pat 346 Whether a court acts *suo motu* or upon the application of a party a court acting under rule 10 is bound by s 22 of the Limitation Act A I R 1930 Lah 647=11 Lah 688=126 Ind Cas 78 When parties are added by the court after the institution of a suit under order 1 rule 10 (2) section 22 of the Limitation Act provides that the date when they are added is deemed to be the date of the institution of the suit so far as they are concerned for the purposes of limitation and the rights which they may have acquired under the Limitation Act are therefore sufficiently safeguarded *Per Sir John Vallis* in A I R 1927 P C 252=26 A L J 371=30 Bom L R 220=32 C W N 281=47 C L J 136=54 M L J 88=6 Rang 29=107 Ind Cas 237, see also A I R 1929 Cal 501, 35 C 519 (F B), 50 M 372=52 M L J 199=A I R 1927 Mad 468 A I R 1928 Lah 33=100 Ind Cas 859 Addition of more representatives out of time does not bar a suit to enforce rights of trust by interested persons 9 L W 377=50 Ind Cas 353 Even where the Court of its own motion adds a necessary party, the suit will be deemed to be instituted when the party is added A I R 1925 Sind 181=17 S L R 374=79 Ind Cas 914

11 [S 32 sixth para] The Court may give the conduct of the suit to such person as it deems proper

Conduct of suit

**Scope**—The general rule is that the conduct of a suit will rest with the plaintiff  
 21 Ch D, 647 The word 'person' in this rule means a person who is a party to the  
 suit and not a stranger to it A I R 1926 Cal 143=46 C L J 530=106 Ind Cas  
 854 So suit cannot be conducted by a third party on behalf of absent party without  
 special authorisation under order 1, rule 11 *Ibid* Suit by trustee impleading co-  
 trustee as a party defendant, can be continued by co-trustee after plaintiff's death  
 62 Ind Cas 360=40 M L J 208=13 L W 148=(1921) M W N 108

**12 [S 35]** (1) Where there are more plaintiffs than one, any one or  
 Appearance of one of several more of them may be authorized by any other  
 plaintiffs or defendants for of them to appear, plead or act for such other  
 others in any proceeding, and in like manner, where  
 there are more defendants than one, any one  
 or more of them may be authorized by any other of them to appear, plead  
 or act for such other in any proceeding

(2) The authority shall be in writing signed by the party giving it and  
 shall be filed in Court.

**Sub-section (2)**—Vide 2 B H C R 103

**13 [S 34]** All objections on the ground of nonjoinder or misjoinder  
 of parties shall be taken at the earliest possible  
 Objections as to nonjoin opportunity and, in all cases where issues are  
 der or misjoinder settled, at or before such settlement, unless the  
 ground of objection has subsequently arisen, and any such objection not so  
 taken shall be deemed to have been waived

**Scope**—Objection as to non joinder or misjoinder of parties should be taken at  
 the earliest possible opportunity 70 Ind Cas 645=A I R 1922 Mad 317=15  
 L W 283=(1922) M W N 106=42 M L J 133, A I R 1925 Oudh 369=12  
 O L J 66=2 O W N 114=87 Ind Cas 17, see also 17 C 580 (P C),  
 7 C 594, 39 Ind Cas 160, 62 Ind Cas 386=44 M 344=40 M L J 282  
 At any rate such objection should be taken before the settlement of issues 41 Ind  
 Cas 527, see also 6 A L J 541, 25 Ind Cas 125 Where a defendant is permitted  
 to state his defence in a written statement and he therein raises an objection as to  
 the provisions  
 W N 494=35  
 is brought by a  
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 ndants raise no  
 are settled the  
 only A I R

1934 Lah 459, see also 156 P R 1889 where such objections have not been taken  
 in time it must be deemed to have been waived 14 M 498, 26 B 301, 69 P R  
 1903, 7 Ind Cas 102, 13 Bom L R 1061, 64 P R 1881, 58 P R 1882, 55 Ind  
 Cas 261=23 C W N 876, 23 Ind Cas 862 But such objection can be allowed  
 even after the settlement of issues where the reason of the objection has come into  
 existence subsequently 5 B 609 Any irregularity in the initial procedure cannot  
 be questioned at a later stage when parties without objection join issue and  
 go to trial upon merits 23 C W N 876=57 Ind Cas 261 Such objection  
 cannot be taken for the first time in appeal 16 B 119, 14 M 498, 16 C  
 W N 639=13 Ind Cas 277, 26 B 301, 44 M 301, 18 A 109, A I R 1929  
 Rang 295, 2 N L R 45, 55 Ind Cas 261=23 C W N 876 Objection as to  
 non joinder of parties not taken in first appeal cannot be raised in second appeal  
 A I R 1921 Mad 243=44 M 344=62 Ind Cas 386, see also 38 Ind Cas  
 715=(1917) M W N 333, 9 C L J 623 5 C L J 95 A I R 1933 Pat 270=145  
 Ind Cas 35 Objection as to non joinder taken for the first time before the High  
 Court in revision cannot be allowed 41 Ind Cas 527 Where the objection as to  
 non joinder of parties is taken after the framing of the issues the objection cannot  
 be entertained A I R 1933 Oudh 128=1 O W N 48=143 Ind Cas 838 Where  
 the objection as regards non joinder was taken at the outset and the plaintiff does  
 not remedy the defect, the suit must be dismissed 145 Ind Cas 178=A I R 1933  
 Lah 93

## ORDER II

*Frame of Suit.*

- 1 [S 42] Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them

Frame of suit

**Scope**—Though a suit should include whole of the claim it is not necessary to join all the causes of action 59 Ind Cas 51 Suppressed fact essential for the final decision the case, cannot be made a ground for second suit It is barred by this rule A I R 1931 Bom 114=32 Bom L R 1473=129 Ind Cas 787, 10 L W 170=52 Ind Cas 735 The expression 'subject in dispute' also includes the right of one party against the other A I R 1925 Mad 192=6 Mad 234=49 M L J 701=23 L W 13=91 Ind Cas 660, see also 26 M 760=13 M L J 448 In the suit for declaration of title possession of the properties need not be asked where the possession is not with the defendants A I R 1925 Mad 427=20 L W 754=80 Ind Cas 929 This rule requires that all the disputes between the parties to the litigation should be disposed of in one suit 25 C 371=2 C W N 201, see also 27 C 724 (761) Suit for declaration of a right of residence and maintenance should be so framed as to enable the defendant the ascertainment of actual extent of right A I R 1926 Sind 18=9 Ind Cas 997 Mortgagor cannot in a mortgage suit claim account of the agency from the mortgagee acting as managing agent of mortgagor's business A I R 1930 Cal 85=124 Ind Cas 520 Where in a suit by an adopted son against the widow and her alienees to recover the property of the adoptive father the plaintiff fails to claim to recover from a particular defendant certain property of the adoptive father which was in that defendant's possession to plaintiff's knowledge it cannot possibly be held that the suit was so framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them 32 Bom L R 1473—A I R 1931 Bom 114=129 Ind Cas 737 This rule should not be confined in its incidence to the manner in which the pleadings ought to be drafted It should be the effort no less of the court to attain a final decision upon the subjects, in dispute and prevent further litigation concerned 34 Bom L R 125=139 Ind Cas 678—A I R 1932 Bom 175

- 2 [S 43] (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the

Suit to include the whole claim

suit within the jurisdiction of any Court.

- (2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished

- (3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits, except with the leave of the Court to sue for all such reliefs he shall not afterwards sue for any relief so omitted

**Explanation**—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action

*Illustration*

A lets a house for 10 years 1905, 1906 due for 1906

**Principle**—The real principle underlying cases under this rule is that if the several items which make up the claim are of the same nature and form part of the

**Scope**—The general rule is that the conduct of a suit will rest with the plaintiff 21 Ch D 647 The word 'person' in this rule means a person who is a party to the suit and not a stranger to it A I R 1926 Cal 143=46 C L J 530=106 Ind Cas 854 So suit cannot be conducted by a third party on behalf of absent party without special authorisation under order 1, rule 11 *Ibid* Suit by trustee impleading co-trustee as a party defendant, can be continued by co-trustee after plaintiff's death 62 Ind Cas 360=40 M L J 208=13 L W 148=(1921) M W N 108

**12 [S 35]** (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

**Sub-section (2)**—Vide 2 B H C R 103

**13 [S 34]** All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived

**Scope**—Objection as to non joinder or misjoinder of parties should be taken at the earliest possible opportunity 70 Ind Cas 645=A I R 1922 Mad 317=15 L W 283=(1922) M W N 106=42 M L J 133, A I R 1925 Oudh 369=12 O L J 66=2 O W N 114=87 Ind Cas 17, see also 17 C 580 (P C), 7 C 594, 39 Ind Cas 160, 62 Ind Cas 386=44 M 344=40 M L J 282 At any rate such objection should be taken before the settlement of issues 41 Ind Cas 577 see also 6 A I J 541, 25 Ind Cas 125 Where a defendant is permitted to raise an objection as to fresh issue the provisions of 1932 M W N 494=35 re a suit is brought by a firm without making the defendants raise no parties are settled the subsequently A I R

1934 Lah 459 see also 156 P R 1889 Where such objections have not been taken in time it must be deemed to have been waived 14 M 498 26 B 301, 69 P R 1903, 7 Ind Cas 102, 13 Bom L R 1061, 64 P R 1881, 58 P R 1882, 55 Ind Cas 261=23 C W N 876 23 Ind Cas 862 But such objection can be allowed even after the settlement of issues where the reason of the objection has come into existence subsequently 5 B 609 Any irregularity in the initial procedure cannot be questioned at a later stage when parties without objection join issue and go to trial upon merits 23 C W N 876=57 Ind Cas 261 Such objection cannot be taken for the first time in appeal 16 B 119 14 M 498, 16 C W N 639=13 Ind Cas 277, 26 B 301 44 M 301, 18 A 109 A I R 1929 Rang 395, 2 N L R 45 55 Ind Cas 261=23 C W N 876 Objection as to non joinder of parties not taken in first appeal cannot be raised in second appeal A

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## ORDER II.

*Frame of Suit.*

- 1 [S. 42] Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them

**Scope**—Though a suit should include whole of the claim, it is not necessary to join all the causes of action 59 Ind Cas 51 Suppressed fact essential for the final decision the case, cannot be made a ground for second suit. It is barred by this rule A I R 1931 Bom 114=32 Bom L R 1473=129 Ind Cas 787, 10 L. W. 170=32 Ind Cas 735 The expression 'subject in dispute' also includes the right of one party against the other A I R 1925 Mad 427=20 L. W. 754=80 Ind Cas 929 L. V. 13=91 Ind Cas 663, see also 26 M. 760=13 M. L. J. 448 In the suit for declaration of title possession of the properties need not be asked where the possession is not with the defendants A I R 1925 Mad 427=20 L. W. 754=80 Ind Cas 929 This rule requires that all the disputes between the parties to the litigation should be disposed of in one suit 25 C 371=2 C. W. 201, see also 27 C 724 (761) Suit for declaration of a right of residence and maintenance should be so framed as to enable the defendant the ascertainment of actual extent of right A I R 1926 Sind 18=91 Ind Cas 997 Mortgagee cannot in a mortgage suit claim account of the agency from the mortgagor acting as managing agent of mortgagor's business A I R 1930 Cal 85=124 Ind Cas 520 Where in a suit by an adopted son against the widow and her alienees to recover the property of the adoptive father the plaintiff fails to claim to recover from a particular defendant certain property of the adoptive father which was in that defendant's possession to plaintiff's knowledge it cannot possibly be held that the suit was so framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation Bom 114=129 Ind Cas 737 manner in which the plead- ent further litigation concerned

34 Bom L. R. 125=139 Ind Cas 678=A I R 1932 Bom 175

- 2 [S. 43] (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted

**Explanation**—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action

*Illustration*

A lets a house to B at a yearly rent of Rs. 1200 The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid A sues B in 1908 only for the rent due for 1906 A shall not afterwards sue B for the rent due for 1905 or 1907

**Principle**—The real principle underlying cases under this rule is that if the several items which make up the claim are of the same nature and form part of the

same course of dealing, so as to pass under the same description and form part of one transaction, they must be considered as one cause of action and must be joined

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object

(1931) P C 229=35 C W N 977=54 C L J 274=34 L W 444=61 M L J  
294=134 Ind C 654 (P C)

'I R 1976 Lah 539=8  
Cas 966=2 U P L R  
cause of action The  
A L J 797=A I R

**Scope of the Section**—This section is directed to securing the exhaustion of the relief in respect of a cause of action, different causes of action, ev

second portion makes it incumbent on

The final paragraph is not intended to  
but a substantive enactment making  
e of action, one cause of action for the

what otherwise would be the purpose of the section 18 C W N 617 P C=26 I A 228, see also 6 M 49  
This rule covers only cases where plaintiff can claim several reliefs as to one cause of action and does not cover case where several causes of action can be joined in one suit A I R 1928 Mad 840=1928 M W N 336=56 M L J 52=110 Ind  
Cas 554, see also A I R 1927 Rang 237  
A I R 1926 Cal 1022=30 C W N 8  
Bom L R 45=40 B 351, 109 Ind Cas 65  
order 2 rule 2 applicable it is necessary

the same 145 Ind C 1010=34 P L R 905=A I R 1933 Lah 542 Where  
the cause of action in the former suit and the cause of action in the present suit  
are different this section has no application A I R 1933 Lah 107  
This section is applicable to the plaintiffs and not applicable to the defendant  
This section is applicable to the plaintiffs and not applicable to the defendant  
A I R 1933 Lah 569, see also A I R 1926 Lah 494=7 Lah 297

A I R 1933 Lah 569, see also A I R 1926 Lah 494=7 Lah 297  
357=57 Ind Cas 348,  
909 The provisions of  
ay of restitution is claimed  
as 552=13 S L R 158  
by the creditor who was  
s suit for a declaration that  
A I R 1925 Mad 1120=

49 M L J 474=22 L W 17=48 M 703=91 Ind Cas 403 This rule has no  
application to execution proceeding, If an application for partial execution has

subsequent application for executing the  
barred 28 N L R 77=130 Ind Cas  
nt who claims a set off is in the position  
subject to the rule 32 C 654=1 C L J

364 The cause of action referred to in the rule is the cause of action which  
gives occasion to and forms foundation of the suit and if that cause  
enables a man to seek for larger and wider relief than that to which he limits  
his claim, he cannot afterwards seek to recover balance by independent proceedings  
A I R 1922 P C 23=42 M L J 248=20 A L J 17=26 C W N 297=  
15 L W 377=44 A 121=24 Bom L R 341=3 Pat L J 279=49 I A 9=35 C L J  
126=65 Ind Cas 79 Under this rule every suit must include the whole of  
the claim arising from one and the same cause of action and it is not necessary  
that every suit shall include every claim or every cause of action which the  
plaintiff might have against the defendant A I R 1923 Cal 371=37 C L J 545=27  
C W N 673, A I R 1923 Mad 857= (1922) M W N 845=46 M 135=72 Ind Cas  
207 Cause of action for the redemption suit and the subsequent suit for contribution  
against owner of a part of the equity of redemption are different A I R 1929

All 696=(1929) A L to the dismissal of the r 66 A I R. 1928 Ma 336 Suit by order of not bar a subsequent suit for conversion A I R 1929 Bom 460=31 Bom L R 1123-122 Ind C1s 428 Where previous suit was for the wrongful conversion of goods it does not bar subsequent suit to obtain payment of legacies without any claim in respect of any of the goods to which the previous suit related A I R 1925 P C 105=29 C W N 989=52 Ind C1s 214=48 M L J 627-48 M 312=27 Bom L R 823=87 Ind Cas 324 (P C) A prior suit for possession does not bar a subsequent suit for compensation for holding over A I R 1928 Lah 50=110 Ind Cas 491 Suit for possession does not bar subsequent suit for redemption A I R 1927 Nag 322=103 Ind C1s 888 A person is not bound to sue on an alternative cause of action A I R 1927 Nag 322=103 Ind C1s 888 Plaintiff can not get a decree upon a cause of action arising subsequent to decree and totally different from that pleaded A I R 1927 Cal 56=44 C L J 263=98 Ind Cas 845 Claim to recover part of the property as owner and not by pre-emption rests on two causes of action A I R 1926 All 710=49 A 219=25 A L J 48=97 Ind C1s 176 A claim for money due based on the original loan or dealings can be combined, with a claim for the same money as due under a promote A I R 1924 Mad 520-44 M L J 361=17 M L W 574=72 Ind Cas 325 This rule when it operates as a bar merely deprives the claimant of his remedy by suit founded on the same cause of action If cannot have the effect of vesting as right in any of the defendants 144 Ind Cas 152=A I R 1933 All 228, see also 14 Pat L T 663=A I R 1933 Pat 715 There is no reference in this rule to the jurisdiction of the court trying the claims 14 P L T 663=A I R 1933 Pat 715 Where in a former suit by an adopted son against the widow and her alienees for recovery of the adoptive father's property the plaintiff claimed to recover a particular property from the widow and not from her alienee who was a party to the suit and who plaintiff knew held the property under a void deed of gift from the widow a subsequent suit by him to recover the property from the alienee would be barred by the provisions of order 2 rule 2 32 Bom L R 1473=A I R 1931 Bom 114=129 Ind Cas 737 A claim for the rents and profits resting on the same foundation of facts and law as the right to have the purchases of the decree and of the properties declared to be purchases for the mortgagors ought to be joined in the same suit Claim for rents and profits not asked for in the prior declaratory suit cannot be asked for in a subsequent suit (1931) A L J 797=A I R (1931) P C 229=35 C W N 977=54 C L J 274=34 L W 444=61 M L J 294-134 Ind Cas 634 (P C) This rule hardly applies to a case of claim made by a defendant in the suit who is not suing in respect of a claim omitted for the former suit A I R 1931 Sind 143

There is nothing in the rule which limits its operation to cases where two reliefs open to plaintiff on the same cause of action are both cognizable by the same court. Where the relief taken separately and alone would be cognizable by the same court, the rule applies. Where the maintenance of the amount of the husband's property is in question, the rule applies. 1251 M W N 893=A I R 1931 Mad 705

**Cause of action**—The cause of action for a suit means the fact or facts which the plaintiff alleges to entitle him to a decree A I R 1931 Oudh 57=7 O W N 1156=130 Ind Cas 79 Cause of action should be interpreted not on the basis of English decisions nor on the basis of its meaning in the Limitation statutes but on the basis of rules or sections of the previous Code A I R 1924 Rang 79 Ind Cas 755 Cause of action necessary for the plaintiff to prove judgment of the Court and refers entirely to cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour A I R 1921 Pat 143=60 Ind Cas 496 Cause of action for a suit, is sum total of facts and circumstances which the plaintiff has to prove to entitle him

to relief 38 A 217=14 A L J 257=33 Ind Cas 124 A cause of action has no relation to the defence set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff, but refers entirely to the grounds set forth in the plaint as the cause of action 52 Ind Cas 929, A I R 1912 All 50=70 Ind Cas 817 The words 'cause of action' must be interpreted with reference to those facts which the plaintiff sets out as grounds for relief he claims A L R 1933 Bom 440=25 Bom L R 491=73 Ind Cas 424, see also A I R 1924 Bom 141=25 Bom L R 1172=81 Ind Cas 776 The cause of action for a suit means the fact or facts which the plaintiff alleges to entitle him to a decree A I R 1931 Mad 313=132 Ind Cas 196

**Whole claim in respect of the same cause of action**—This rule only prohibits the splitting of claims arising out of the same cause of action 2 L W 890=29 M L J 474=18 M L T 377=31 Ind Cas 59 Whether the cause of actions are different or same in two suits can be ascertained by whether the same

L R 45=33 Ind Cas

action for a prior and a

4 O L J 354=41 Ind

77 Ind Cas 500, 130 Ind

33 Bom L R 1563 A I R 1934

Mad 46 Plaintiff need not combine in one suit all the causes of action which he may

have in respect of the subject matter of the suit A I R 1930 Mad 264=127 Ind Cas

139 This rule does not require that every suit shall include every claim or every

cause of action arising out of the same transaction A I R 1929 Pat 241=120

Ind Cas 479 Where a mortgage bond contains default clause causes

of action on mortgage and that for money are same and indistinguishable

V N 280=120

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both suits the causes of action in both suits cannot be said to be the same A I

R 1930 All 116=121 Ind Cas 827 Where the former suit is one for pure declar-

ation and the second suit is for possession, it must be taken that the two causes of

action are different A I R 1929 All 306=1929 A L J 492=119 Ind Cas 562

Cause of action in suit based on dispossession is entirely different from cause of

action in reversioner's suit for possession and the former does not preclude latter

A I R 1922 Cal 83=48 C L J 368=114 Ind Cas 139

A plaintiff cannot be compelled to join several causes of action though in certain case he can do so A I R 1929 Oudh 167=6 O W N 142=117 Ind Cas 412 A suit by daughter to establish her title to her father's estate as heir in reversion her mother's death does not bar a subsequent suit to recover possession of a specific property not included in the previous suit but upon the footing that it formed a part of the estate and that the defendant was in wrongful possession of it A I R 1929 P C 166=51 A 439=(1928) A L J 716=33 C W N 807=30 L W 60=56 I A 267=31 Bom I R 891=57 M I J 160=50 C L J 52=10 P L T 527=117 Ind Cas 498 The dismissal of a suit for ejectment does not in any way bar the plaintiff in a subsequent suit to enforce his right to redeem as mortgagor 63 Ind Cas 684 The mere fact that the title to the property in dispute in both suits is the same and the property is the same does not necessarily show that the cause of action is the same 59 Ind Cas 517 Suit for mesne profits up to delivery of symbolical possession does not bar a second suit for mesne profits after delivery of symbolical possession, causes of action being different 27 C W N 673=37 C L J 515=70 Ind Cas 187 A suit either on a non-existent cause of action or upon a false cause of action will not disable a plaintiff from filing a fresh suit on the true cause of action 7 L W 557=(1918) M W N 427=24 M L T 311=45 Ind Cas 963 Suit for a portion of claim in village Court bars the suit for balance. A I R 1934 Mad 99

**Relinquishment of claim**—Under this rule a plaintiff can relinquish any portion of his claim based upon the same cause of action in order to bring it within the jurisdiction of a particular Court A I R 1921 Mad 606=16 L W 135=(1922) M W N 83=66 Ind Cas 837 Where two reliefs on the same cause of action are open to plaintiff and he chooses only to ask for one he can not bring a fresh suit for the other relief A I R 1924 All 249=22 A L J 745=83 Ind Cas 969 Provisions of this rule only require that a suit shall include whole of the claim in



respect to one and the same cause of action and not that every suit shall include

on the memorandum of appeal on the claim is reduced on appeal A I R 1927 Lah 543=9 Lah L J 293=29 P L R 64=102 Ind Cas 70. Where several properties are mortgaged by one deed, a suit for declaration respecting one, as being inalienable bars a similar suit regarding other A I R 1927 Oudh 77=1 Luck. 1=3 O W N 40=91 Ind Cas 976 Relief available in the previous suit or in execution of the decree in the previous suit is barred in subsequent suit A I R 1925 Cal 305=80 Ind Cas 917, see also A I R 1925 All 795=88 Ind Cas 530, A I R 1931 Bom 114=32 Bom L R 1473=129 Ind Cas 737, A I R 1923 Bom 63=24 Bom L R 1157=73 Ind Cas 862, A I R 1923 Bom 201=25 Bom L R 203=72 Ind Cas 290, A I R 1922 All 3,9=44 A 663=20 A L J 590=68 Ind Cas 970, 65 Ind Cas 194-A I R 1922 Nag 129=21 N L R 124, 58 Ind Cas 656=46 C 640 Omission to claim the possession of a right without knowledge of it cannot be intentionally relinquished under Order II, rule 2 94 P R 1916=37 Ind Cas 119, but see 43 C 95=20 C W N 47=36 Ind Cas 179 The relinquishment by a plaintiff of a portion of the claim under Order 2 r 2 (1) applies preliminary to relinquishment before institution of the suit and the rule has no application to any part of

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was obtained A I R 1931 Mad 313=132 Ind Cas 196

**Omission to claim**—Order 2 rule 2 requires plaintiff in a suit to include the whole of his claim he is entitled to make in respect of particular cause of action constituting the basis but does not compel him to include all claims arising out of different causes of action 87 P R 1915=181 P W R 1915=31 Ind Cas 463 This rule refers to a case where there has been a suit in which there has been an omission to sue in respect of a portion of a claim and a decree has been made in that suit 45 C 305=22 C W N 611 This rule does not apply to the amendment of plaint by the addition of the claim which had been omitted 45 C 305=22 C W N 611=47 Ind Cas 129 'Omits to sue' means intentionally omits' 38 A 217=14 A L J 257=33 Ind Cas 124 Where the plaintiff is not aware of or informed of cause of action prior to suit there is no omission 23 L W 415=(1926) M W N 94=93 Ind Cas 1, see also 21 O C 307=49 Ind Cas 54 47 Ind Cas 881 This rule does not bar a plaintiff from including in his claim certain additional profits omitted in a previous suit under a misapprehension A I R 1923 All 230=65 Ind Cas 585 Where a claim is made but rejected by Court as not claimable subsequent suit for same is not barred It is only when there is an omission or intentional relinquishment that a second suit is barred A I R 1925 Rang 313=4 Bur L J 113=94 Ind Cas 611, see also A I R 1927 Rang 237=6 Bur L J 85=104 Ind Cas 370 Casual omission for some property given in the schedule to plaint, does not mean abandonment of claim with respect to those items 50 Ind Cas 381 In a suit by heirs for the property of the deceased, omission to sue for an item bars a subsequent suit in respect of the same A I R 1922 Nag 246=18 N L R 136=65 Ind Cas 338 see also A I R 1924 All 902=46 A 822=22 A L J 753=80 Ind Cas 31 Purchase in execution of a decree cannot maintain suit for possession after his suit for possession of part is dismissed 20 C W N 163=33 Ind Cas 159 Competence of a Court giving leave to plaintiff to omit to sue for relief is not affected by the pecuniary value of reliefs ought to be omitted 9 Bur L T 93=33 Ind Cas 135 Where possession is not prayed in a suit to set aside sale, a fresh suit for possession is not barred 57 Bom 456=35 Bom L R 630=A I R 1933 Bom 398 A claim for rent against a tenant and a claim for possession on the expiry of notice are two distinct causes of action A I R 1933 Rang 107=144 Ind Cas 751 This section is not applicable where the causes of action are distinct A I R 1933 Lah 1017, see also A I R 1933 All 852

**Same parties**—Order 2 rule 2 is not applicable where parties to suit are different A I R 1919 Mad 95=(1928) M W N 654=116 Ind Cas 116 see also A I R 1925 Oudh 53=81 Ind Cas 562

**Withdrawal of suit**—An order for withdrawal with leave under order 23 rule 1 (2) does not preclude plaintiff from including portions of his claim in the new suit omitted in the first suit A I R 1925 Rang 118=3 Bur L J 189=84 Ind Cas 483 Leave may be given either expressly or by implication 14 L R 134 (Rev)=17 R D 176 Apprehension on the part of the plaintiff that the second suit would be barred under order 2, rule 2 is good ground for allowing withdrawal A, I R 1924 Rang 249=2 Rang 66

**Execution proceedings**—This rule has no application to proceedings in execution of decree A. I R 1921 Sind 13=15 S L R 11=62 Ind Cas 507, 96 Ind Cas 562=A L R 1926 Cal 1019=53 C 582=43 C L J 596, 38 Ind Cas 806=40 M 780=5 L W 267, 28 N L R 77=130 Ind Cas 120=A I R 1932 Nag 89

**Dismissal of prior suit**—Dismissal of an earlier suit on the ground of formal defect in the plaint, with permission to file fresh suit does not bar subsequent suit on the same cause of action A I R 1930 Lah 634=130 Ind Cas 572 Dismissal of prior suit for mere declaration does not bar subsequent suit for possession of same subject matter A I R 1926 Rang 123=5 Bur L J 64=95 Ind Cas 891, see also A I R 1930 Sind 87=120 Ind Cas 509, A I R 1926 P C 118=30 C W N 1009=24 L W 328=100 Ind Cas 345 Dismissal of a suit on the ground of misdescription of property in suit does not bar a subsequent suit on the same cause of action A I R 1925 Lah 193=78 Ind Cas 579 Suit for recovery of purchase money from the vendor in case he has no title to the property is not barred by suit for possession A I R 1924 Cal 558=39 C L J 90=28 C W N 1033=80 Ind Cas 357, see also A I R 1925 Lah 459=7 Lah L J 236=6 Lah 384=26 P L R 280=87 Ind Cas 994, A I R 1927 Mad 273 Suit for mere declaration that property in suit was not attachable does not bar subsequent suit to recover damages for wrongful attachment of same A I R 1927 Oudh 48=95 Ind Cas 299 A subsequent suit for the recovery of possession is not barred when the plaintiff was not in possession at the time of the dismissal of declaratory suit 9 L B R 37=10 Bur L T 189=37 Ind Cas 15, see also 52 Ind Cas 434

Contract contains two covenants a breach of of action 10 L B R 111=12 Bur L T Instrument contains two separate contracts and in a different manner each gives rise to a may be joined in the same suit 16 N L R 136=58 Ind Cas 18 *Prima facie* each order and delivery of goods is a separate transaction and a separate cause of action, if not they are successive claims which arise under the same obligation within the explanation at the end of the rule, and the question whether they are really so or not depends upon the contract between the parties 79 Ind Cas 755=A I R 1924 Rang 145=2 Bur L J 169, see also 81 Ind Cas 465=A I R 1924 Rang 249

**Mesne-profits**—A suit for possession and past mesne profits and suit for future mesne profits must arise out of different cause of action A I R 1931 Oudh 131=7 O W N 831=128 Ind Cas 751, 12 Lah L J 152=31 P L R 745, see also A I R 1927 All 772=101 Ind Cas 816, A I R 1926 Mad 1015=51 M L J 252=24 N L R 290=(1926) M W N 814=97 Ind Cas 389, A I R 1931 Oudh 131=128 Ind Cas 751, A I R 1925 Pat 145=6 P L J 78=80 Ind Cas 710, 32 Ind Cas 696=9 Bur L T 92, 40 A 292=16 A L J 182=44 Ind Cas 88, A I R 1924 Cal 442=71 Ind Cas 972 A suit for partition does not bar subsequent suit for mesne profits on fresh cause of action A I R 1928 Nag 65=10, Ind Cas 771 A claim for mesne profits need not be made in application for reinstatement of possession A I R 1921 Nag 112=17 N L R 62, see also 60 Ind Cas 65, A I R 1924 Bom 368=26 Bom L R 288=80 Ind Cas 259, 33 Ind Cas 799=3 O I J 271=19 O C 161=57 Ind Cas 900, A I R 1926 Rang 137=5 Bur L J 17=95 Ind Cas 380 The failure of the plaintiff to make a claim in the suit for mesne profits up to the date of possession will bar a subsequent suit for mesne profits the date of decree to the date of possession A I R 1927 All 716=49 A 597=25 A L J 409=104 Ind Cas 406, see also A I R 1924 All 909=78 Ind Cas 326, 54 A 65=A I R 1932 All 510, but see 56 B 293=34 Bom L R 447=138 Ind Cas 578=A I R 1932 Bom 222 A suit for mesne profits is maintainable even though

the plaintiff does not claim ejectment of the defendants from the lands in dispute as claims for mesne profits and for ejectments are distinct relief and may or may not arise from the same transaction 12 P L T 540=A I R (1931) Pat 233=133 Ind Cas. 766 Plaintiff brought a suit for possession and mesne profits till the institution of the suit After obtaining possession he brings the suit for mesne profits from the date of the prior suit *Held* Order 2, rule 2 is no bar 1931 A L J 673 (S B)=A I R. 1931 All 673=133 Ind Cas 298, see also A I R 1931 Oudh 131=128 Ind Cas 751=6 Luck 243 Where a person sues for possession and mesne profits but the Court does not adjudicate on his claim to mesne profits it is open to him to bring a fresh suit for mesne profits 1931 A L J 606=A I R. (1932) All. 45

**Mortgage suit.**—Where a mortgagor makes himself liable personally for unpaid interest, suit on personal covenant for interest does not bar the subsequent suit for enforcement of the mortgage A I R 1930 All 286=(1929) A L J 1045=51 A 974=119 Ind Cas 90 In suit by usufructuary mortgagee for possession relief under Transfer of Property Act, s 63 (c) for money decree in the alternative should be prayed for A I R 1926 Pat 87=7 P L T 150=90 Ind. Cas 622 A puisne mortgagee's suit for redemption does not bar subsequent suit for pre-emption A I R 1928 Lah 63=103 Ind Cas 348 A mortgagee holding a separate money bond against a mortgagor is under no obligation to enforce the money bond along with the mortgagee, or even to refer to its existence in his plaint seeking to enforce the mortgage A I R 1925 Mad 991=86 Ind Cas 481, see also 26 A L J 57=107 Ind Cas 591, A I R 1927 All 713=25 A L J 791=103 Ind Cas 269; A I R 1926 Lah 559=8 Lah L J 381=27 P L R 620=97 Ind Cas 396 Where a mortgage deed provides for independent personal covenant for interest, a suit for interest brought on the covenant does not bar subsequent suit for mortgage money A I R 1925 Mad 120=49 M L J 474=91 Ind Cas 405 Where two successive mortgages are created on the same property by the same debtor in favour of the same creditor each can be sued upon separately 33 C L J 232=25 C W N 129=60 Ind Cas 809, see also A I R 1925 Oudh 379=12 O L J 127=86 Ind Cas 748 but see 53 Ind Cas 753=6 O L J 482 Where lease and mortgage although executed on the same day are separate transaction, a suit for rent alone does not bar a suit for principal money A I R 1924 Lah 1922 Lah 111=8 P W R 1922=3 Lah 1=65 one transaction 3 Lah L J 390=63 Ind C a mortgagee for possession of the mortgaged land bars subsequent suit for recovery of mortgage debt A I R 1921 Lah 309=4 Lah L J 502, see also A I R 1932 Lah 523=138 Ind Cas. 270; 34 Bom L R 1615, 140 Ind Cas 181

Where the first suit was by the usufructuary mortgagee for arrears of rent, the second suit for sale under a provision in the mortgage deed and for arrears of rent which had accrued subsequently is not barred 137 Ind Cas 651=1932 M W N 337=35 L W 631=A I R 1932 Mad 466=63 M L J 672

**Suit for partition**—The cause of action in a partition suit in joint family property must be regarded as exhaustive of the whole property available for division, so far as its existence is known at the date of the plaint The position of suit properties in two jurisdictions make no difference in the application of the principle involved in Order II rule 2 A I R 1923 Mad 584=44 M L J 652=72 Ind Cas 430, see also 1927 Mad 213=38 M L T 82=98 Ind Cas 538, but see 58 A 217=14 A L J 257=33 Ind Cas 124 (where the properties are situate in two different districts) A suit for partition of all joint properties is not barred under Order II rule 2 though a suit for partial partition is dismissed 87 P R 1915=181 P W R 1915=31 Ind Cas 463 Suit for partition of items not included in previous suit for partition is not barred if plaintiff was not aware of existence of these items and the information about them was withheld from him either by mistake or fraud of

A I R 1923 Mad 584=44 M L J 652=72 Ind Cas 430 First suit for partition of joint family property bars subsequent suit for share of rent for a prior period 137 Ind Cas 775=33 P I R 570=A I R 1932 All 448

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suit on the same cause of action from the vendor in case of recovery of purchase money for possession A I R 1924 Cal 558=39 C L J property is not barred by suit for possession A I R 1925 Lah 459=7 Lah 90=28 C W N 1033=80 Ind Cas 357, see also A I R 1927 Mad 273 L J 236=6 Lah 384=26 P L R 280=87 Ind Cas 994, A I R 1927 Mad 273 Suit for mere declaration that property in suit was not attachable does not bar subsequent suit to recover damages for wrongful attachment of same A I R 1927 Oudh 48=95 Ind Cas 299 A subsequent suit for the recovery of possession is not barred when the plaintiff was not in possession at the time of the dismissal of declaratory suit 9 L B R 37=10 Bur L T 189=37 Ind Cas 15, see also 52 Ind Cas 434

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**Mortgage suit.**—Where a mortgagor makes himself liable personally for unpaid interest, suit on personal covenant for interest does not bar the subsequent suit for enforcement of the mortgage A I R 1930 All 286=(1929) A L J 1045=51 A 974=119 Ind Cas 90 In suit by usufructuary mortgagee for possession relief under Transfer of Property Act, s 63 (c) for money decree in the alternative should be prayed for A I R 1926 Pat 87=7 P L T 150=90 Ind Cas 622 A puisne mortgagee's suit for redemption does not bar subsequent suit for pre-emption A I R 1928 Lah 63=103 Ind Cas 348 A mortgagee holding a separate money bond against a mortgagor is under no obligation to enforce the money bond along with the mortgagee, or even to refer to its existence in his plaint seeking to enforce the mortgage A I R 1925 Mad 991=86 Ind Cas 481 ; see also 26 A L J 57=107 Ind Cas 591, A I R 1927 All 713=25 A L J 791=103 Ind Cas 269, A I R 1926 Lah 559=8 Lah L J 381=27 P L R 620=97 Ind Cas 396 Where a mortgage deed provides for independent personal covenant for interest, a suit for interest brought on the covenant does not bar subsequent suit for mortgage money A I R 1915 Mad 120=49 M L J 474=91 Ind Cas 403 Where two successive mortgages are created on the same property by the same debtor in favour of the same creditor each can be sued upon separately 33 Ind Cas 809, see also A I R 1925 Oudh 48, but see 53 Ind Cas 753=6 O L J 482 executed on the same day are separate transactions suit for principal money A I R 1924 Lah 1922 Lah 111=8 P W R 1922=3 Lah 1=65 one transaction 3 Lah L J 390=63 Ind C a mortgagee for possession of the mortgaged land bars subsequent suit for recovery of mortgage debt A I R 1921 Lah 307=4 Lah L J 502, see also A I R 1932 Lah 523=138 Ind Cas. 270 ; 34 Bom L R 1615, 140 Ind Cas 181

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**Suit for partition.**—The cause of action in a partition suit in joint family property must be regarded as exhaustive of the whole property available for division, so far as its existence is known at the date of the plaint The position of suit properties in two jurisdictions make no difference in the application of the principle involved in Order II rule 2 A I R 1923 Mad 584=44 M L J 652=72 Ind Cas 430, see also 1927 Mad 213=38 M L T 82=98 Ind Cas 538 but see 38 A 217=14 A L J differ ent districts) Order II rule 2 though a W R 1915=31 Ind -- suit for partition is not barred if plaintiff was not aware of existence of these items and the information about them was withheld from him either by mistake or fraud of defendant A I R 1931 Sind 27=130 Ind Cas 552 Where brothers inherit property from their father and also from their maternal grand father and the properties become mixed up, the properties do not get consolidated into one whole so as to give one cause of action for partition A I R 1930 All 371=122 Ind Cas 403 Sections 16 and 17 do not override the principles of the provisions of Order 2 rule 2 A I R 1923 Mad 584=44 M L J 652=72 Ind Cas 430 First suit for partition of joint family property bars subsequent suit for share of rent for a prior period 137 Ind Cas 775=33 P I R 100=A I R 10 214 448

**Principal a**

gation to pay judgment in respect of the principal. But if the non payment of the interest causes the principal money to become due, order 2, rule 2 applies. A I R 1922 P C 412=50 I A 115=27 C W N 802=38 C L J 126=25 Bom L R 220=32 M L T 41 (P C)=72 Ind Cas 187, see also A I R 1922 P C 23=44 A 121=20 A L J 17=26 C W N 297=35 C L J 126=42 M L J 248=65 Ind Cas 79, 39 A 506=15 A L J 557=41 Ind Cas 233, 63 Ind Cas 928=A I R 1921 Lah 41=6 O W N

1928 Lah 732=112 Ind Cas 15, A I R 1929 Rang 90=117 Ind Cas 285, Ind Cas 613=A I R 1928 Lah 269, A I R 1926 Lah 661=97 Ind Cas 285, 4 U B R (1921) 62=64 Ind Cas 953

**Rent suit**—Second suit for rent for period covered by first suit is barred under this sale. A I R 1929 Bom 152=46 B 229=23 Bom L R 1086=64 Ind Cas 919. Suit for ejectment of a tenant does not bar subsequent suit for arrears of rent. A I R 1922 Lah 118=4 Lah L J 17=63 Ind Cas 978. Suit for rent does not bar a second suit for cesses where cesses are agreed to be paid in the collectorate. A I R 1923 Cal 615=27 C W N 521=77 Ind Cas 364. If in a suit for rent the plaintiffs stated that they reserved the right for settlement of rent for the excess quantity of land and no order however, allowing such reservation is made by the Court the plaintiffs are not entitled to claim for excess area for the period of the prior suit. A I R 1925. A decree obtained under old rent, 105 does not bar suit for difference of rent. A I R 1928 Cal 681=32 C W N 870=110 Ind Cas 395. Where the rent for cesses is payable monthly and is in arrears for a number of months the

**Suit for possession**—Suit for cancellation of a deed in which possession is not prayed bars a suit for possession. 9 Bar L T 93=33 Ind Cas 135, see also 77 Ind Cas 542=47 M 150=45 M L J 431. Plaintiff should join all the persons in possession of the property which he claims for a suit against some bars subsequent suit against rest. A I R 1923 Lah 556=8, Ind Cas 202, see also A I R 1923 Lah 556=85 Ind Cas 203.

**Suit for specific performance**—Dismissal of a suit for specific performance does not bar a subsequent suit for sale of land if it is open unless the contract expressly directs such a suit omitted to ask delivery of possession might be barred under Order II Rule 2. 5 P L J 314=1 P L T 32=56 Ind Cas 122, see also 77 Ind Cas 542=A I R 1924 Mid 360=45 M L J 431=(1923) M W N 776. But a decree in suit for specific performance of agreement to lease does not bar a fresh suit for possession. 14 N L R 176=48 Ind Cas 188.

3 [S. 45 Cf. R S C O 18, r 1] (r) Save as otherwise provided, a joinder of causes of action plaintiff may unite in the same suit several causes of action against the same defendant or the same defendant, jointly, and any plaintiffs having causes of action in

which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit<sup>1</sup>

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

**Scope**—Order 1, rule 1 lays down rules as regard joinder of plaintiffs and order 1 rule 3 that of defendants. This rule lays down rules as regards joinder of causes of action. This rule is to be read subject to rules 4 and 5 of the order. This rule applies to cases where there are only one plaintiff, and one defendant and several causes of action and also to cases where the plaintiffs and defendants, though consisting of two or more individuals may be considered as a unit with reference to all the different causes of action. 2 C L J 602 In *Umabai v Bhan Balwant*, 34 B 358 at P 367 D: or J observed, In *Narsingh Das v Mungil Dubey*, 5 A 163 a full Bench of that court held that a plaint had been properly rejected because the suit was open to the objection that different causes of action against different defendants separately had been joined in the same suit. In the course of the judgment it is said at p 171 The plaintiff has united different causes of action in one suit against different defendants, who are not jointly liable in respect of each and all of such causes of action—a mode of proceeding that the law does

or causes of action against several defendants is the same. As I read the judgment it lays down that the meaning of the word jointly in the old section and therefore in this Rule, is that all the defendants are jointly interested in the cause of action of each and all of the cause of action in the same suit. (See *al Beyfus*) The result of the authorities is that in one action unite several causes of action and that all such defendants are of action and that the conditions of several causes of action against

all have a joint interest in the main question raised by the litigation and that cause of action joined in one suit against several defendants must be causes of action. Under these rules read defendants also can be joined. When the suit is framed against stranger to the trust relief 10 Rang 342=140

Ind Cas 317=A I R 1932 Rang 132

**Illustrative cases**—Claims on three promissory notes can be joined together in one suit. 100 P R 1915=189 P W R 1915=32 Ind Cas 40. All alienations from one person though on different occasions may be made co-defendants in a suit to set aside the alienations. 40 B 351=18 Bom L R 45=33 Ind Cas 950. Claims against different estates can be joined in one suit against the same person if they are affected by the same instrument. 11 Bur L T 222=50 Ind Cas 528. Where a landlord sued to eject, it is highly irregular to join in ejectment suit as defendants several tenants in possession of different parcels of land. 43 M 567=47 I A 76=27 M L T 102=38 M L J 476=22 Bom L R 578=25 C W N 48, (P, C)=22 Bom L R 578=56 Ind Cas 117. In a suit for partnership accounts relief regarding

litigation as the policy of the without injustice to any one

A I R 19 8 Cal 92=103 Ind Cas 811. But where several persons who has each separately contract the same defendant meaning of the rule. A pre-emptor can. from the sale.

**Principal and interest**—If the mortgage provides for an independent obligation to pay the principal and the interest then a suit brought to obtain a personal judgment in respect of the interest alone, would not prevent a subsequent claim for payment of the principal. But if the non-payment of the interest causes the principal money to become due, order 2, rule 2 applies. A. I. R. 1922 P. C. 412=50 I. A. 115=27 C. W. N. 802=38 C. L. J. 126=23 Bom. L. R. 220=32 M. L. J. 41 (P. C.)=72 Ind. Cas. 187, see also A. I. R. 1922 P. C. 23=44 A. 121=20 A. L. J. 17=26 C. W. N. 297=33 C. L. J. 126=42 M. L. J. 248=63 Ind. Cas. 79, 39 A. 506=15 A. L. J. 557=41 Ind. Cas. 233, 63 Ind. Cas. 928=A. I. R. 1921 Lah. 225=3 Lah. L. J. 390, 127 Ind. Cas. 246=A. I. R. 1930 Oudh. 41=6 O. W. N. 960, but see 34 P. L. R. 520=A. I. R. 1933 Lah. 463. Where plaintiff obtained decree for interest only when he could have sued for principal also subsequent suit for principal and interest is barred. 102 P. L. R. 1918=83 P. R. 1918=167 P. W. R. 1918=47 Ind. Cas. 937. If a mortgage deed provides for the payment of principal and interest as independent obligation a prior personal decree for interest one does not bar subsequent suit for principal. 110 Ind. Cas. 206, see also A. I. R. 1928 Lah. 732=112 Ind. Cas. 15, A. I. R. 1929 Rang. 96=117 Ind. Cas. 61, 109 Ind. Cas. 613=A. I. R. 1928 Lah. 267, A. I. R. 1926 Lah. 661=97 Ind. Cas. 285, 4 U. B. R. (1921) 62=64 Ind. Cas. 953.

**Rent**—A suit for interest covered by first suit is barred under this. 1086=64 Ind. Cas. 919. Suit for rent for arrears of rent. A. I. R. 1922 Lah. 118=4 Lah. L. J. 118. Where cesses are agreed to be paid in the does not bar a second suit for cesses where cesses are agreed to be paid in the A. I. R. 1923 Cal. 615=27 C. W. N. 521=77 Ind. Cas. 364. If in a suit for rent the plaintiff reserved the right for settlement of

A. I. R. 19 certain premises cause of action the effect of so as to bring is not the other suit must instalments. 37 C. W. N. 730=A. I. R. 1933 Cal. 117. A prior suit for premium does not bar a subsequent suit for rent. 135 Ind. Cas. 801=33 Bom. L. R. 1563=A. I. R. 1932 Bom. 86.

**Suit for possession**—Suit for cancellation of a deed in which possession is not prayed bars a suit for possession. 9 Bur. L. T. 93=33 Ind. Cas. 135, see also 77 Ind. Cas. 542=47 M. 150=45 M. L. J. 431. Plaintiff should join all the persons in possession of the property which he claims for a suit against some bars subsequent suit against rest. A. I. R. 1923 Lah. 556=85 Ind. Cas. 202, see also A. I. R. 1923 Lah. 556=85 Ind. Cas. 203.

**Suit for specific performance**—Dismissal of a suit for specific performance does not bar a subsequent suit for specific performance. J. 378=45 for sale of land unless the plaintiff has such a specific delivery of the land. P. L. T. 325=360=45 M. L. J. performance of contract. R. 176=48 Ind. Cas. 188. Cas. 542=A. I. R. 1924 Mad. a decree in suit for specific suit for possession. 14 N. L.

3 [S. 45 Cf. R. S. C. O. 18, r. 1] (r) Save as otherwise provided, a joinder of causes of action plaintiff may unite in the same suit several causes of action against the same defendant or the same defendant, jointly, and any plaintiffs having causes of action in



which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

plaintiffs and order  
dis joinder of causes  
the order This rule  
defendant and several  
causes of action and also to cases where the plaintiffs and defendants, though consisting of two or more individuals may be considered as a unit with reference to all the different causes of action 2 C L J 602 In *Umabai v Bhan Balwant*, 34 B 358 at P 367 *Darj* observed, In *Narsingh Das v Mangal Dubey*, 5 A 163, a full Bench of that court held that a plaint had been properly rejected because the suit was open to the objection that different causes of action against different defendants separately had been joined in the same suit In the course of the judgment it is said at p 171 The plaintiff has united different causes of action in one suit against different defendants, who are not jointly liable in respect of each and all of such causes of action—a mode of proceeding that is illegal

causes of action against several defendants is the same As I read the judgment it lays down that the meaning of the word 'jointly' in the old section and therefore in this rule is that all the defendants in the same suit (See also *Beyfus*) The result of the authorities is

in one action unite several causes of action against several defendants, provided that all such defendants are jointly liable in respect of each and all of such causes of action and that the condition precedent to the plaintiff being allowed to join several causes of action against several defendants is that such defendants must all have a joint interest in the main question raised by the litigation and that cause of action joined in one suit against several defendants must be causes of action in which the defendants are all jointly interested Under these rules read together different causes of action against several defendants may be joined in one suit

A I R 1926 Sind 66

under S 92 of the C

either a declaration of title or possession or any other relief 10 Rang 342=140 Ind Cas 317=A I R 1932 Rang 132

Illustrative cases—Claims on three pronotes can be joined together in one suit 100 P R 1915=189 P W R 1915=32 Ind Cas 40 All alienees from one

is in a suit to set

950 Claims against

if they are affected

Where a landlord

defendants several

tenants in possession of different

M L T 102=38 M L J 476=22

76=27

1-72

refers to join in same suit for identical investigation as the policy of the rule is to avoid needless expense where it can be done without injustice to any one

A I R 1928 Cal 9

separately contract

the same defendant

meaning of the rule

A pre-emptor can

the

433

sales

taken by the latter, impleading the various vendors as *pro forma* defendants A I R 1924 Lah 156=6 I r h L J 349=82 Ind Cas 60,

4 [S. 44] No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof,
- (b) claims for damages for breach of any contract under which the property or any part thereof is held, and
- (c) claims in which the relief sought is based on the same cause of action

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property,

Scope—This section is intended for the benefit of the defendant and as such 196 Section 44 (=this rule) of the code with a suit for the recovery of immoveable property to such property of any claim other than for sale or foreclosure of immoveable property 25 A ng to recover in one the same in respect M L J 6 But the limited to cases where a 17 M L J 135

Leave of the Court—A plaintiff may with the leave of the Court join causes of action with a suit for recovery of immoveable property But he is no where compelled to do so 6 A 358=A W N 115, see also 20 M 48 (F B), 19 M 90 Where objection to the joinder of certain causes of action is disallowed in the Court of first instance and the suit is decreed the proceedings of the Court imply and indicate that leave was given to the joinder A W N 1882, 207 The leave must be obtained previously 30 C 369=7 C W N 353 A leave of the Court may not be expressed but may be inferred from its acquiescence A I R 1924 Pat 613=3 Pat 244=5 P L T 573=78 Ind Cas 885

Cases—This rule does not bar joinder in an administration suit claim in respect of the partnership with that for recovery of immoveable property based on the same cause of action A I R 1927 Bom 470=51 B 800=29 Bom L R convenient in mortgage suit to decide possession and likely to rest possession A I R 1924 Pat 613=3 Pat 244=5

P. L T 575=78 Ind Cas 885

5 [S 44] No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him

Claims by or against executor, personally, unless the last mentioned claims are

reference to the state in as executor, administrator, jointly with the

res  
tra  
deceased person

Scope—Where the executor or administrator has been dealing with assets or making contracts in the course of the administration properly and fairly in his character, of executor or administrator and then it becomes a question whether, the contracts being personally entered into by him, he should be sued in his character of legal personal representative or in his personal character *Padnick v Scoll* (1876) 2 Ch D 736 743 The estate means the estate in its physical sense whether rightly or improperly held by executors 21 C W N 939=41 C 615 Suit asked for dissolution of partnership and to wh 1922

hands of an executor who is also a legatee with the same, is due cannot be attached in execution of a decree against him personally but legatee's interest can be attached, and executor restrained from dealing with it otherwise than in his representative capacity. 9 Bur L 1 26=38 Ind Cas 563 This rule prohibits joinder of essentially different causes of action and not when they arise out of common fact such as accounting as executors of will for money received thereunder and as trustees under scheme settled by District Judge. 36 Ind Cas 29, see also 51 B 800=27 B L R 937=104 Ind Cas 764=A I R 1927 Bom 470

**6 [S. 45]** Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient

been properly made and tried 27 M So. In a fit  
Cas 577 Issues on cause of action misjoined but noticed at last stage should not be struck out but tried separately, if embarrassing A I R 1928 Mad 764=113 Ind Cas 865, see also 20 W R 482, 19 C L J 316=25 Ind Cas 438 This rule does not apply to rent suits under the Agra Tenancy Act A I R 1924 All 720=22 A L J 156=79 Ind Cas 560 Appellate Court should not interfere with trial court's discretion under this rule A I R 1924 Lah 156=73 Ind Cas 892

**7 [New]** All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen and any such objection not so taken shall be deemed to have been waived

**N B**—After this rule rule 8 has been added in Punjab *vide infra*

**Principal**—The principal of the exception to the rule against multifariousness has rule is that where a party has merits, he will not be allowed to amount title and one that ought 10 Pat 234=130 Ind Cas 257=

11 Pat L T 898=A I R 1931 Pat 64

**Waiver**—Objection when not taken at the early stage it is deemed to have been waived 63 Ind Cas 168=A I R 1921 Cal 361=33 C L J 317, but see 6 Ind Cas 327=11 C L J 513 but see 13 Bom L R 1051 See also 9 S L R 11=30 Ind Cas 24

### ORDER III

#### *Recognized Agents and Pleaders*

**1. [S. 36]** Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader [appearing, applying or acting as the case may be] \* on his behalf

Provided that any such appearance shall, if the Court so directs, be made by the party in person

**Notes**—Power not invalid even if name of pleader engaged does not appear in body of power A I R 1922 Nag 281=6 N L J 179=73 Ind Cas 251 Power by pardanashin lady must be explicit A I R 1930 Pat 181=11 L T 21=127 Ind Cas 457 Omission of name and indorsement of acceptance by Pleader is simply a mistake A I R 1930 All 112=(1980) A L J 394=121 Ind Cas 546, but see A I R 1927 All 816=102 Ind Cas 255 Vakalnama must be signed like plaints

\* The words within brackets have been substituted for the words "duly appointed" by Act 22 of 1926.

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A I R 1928 Mad 175=51 M 242=27 L W 237=(1927) M W N 885=54 M L J 62=107 Ind Cas 801 Absence of names and other particulars describing the parties or, if it does not invalidate the power A I R 1927 Lah 522=107 Ind Cas 476 If leader can accept Vakalatnamā signed by party from his *gomasta* A I R 1923 Cal 11=48 C L J 357=114 Ind Cas 156 Power granted by agent is for principal and not for himself A I R 1922 P C 225=26 C W N 376 (P C)=24 Bom L R 605=48 I A 534=44 M 736

General authority of pleader does not authorise him to enter into compromise in collateral matter A I R 1927 Cal 714=31 C W N 933=53 C 113=104 Ind Cas 387 Consent decree without clients consent is invalid and unenforceable A I R 1930 Cal 477=34 C W N 210=126 Ind Cas 765, see also A I R 1930 Oudh 112=7 O W N 153=125 Ind Cas 171 A Counsel has authority to make admissions on matters of fact relevant to the issues A I R 1927 Mad 852=26 L W 465=39 M I T 240=50 M 786=53 M L J 606=105 Ind Cas 5 Presence by clerk is not appearance by pleader A I R 1928 Lih 841=110 Ind Cas 177 Defects in filing and signing plaint is immaterial when filed by duly authorized agent and with knowledge of plaintiff A I R 1927 All 514=101 Ind Cas 698 Presence without readiness to act is no presence A I R 1926 Mad 971=51 M L J 290=97 Ind Cas 517 Appearance for nothing, for adjournment only is appearance without instruction A I R 1926 M 819=47

A I R 1926 Cal 719  
M L J 7 P L R  
Appears  
1920=57 L W 227  
is not needed A I R 1922 Nag 125=5 N L J 263=67 Ind Cas 266, Memo  
is not needed if not accompanied by vakalatnamā is not bad when it can be  
randum of appeal A I R 1926 Bom 336=28 Bom L R 538=95 Ind  
filed later before limitation A I R 1926 Lah 223=27 P L R 18=92 Ind Cas 966, 2  
Cas 266, see also A I R 1926 Cal 970, but see 55 Ind Cas 927 Pleadings cannot consent  
U P L R 88=55 Ind Cas 970, but see 55 Ind Cas 927 Pleadings cannot consent  
to be bound by oath of opposite party 34 C W N 310=129 Ind Cas 408  
Memorandum of appeal presented by unauthorized person is no appeal A I R  
1939 All 112=(1930) A L J 394=121 Ind Cas 546 Disobedience to an order  
of court directing the defendant to appear for being examined as plaintiff's witness  
is not in terms in order made under order 3 r 1 C P Code Disobedience to such an  
order will be merely disobedience to witness summons and would not justify the  
striking off of defence 38 L W 869=65 M L J 734=A I R 1933 Mad 821  
=1933 M W N 676 There is no rule of law which requires or authorises the  
plaintiff or his duly authorised agent to present the plaint Presentation may be  
by a person who is orally authorised (1931) A L J 777 (F B)=A I R 1931 All  
507 (F B)=134 Ind Cas 26

## 2 [S 37] The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

### Recognized agents

- (a) persons holding powers of attorney, authorizing them to make and do such appearances applications and acts on behalf of such parties,
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance application or act is made or done in matters connected with such trade or business only where no other agent is expressly authorized to make and do such appearances, applications and acts

N B—Rule 2(a) has been amended in Bombay vide *infra*

Scope—This rule does not deal with the liability of the principal to be bound by the acceptance of service by the agent and if in the case of business where the business is carried on in the name of the principal by somebody then whether that principal is or is not resident within the local jurisdiction the service upon the recognized agent is good service upon him A I R (1931) P 282=133 Ind Cas 679=10 Pat 441 Recognized agent as such has no right of audience A I R 1934 Cal 563 Act in Court must be done by

party himself or by authorized agent or by pleader authorized by proper Vakalatnama A. I R 1934 Pat 290.

Clause (a) — Vide 108 Ind Cas 513 = A I R 1928 Lah 733, 32 P L R 389 = 133 Ind Cas 877, A I R 1931 All 320 = 133 Ind Cas 606, 1931 A L J 904

Clause (b) — Political agent is not recognized agent 11 B 53 A mere servant or partner is a recognized agent. 11 B L R of a person is not his recognized agent 931 A L J 404 = A I R 1931 A 449 46 B 150 = A I R 1922 Bom 113 = 68 estate is business and service of summons J 13

3 [S. 38] (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent

Scope — This section does not bar service on party 3 U B R 94 A service upon attorney's clerk is not good service 2 Hyde 116 A person holding general power of attorney can accept or refuse service at his option 8 C 317

\* 4 (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client

(3) For the purposes of sub rule (2) an application for review of judgment an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the produced Court in

(4) The High Court may by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in

for the purpose of pleading only is filed in Court a memorandum of appearance signed by himself and stating —

(a) the names of the parties to the suit,

(b) the name of the

(c) the name of the

Provided that nothing to plead on behalf of any person or to act in Court on behalf of such party

N B — Vide Bombay, Madras Nagpur Oudh, Patna and Sind amendments (infra)

\* This new rule (4) has been substituted for the following old rule by Act 22 of 1906 —

4 (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power of attorney to act in this behalf

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A I R 1923 Cal 11=48 C L J 357=114 Ind C 156 Power granted by agent is for principal and not for himself A I R 1922 P C 225=26 C W N 376 (P C)=24 Bom L R 605=48 I A. 534=44 M 736

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General authority of pleader does not authorise him to enter into compromise in collateral matter A I R 1927 Cal 714=31 C W N 933=55 C 113=104, Ind C 15 387 Consent decree without clients consent is invalid and unenforceable A I R 1930 Cal 477=34 C W N 210=126 Ind Cas 765, see also A I R 1930 Oudh 112=7 O W N 153=125 Ind Cas 171 A Counsel has authority to make admissions on matters of fact relevant to the issues A I R 1927 Mad 832=26 L W 465=39 M I T 240=50 M 786=53 M L J 606=105 Ind Cas 5 Presence by clerk is not appearance by pleader A I R 1928 Lah 841=110 Ind C 15 177 Defects in filing and signing plaint is immaterial when filed by duly authorized agent and with knowledge of plaintiff A I R 1927 All 514=101 Ind C 15 698 Presence without readiness to act is no presence A I R 1926 Mad 971=51 M L J 290=97 Ind Cas 517 Appearance for applying for adjournment only is appearance without instruction A I R 1927 Rang 46=99 Ind C 15 717, A I R 1915 Mad 21=47 M 819=47 M L J 398=82 Ind Cas 102 (F B), see also 41 M 256=41 Ind Cas 719

see by pleader at delivery of judgment is sufficient appearance 97 P L R Cas 143 For representation of plaint fresh power 125=5 N L J 265=67 Ind Cas 296, Memo

by Cas 266, see also A I R 1926 Lah 223=27 P L R 18=92 Ind Cas 966, 2 U P L R 88=55 Ind Cas 990, but see 55 Ind Cas 927 Pleader cannot consent to be bound by oath of opposite party 34 C W N 310=129 Ind Cas 408 Memorandum of appeal presented by unauthorized person is no appeal A I R 1930 Cas 546 Disobedience to an order being examined as plaintiff's witness r 1 C P Code Disobedience to such in ss summons and would not justify the M L J 734=A I R 1933 Mad 821 of law which requires or authorises the present the plaint Presentation may be 331 A L J 777 (F B)=A I R 1931 All

by a person who is a y --  
507 (F B)=134 Ind Cas 26

2 [S 37] The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

Recognized agents

(a) persons holding powers of attorney, authorizing them to make and do such appearances applications and acts on behalf of such parties,

(b) persons ca  
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done, in matters connected with such trade or business only where  
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N B—Rule 2(a) has been amended in Bombay vide *infra*

Scope—This rule does not deal with the liability of the principal to be bound by the acceptance of service by the agent and if in the case of business where the business is carried on in the name of the principal by somebody then whether that principal is or is not resident within the local jurisdiction the service upon the recognized agent is good service upon him A I R (1931) p 282=133 Ind Cas 679=10 Pat 441 Recognized agent as such has no right of audience A I R 1934 Cal 563 Act in Court must be done by

unless provision is made for payment of the attorney except where the attorney has by his own conduct or misconduct discharged himself A I R 1934 Cal 58

**Sub-rule (3)**—This sub rule defines the term 'until all the proceedings of the suit are ended' Defendant's attorney can appeal against order refusing to set aside *ex parte* decree A I R 1927 Lah 134=99 Ind Cas 690 Advocate appointed in a case can present appeal also A I R 1930 Lah 68=116 Ind Cas 184 Appeal includes second appeal also A I R 1928 Lah 733=108 Ind Cas 513 No fresh power required for appeal if pleader appointed to prosecute all litigations or suit A I R 1926 Lah 32=6 Lah 461=20 P L R 721=91 Ind Cas 30 Fresh vakalatnama is not required for representation of plaintiff A I R 1923 Nag 182=6 N L J 100=71 Ind. Cas 436 Vakalatnama embodied in general terms does not include power to refer a suit to arbitration A I R 1924 Nag 338=79 Ind Cas 48

**Sub rule (5)**—Sub-rule (5) is inconsistent with the rules of the Calcutta High Court framed under s 37 Letters Patent of 1865, as such the rules framed under s 37 Letters Patent are to prevail A I R 1932 Cal 1=135 Ind Cas 789, 35 C W N 1100

**5. [S 40]** Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person

**N B**—Vide Madras Nagpur Oudh and Patna rules for amendment of this rule

**Scope**—Notice to duly appointed pleader is good notice to the client A I R. 1928 Lah 426=108 Ind Cas 62 He is bound to protect client's interest A I R 1922 Oudh 75=25 O C 40=9 O L J 170=67 Ind Cas, 554 Signing order sheet by pleader is sufficient notice A I R 1927 Pat 135=1926 Pat 161=7 P L T 739=95 Ind Cas 321 Communication of order of filing award to pleader is sufficient compliance with para 10 schedule 2 A I R 1927 Cal 619=45 C L J 458=103 Ind Cas 625

**6 [S 41.] (1)** Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process

**(2)** Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court

**N B**—Vide Sindh rules for amendment

## ORDER IV

### *Institution of Suits.*

**1. [S 48] (1)** Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf

**(2)** Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable

**N B**—For local amendments in Allahabad and Oudh, vide *infra*

**Scope**—Presentation of plaint is the starting point of a case A I R 1929 Mad 480=133 Ind Cas 550 It does not matter if it is imperfect at the time of institution A I R 1921 Sind 166=17 S. L. R 223=85 Ind Cas 893 Plaint substantially in accordance with order VI and VII is valid even with certain defendants. A I R 1921 Sind 166=17 S. L. R 223=85 Ind Cas 893 Presentation is proper

Sub rule (1)—*Vakalatnama* must bear parties' or authorized agent's signature  
 A I R 1921 Nag 27, A I R 1927 Lah 382=100 Ind Cas 838 Acceptance of power  
 may be verbal, 43 C 884=23 C L J 297=20 C W N 287=38 Ind Cas 395,  
 A I R 1926 Lah 32, but see 20 C W N 283=38 Ind Cas 831, A I R 1923  
 Lah 402=84 Ind Cas 518 Advocates' power may be verbal A I R 1926 Pat 73=  
 4 P 766=7 P L T 362=92 Ind Cas 179, 88 Ind Cas 91=A I R 1925 Pat  
 614=6 P L T 380=1925 Pat 233 If name appears it can be signed by another  
 pleader even after it is filed A I R 1922 Pat 504=3 P L T 447=63 Ind Cas 6,9  
 A duly accepted *vakalatnama* without pleaders' name in body is not invalid  
 12 N L R 189=37 Ind Cas 103, 55 Ind Cas 415, 12 Pat L T 558=133 Ind  
 Cas 171, 41 Ind Cas 685, A I R 1923 Nag 182=10 N L R 26=6 N L J 100=  
 71 Ind Cas 436, A I R 1921 All 210=43 A  
 410, but see A I R 1931 All 767=1931 A L J 9  
 second grade pleader to appoint other pleader  
 J 54=118 Ind Cas 58 Where appeal was filed with powers of attorney, subse-  
 quent filing of the same does not save limitation, 33 P L R 517 Where a plaint  
 is filed by a pleader in whose favour a valid *vakalatnama* has not been executed the  
 proper procedure is to return the plaint to the pleader who presented it 132 Ind  
 Cas 566=1931 A L J 983=A I R 1931 All 767 A defective presentation  
 of plaint on account of failure to comply with the provisions of order  
 3, rule 4 is a mere irregularity and can be cured under s 99 C P Code 1931  
 A L J 777 (F. B)

Sub-rule (2)—Power of pleader remains in force in all stages of the suit  
 A I R 1930 Cal 721=34 C W N 914=52 C L J 87=129 Ind Cas 561=58 C  
 374 Appointment of pleader continues till the end of the case if sufficient grounds  
 for Court's sanction to terminate the power is not shown A I R 1930 Pat 403=  
 9 Pat 865=11 P L T 371=128 Ind Cas 350 Termination of power without  
 leave of Court cannot be recognized A I R 1930 Lah 134 Mere dismissal of  
 suit or passing of an *ex parte* decree does not terminate counsel's power A I R  
 1929 Lah 96=30 P  
 the suit includes all proc  
 C

or delegate his power to  
 Court A I R 1922 Cal  
 Ind Cas 81 Pleadings  
 to an end and is enfor

ceable for miscellaneous proceedings  
 808=41 Ind Cas 328 Authorizing conduct of one particular matter is special  
 power 41 B 40=18 Bom L R 821=36 Ind Cas 805, see A I R 1930 Bom 511=  
 32 Bom L R 1178=128 Ind Cas 609 Power of pleader appointed  
 in an appeal is not terminated by minor's attaining majority (1917) M W N  
 engaged in trial Court unless  
 146 Ind Cas 363=A I R  
 is appointed only for the lower  
 219=145 Ind Cas 760, see also  
 245 A pleader not specifically  
 136 Ind Cas 712=33 P L R  
 388=A I R 1932 Lah 373 When an appellant dies his power of attorney in  
 favour of his counsel ceases to be operative and the counsel can not file an appli-  
 cation on behalf of the legal representatives to bring them on record without a fresh  
 power from such legal representatives 32 P L R 389 The practice of the  
 Calcutta High Court has always been that no order for change of attorney is made

(2) Every such appointment when accepted by a pleader, shall be filed in  
 Court and shall be considered to be in force until determined with the leave of the  
 Court by a writing signed by the client or the pleader, as the case may be,  
 and filed in Court, or until the client or the pleader dies or until all proceedings  
 in the suit are ended so far as regards the client

(3) No advocate of any High Court established under the Indian High Courts,  
 Act, 1861, or of any Chief Court, and no advocate of any other High Court who  
 is a barrister, shall be required to present any document empowering him to act



(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance

**Scope**—Where the Court fixes a date for the personal appearance of a party

The suit cannot be dismissed for

39 A 476=15 A L J 522=39

vide to serve summons personally

ed to receive summons appeal to

set aside *ex parte* decree must succeed A I R 1922 Cal 128=70 Ind Cas 292  
The Court under this rule cannot compel the personal appearance of a *pardumashin*  
lady on the ground that at her examination in commission she was tutored This  
rule is confined to those cases in which the Court before the issues are framed desires  
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1384-A I R 1933 All 551 28 N L R 146=140 Ind Cas 716=A I R 1932  
Nag 13,

No party to be ordered to  
appear in person unless  
resident within certain  
limits

4 [S 67] No party shall be ordered to  
appear in person unless he resides —

(a) within the local limits of the Court's ordinary original jurisdiction,  
or

(b) without such limits but at a place less than fifty or (where there is rail  
way or steamer communication or other established public convey  
ance for five sixths of the distance between the place where he resi  
des and the place where the Court is situate) less than two hundred  
miles distance from the court house

**N B**—For local amendment in Allahabad vide *infra*

5 [S 68] The Court shall determine at the time of issuing the  
Summons to be either to settle issues or for final  
disposal. summons whether it shall be for the settlement  
of issues only, or for the final disposal of the  
suit, and the summons shall contain a direction  
accordingly

Provided that, in every suit heard by a Court of Small Causes, the  
summons shall be for the final disposal of the suit

**N B**—For local amendment in Madras vide *infra*

**Notes**—In simple cases, a summons for the final disposal of the suit should be  
issued 38 B 377 (379)=16 Bom L R 39=24 Ind Cas 665 In a mortgage suit  
a summons for the settlement of issues should be issued *Ibid*

6 [S 69] The day for the appearance of the defendant shall be fixed  
fixing day for appearance with reference to the current business of the  
of defendant Court the place of residence of the defendant  
and the time necessary for the service of the  
summons and the day shall be so fixed as to allow the defendant sufficient  
time to enable him to appear and answer on such day.

**Notes**—Vide 3 M H C R 167 7 B H C R 138, 5 W R (Act X) 39  
1 L B R 226, 17 Ind Cas 351=8 S L R 153

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8 [S 71] Where the summons is for the final disposal of the suit  
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when it is presented to Head ministerial officer authorized to receive plaint 40 Ind Cas 587=6 L W 16 (on appeal 40 M L J 229=19 A L J 161 P C) Plaint must be validly signed 23 Bom L R 911=68 Ind Cas 217, A I R 1924 All 54=45 A. 701=21 A L J 678=77 Ind Cas 30 Plaint presented out of office hours is not good presentation A I R 125 Mad 201=20 L W 655=82 Ind Cas 928 But when accepted it is good presentation A I R 1924 Mad 448=47 M 312=46 M L J 78=19 L W 468=79 Ind Cas 1017 Plaint presented at Judge's residence after usual hours is valid presentation A I R 1922 Nag 167=65 Ind Cas 674 Where a blank plaint has been signed by the plaintiff it cannot be treated as a proper plaint A L R 1934 All 39=2 A W R 932 The absence of signature or verification or for the matter of that the absence of presentation on the part of some of the plaintiffs out of several does not affect the jurisdiction of the court and the suit must be deemed to have been duly instituted on their behalf and authority 134 Ind Cas 26=1931 A L J A plaint is presented when it is handed over to A I R 1934 Bom 91

2 [S 58] The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits Such entries shall be numbered in every year according to the order in which the plaints are admitted

### ORDER V.

#### *Issue and Service of Summons*

##### *Issue of Summons*

1 [S 64] (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified

##### Summons

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim

(2) A defendant to whom a summons has been issued under sub rule (1) may appear —

(a) in person or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court

N B—For local amendment in Oudh vide *infra*

Scope—Onus of proving service of summons is on the plaintiff A I R 1925 Cal 801=52 C 453=88 Ind Cas 929 Where there is allegation that summons was not served by fraud the defendant must prove it A I R 1922 Pat 291=3 P L T 451=66 Ind Cas 137 Where no date is fixed suit cannot be dismissed for default under Order IX rule 3 A I R 1921 Lah 320=27 P L R 1921=60 Ind Cas 475 Sub-rule is equally applicable in the case of a plaintiff A I R 1924 Mad 842=17 M L J 514=20 L W 795=82 Ind Cas 107 It is not sufficient appearance, when a pleader instructed only to apply for adjournment does so A I R 1927 Rang 46=4 Rang 408=99 Ind Cas 717, see also 24 M L J 235=18 Ind Cas 360

2 [S 65] Every summons shall be accompanied by a copy of the plaint or if so permitted, by a concise statement

Copy or statement annexed to summons

3 [S 66] (1) Where the Court sees reason to require the personal appearance of the defendant the summons shall order him to appear in person in Court on the day therein specified

Court may order defendant or plaintiff to appear in person

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance

personal appearance of a party  
The suit cannot be dismissed for  
39 A 476=15 A L J 522=39  
vide to serve summons personally  
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set aside *ex parte* decree must succeed A I R 1922 Cal 128=70 Ind Cas 292  
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Nag 135

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Summons to be either to settle issues or for final  
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Provided that, in every suit heard by a Court of Small Causes, the  
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Notes—In simple cases a summons for the final disposal of the suit should be  
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6 [S 69] The day for the appearance of the defendant shall be fixed  
fixing day for appearance of defendant with reference to the current business of the  
Court, the place of residence of the defendant  
and the time necessary for the service of the  
summons, and the day shall be so fixed as to allow the defendant sufficient  
time to enable him to appear and answer on such day.

Notes—Vide 3 M H C R 167, 7 B H C R 138, 5 W R (Act X) 39,  
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Summons to order defend ant to produce documents  
relied on by him or power upon which he intends to rely in  
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8 [S 71] Where the summons is for the final disposal of the suit,  
On issue of summons for final disposal, defendant to be directed to produce his witnesses  
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Register of suits in a book to be kept for the purpose and called the register of civil suits Such entries shall be

numbered in every year according to the order in which the plaints are admitted

## ORDER V.

### *Issue and Service of Summons.*

#### *Issue of Summons*

1 [S 64] (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified

Summons

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim

(2) A defendant to whom a summons has been issued under sub rule (1) may appear —

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court

N B.—For local amendment in Oudh vide *infra*

Scope.—Onus of proving service of summons is on the plaintiff A I R 1925 Cal 801=52 C 453=88 Ind Cas 929 Where there is allegation that summons was not served by fraud the defendant must prove it A I R 1922 Pat 291=3 P L T 451=66 Ind Cas 137 Where no date is fixed, suit cannot be dismissed for default under Order IX, rule 3 A I R 1921 Lah 320=27 P L R 1921=60 Ind Cas 475 Sub-rule is equally applicable in the case of a plaintiff A I R 1924 Mad 842=17 M L J 514=20 L W 795=82 Ind Cas 107 It is not sufficient appearance, when a pleader instructed only to apply for adjournment does so A I R 1927 Rang 46=4 Rang 408=99 Ind Cas 717, see also 24 M L J 235=18 Ind Cas 360

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3 [S 66] (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified

Court may order defendant or plaintiff to appear in person

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance

personal appearance of a party

The suit cannot be dismissed for

39 A 476=15 A L J 522=39

Ind Cas 534 Where no sufficient attempt is made to serve summons personally and the person served is not shown to be authorized to receive summons appeal to set aside *ex parte* decree must succeed A. I R 1922 Cal 128=70 Ind Cas 292 The Court under this rule cannot compel the personal appearance of a *pardumashin* lady on the ground that at her examination in commission she was tutored This rule is confined to those cases in which the Court before the issues are framed desires the personal attendance of a party 55 A 665=146 Ind Cas 885=1933 A L J 1384=A I R 1933 All 551 28 N L R 146=140 Ind Cas 716=A I R 1932 Nag 13,

No party to be ordered to appear in person unless resident within certain limits

4 [S 67.] No party shall be ordered to appear in person unless he resides —

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is rail way or steamer communication or other established public conveyance for five sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court house

N B—For local amendment in Allahabad vide *infra*

5 [S 68] The Court shall determine, at the time of issuing the summons whether it shall be for the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly

Summons to be either to settle issues or for final disposal

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit

N B—For local amendment in Madras vide *infra*

Notes—In simple cases a summons for the final disposal of the suit should be issued 38 B 377 (379)=16 Bom L R 39=24 Ind Cas 665 In a mortgage suit a summons for the settlement of issues should be issued *Ibid*

6 [S 69] The day for the appearance of the defendant shall be fixed with reference to the current business of the Court the place of residence of the defendant and the time necessary for the service of the summons, and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

1 and day for appearance of defendant

Notes—Vide 3 M H C R 167, 7 B H C R 138, 5 W R (Act X) 39, 1 L B R 226, 17 Ind Cas 351=8 S L R 153

7 [S 70] The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case

Summons to order defendant to produce documents relied on by him

8 [S 71] Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses

### Service of Summons

- 9 [S 72.] (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.
- (2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

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jurisdiction is irregular A I R 1925 Rang 325=3 Rang 239=89 Ind Cas 870 The defendant can appear and defend a suit where plaintiff has given a wrong address of him 60 C 98=143 Ind Cas 710=A I R 1933 Cal 274

- 10 [S. 73] Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

NB—For local amendment in Lahore vide *infra*

Mode of service—Service not made by officer of Court is irregular A I R 1925 Rang 325=3 Rang 239=89 Ind Cas 870 Identifier need not be supplied by party He may be resident of the village knowing the defendant A I R 1923 Pat 114=3 P L T 498=65 Ind Cas 49 Where service is not personal rules of procedure must be strictly complied with 46 Ind Cas 277 Summons was held to be duly served by affixture where without accepting copy tendered by process server defendant shut himself up in house and the copy was affixed to the door of the house 38 Ind Cas 545, see also A I R 1932 Pat 150=12 P L T 911=135 Ind Cas 110

Case under Punjab Amendment—Vide A I R 1926 Lah 579=95 Ind Cas 874, 99 Ind Cas 909=A I R 1927 Lah 157=9 Lah L J 96=99 Ind. Cas 909, 101 Ind Cas 615=A I R 1927 Lah 376, A I R 1929 Lah 235=116 Ind Cas 670

- 11 [S 74] Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

- 12 [S 75] Wherever it is practicable, service shall be made on the defendant in person when practicable or on his agent.

Scope—Effort should be made to serve the summons personally 29 M 524, 43C 447=23 C L J 183=20 C W N 173=34 Ind Cas 799, 23 Ind Cas 324 Service of summons on *chela* is not valid 23 O C 104=57 Ind Cas 563 Service of summons on *pardanashin* lady not being practicable affixing copy of summons at her residence is sufficient 57 Ind Cas 594, 72 Ind Cas 910=A I R 1923 Pat 433=4 P L T 89 Service on guardian *ad litem* is sufficient A I R 1926 Cal 1106=30 C W N 919=97 Ind Cas 614 Where the defendant residing in British India at the time of the institution of suit, is outside British India at the time of service of summons the service should be effected by affixing the summons to his last known place of residence and by registered post 32 Ind Cas 820 Where no sufficient attempt is made to serve summons personally service on cousin is not proper 70 Ind Cas 292=A I R 1922 Cal 128

**13 [S. 76]** (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits shall be deemed good service

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

**Scope**—This rule does not apply where suits are brought against persons in their individual capacity. A I R 1922 Pat 376=(1922) Pat 76=3 P L T 29=62 Ind Cas 927. Service of summons on the Foreign Corporation can be made on its agent who carries on business in British India on its behalf. 43 C L J 576=A I R 1926 Cal 1030=97 Ind Cas 286

**14 [S 77]** Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property

**15 [S 78]** Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf service may be made on any adult male member of the family of the defendant who is residing with him

**Explanation**—A servant is not a member of the family within the meaning of this rule

**N B**—For local amendments in Allahabad, Calcutta, Lahore Madras Oudh and Rangoon vide *infra*

**Notes**—Attempt should be made to find out the defendant, by an enquiry from his neighbours and other persons. This rule must be strictly followed. A I R 1921 Cal 638=35 C L J 203=26 C W N 359=68 Ind Cas 991, see also A I R 1934 Pat 274. Service on son will bind the father, if he is adult. 26 C W N 359=35 C L J 203=68 Ind Cas 991, see also 37 C L J 478=A I R 1923 Cal 682=75 Ind Cas 103. Service of notice to *munim* is no notice to party or pleader. 45 Ind Cas 932=105 P W R 1918. A servant is not a member of the family. A I R 1927 Lah 202

one defendant is not service on all

**16. [S. 79]** Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons

**17. [S. 80]** Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or per works for gain, and shall then return the original to the Court from it was issued, with a report endorsed thereon or annexed thereto stating thas ved the

### Service of Summons

9 [S 72.] (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction

Delivery or transmission of summons for service who is empowered to accept the service of the summons, the summons shall unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct

Notes—Service by registered post if brought into question very slight evidence is necessary to displace it A I R 192

The defendant can appear and defend of him 60 C 98=143 Ind Cas

710=A I R 1933 Cal 274

10 [S 73] Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or Mode of service such officer as he appoints in this behalf, and sealed with the seal of the Court

NB—For local amendment in Lahore vide *infra*

Mode of service—Service not made by officer of Court is irregular A I R 1925 Rang 325=3 Rang 239=89 Ind Cas 870 Identifier need not be supplied by party He may be resident of the village knowing the defendant A I R 1923 Pat 114=3 P L T 498=65 Ind Cas 49 Where service is not personal rules of procedure must be strictly complied with 46 Ind Cas 277 Summons was held to be duly served by affixure where without accepting copy tendered by process server defendant shut himself up in house and the copy was affixed to the door of the house 38 Ind Cas 545, see also A I R 1932 Pat 150=12 P L T 911=135 Ind Cas 110

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11 [S 74] Save as otherwise prescribed, Service on several defendants where there are more defendants than one, service of the summons shall be made on each defendant

12 [S 75] Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient

Scope—Effort should be made to serve the summons personally 29 M 324, 43C 447=23 C L J 183=20 C W N 173=34 Ind Cas 799, 23 Ind Cas 324 Service of summons on *chela* is not valid 23 O C 104=57 Ind Cas 563 Service of summons on *parianashin* lady not being practicable affixing copy of summons at her residence is sufficient 57 Ind Cas 594, 72 Ind Cas 910=A I R 1923 Pat 433=4 P L T 89 Service on guardian *ad litem* is sufficient A I R 1926 Cal 1106=30 C W N 919=97 Ind Cas 614 Where the defendant residing in British India at the time of the institution of suit, is outside British India at the time of service of summons the service should be effected by affixing the summons to his last known place of residence and by registered post 32 Ind Cas 820 Where no sufficient attempt is made to serve summons personally service on cousin is not proper 70 Ind Cas 292=A I R 1922 Cal 128



13 [S. 76] (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued service on any manager or agent by whom defendant carries on business or on such business or work for . . . , good service shall be deemed to be

(2) . . . shall be deemed to be the agent of the owner or charterer.

Scope—This rule does not apply where . . . right against persons . . . Pat 76=3 P L T Corporation can be . . . behalf 43 C L J

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14. [S 77] Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service can not be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property

15 [S 78] Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf service may be made on any adult male member of the family of the defendant who is residing with him

Explanation—A servant is not a member of the family within the meaning of this rule

N B—For local amendments in Allahabad, Calcutta, Lahore Madras, Oulu and Rangoon vide *infra*

Notes—Attempt should be made to find out the defendant, by an enquiry from his neighbours and other persons. This rule must be strictly followed. A I R 1921 Cal 638=35 C L J 203 26 C W N 359=68 Ind Cas 991, see also A I R 1934 Pat 274. Service on son will bind the father, if he is adult 26 C W N 359=35 C L J 203=68 Ind Cas 991 see also 37 C L J 478=A I R 1923 Cal 682=75 Ind Cas 105. Service of notice to *minor* is no notice to party or pleader 45 Ind Cas 932=105 P W R 1918. A servant is not a member of the family A I R 1927 Lah 202=8 Lah 54=102 Ind Cas 523. Service of summons on son is not service on father where the son is not living with father 34 P L R 963=A I R 1933 Lah 797. Where in an ejectment suit there are defendants in different villages, service of process on one defendant is not service on all 17 R D 608=14 L R 500 (Rev)

16. [S. 79] Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons

17. [S 80] Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the

copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

NB—I or local amendments in Calcutta vide *infra*

**Notes**—Mere absence of the defendant does not entitle the peon to affix summons on the door of his house. He must make sufficient enquiry before taking the above procedure. A I R 1930 Lah 192=124 Ind Cas 673, see also 32 Ind Cas 744, 32 Ind Cas. 826 23 C L J 83=43 C 447=20 C W N 178=34 Ind Cas 799, 39 Ind Cas 544, A I R 1924 Cal 1004=40 C L J 154=82 Ind Cas 703. All available steps to effect personal service must be made before resort is had to substituted summons. A I R 1925 Cal 627=52 C 179=88 Ind Cas 508, see also A I R 1925 Cal 801=52 C 453=88 Ind Cas 929, A I R 1925 Bom 231=27 Bom L R 251=49 B 568=91 Ind Cas 20, A I R 1924 Oudh 237=10 O L J 337=74 Ind Cas 792, 10 O L J 337=74 Ind Cas 792, A I R 1924 Lah 233=73 Ind Cas 34, but see 42 M L J 422. Summons must be served where he ordinarily resides. 41 Ind Cas 181. If person to be served lives outside British India service should be effected by affixing to the last known residence in British India and by registered post. 32 Ind Cas 520. Words after using all due and reasonable diligence are specially restricted to the case when there is no agent empowered to accept service on behalf of the defendant. A I R 1922 Nag 105=5 N L J 41=65 Ind Cas 44. Court's order under Order V, rule 20 is essential to make substituted service effectual. 55 Ind Cas 824. Mere delivery to a person who refused to accept service is itself sufficient. 99 P R 1918=184 P W R 1918=48 Ind Cas 28, but see 43 Ind Cas 718=41 P L R 1918=31 P W R 1918. Service by affixing summons during temporary absence on the outer door of house where party's wife was living is sufficient service. A I R 1922 Mad 93=42 M L J 422=(1922) M W N 173=45 M 875=70 Ind Cas 611. Where *pardanashin* lady has not got other member of family or agent to receive summons service by affixture is valid. A I R 1923 Pat 433=4 P L T 89=72 Ind Cas 910, see also A I R 1922 Oudh 268=9 O L J 489=69 Ind Cas 667. Where defendant by his conduct renders it impossible to have the copies affixed on his house he cannot be permitted to plead that the omission to affix rendered service invalid. A I R 1924 Pat 446=3 P 236=2 Pat L R 58=5 Pat L T 576=78 Ind Cas 889. Where defendant refuses to accept summons it must be affixed on the door of the house in which he resides and not on the door of the house where he is found. A I R 1925 Cal 801=52 C. B T Act is gu 175=4 Pat 13. outer door or resides A I R is shown that every effort to service it should be held that affixture was good service. 27 N L R 50=A I R 1931 Nag 122, see also 27 N L R 53=A I R 1931 Nag 119.

Report of a process server not containing the name of any witness while there at the time of service cannot be deemed to have

w and does not furnish *prima facie* proof of due =23 N L R 116=107 Ind Cas 666. The service delivery of a copy of summons to the defendant append his signature to the acknowledgment of intent to effect service in the manner prescribed

serv by Order 5 Rule 17 of the C P Code. A I R 1933 A 165=144 Ind Cas 1019=1933 A L J 165, see also 33 P L R 5=A I R 1932 Lah 59.

18 [S 81] The serving officer shall, in all cases in which the summons has been served under rule 16 endorse or annex,

Endorsement of time and or cause  
manner of service original

and the manner in which the summons,

the person (if any) identifying the person served and witnessing the delivery or tender of the summons

N B—For local amendments in Madras *vide infra*

Notes—Identifier need not be supplied by party A I R 1923 Pat 114=3 P L T 498=6, Ind Cas 49 The report of the Nazir is enough 3 W R Mis 11; 4 W R Mis 4, 12 W R 365, 18 W R 197.

19. [S 82, first para] Where a summons is returned under rule 17,

Examination of serving officer has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer, on oath, or cause him to be so examined by another Court touching his proceedings, and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit.

N B—For local amendment in Madras *vide infra*

Notes—Court's omission to make order declaring proper service is essential It is not a mere irregularity A I R 1927 Mad 813=39 M L T 34=26 L W 481=103 Ind Cas 825, see also A I R 1922 Mad 417=15 L W 17 In case of substituted service the requirements of the rule must be fulfilled 43 C 447=23 C L J 183=20 C W N 173=34 Ind Cas 799 The court must either declare the service to be sufficient or order such service as it thinks fit 1933 M W N 478=37 L W 622=A I R 1933 Mad 466=64 M L J 329, see also A I R 1933 Mad 406=64 M L J 637=1933 M W N 257 Declaration of due service under this section may be implied or inferred A I R 1932 Oudh 326=9 O W N 806

20 [S 82, second para, Ss 83, 84] (1) Where the Court is satisfied

Substituted service that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service (2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally

Where service substituted, time for appearance to be fixed (3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require

N B—For local amendments in Oudh and Rangoon *vide infra*

Scope—Substituted service amounts to personal service A I R 1928 Mad 1052=116 Ind Cas 363, A I R 1928 Mad 815=51 M 860 A I R 1927 Mad 487=52 M L J 512=101 Ind Cas 651 Substituted service should not be ordered unless defendant could not be served in the ordinary way or has refused to accept service 120 Ind Cas 594, see also (1930) M W N 1227, A I R 1930 Lah 307=129 Ind Cas 689, 107 Ind Cas 282, 94 Ind Cas 395, 69 Ind Cas 467, L R 2 A 244 (Rev) Where substituted service is ordered to be effected by means of news paper reasonable time to allow newspaper to reach in addition to the time of the notice is sufficient L R 2 A 242 Rev, see also A I R 1928 Rang 18,=6 Rang 218=111 Ind Cas 371, A I R 1929 Lah 235=116 Ind Cas 620 It is not correct to order substituted service on a person to show cause why he should not be appointed guardian A I R 1930 All 609=(1930) A L J 1020=124 Ind Cas 191 Affixation of summons without being accompanied by copy of plaint is not a sufficient compliance with the law A I R 1927 Lah 376=28 P L R 300=101 Ind Cas 615 Where plaintiff has failed to make enquiries

substituted service should not be ordered A I R 1924 Lah 191=69 Ind Cas 467 Service by registered post is a poor substitute for personal service A I R 1922 Bom 377=46 B 130=23 Bom L R 908=64 Ind Cas 386 Question of effecting substituted service being primarily on discretion of trial Court, appellate Court has only to see that rules of law are observed A I R 1931 Lah 118=31 P L R 906=131 Ind Cas 344 A I R 1927 Mad 587=52 M L J 477=102 Ind Cas 243 Where the defendant is avoiding service of summons substituted service can be ordered A I R 1932 Mad 472=138 Ind Cas 146=1932 M W N 133

The advisability of effecting service by substituted service is a matter primarily for the trial Court and if it is satisfied on the matters set out in order 5, rule 20 it should order substituted service which is as effectual as if service was made personally 131 Ind Cas 344=31 P L R 1006=A I R 1931 Lah 118, see also 132 Ind Cas 778=14 O L J 543=A I R 1931 Oudh 369 But if for no fault of the defendant, a defendant was never put in a position to know that a suit has been instituted against him whatever steps might have been taken for serving the summons on him these steps can never be taken as amounting to due service. 1931 A L J 1049=A I R 1931 All 777 (F B) see also 134 Ind Cas 1202=A I R 1931 Mad 813=61 M L J 920 The dismissal of the suit without affording the plaintiff an opportunity to apply for substituted service is illegal and should be set aside 12 Pat L T 644=A I R 1931 Pat 420, see also 1930 M W N 1227 debtor's house which was occupied by the other substituted service 1931 A L J 62=130 Ind Cas

## 21. [S 85, first para] A summons may be sent by the Court by which

Service of summons where defendant resides within jurisdiction of another Court

it is issued, whether within or without the province either by one of its officers or by post to any Court (not being the High Court), having jurisdiction in the place where the defendant

resides,

N B—For local amendments in Bombay and Rangoon *vide infra*

## 22 [S 86] Where a summons issued by any Court established beyond

Service within Presidency towns and Rangoon of summons issued by Courts outside

the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served

N B—For local amendments in Bombay and Burma *vide infra*.

Notes—Vide A I R 1922 Bom 377=22 Bom L R 908=46 B 130=64 Ind Cas 386

## 23 [S 85, second para] The Court to which a summons is sent

Duty of Court to which summons is sent

under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the

Court of issue, together with the record (if any) of its proceedings with regard thereto

N B—For local amendments in Rangoon *vide infra*

## 24 [Ss 87, 88.] Where the defendant is confined in a prison, the

Service on defendant in prison

summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant

## 25 [S 89] Where the defendant resides out of British India and

Service where defendant resides out of " and has no age

has no agent in British India empowered to accept service, the summons shall be addressed

munication be

ng  
m

N B—For local amendments in Allahabad, Madras, Oudh and Rangoon, vide *infra*

Notes—Refusal of letter containing summons amounts to due service A I R 1930 Lah 439=31 P L R 26=121 Ind Cas 386

Service in foreign territory  
through Political Agent of  
Court

26 [S 90] Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council, a Political Agent has been appointed, or a Court, has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

\*[(b) the Governor General in Council has, by notification in the Gazette of India, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,]

the summons may be sent to such Political Agent or Court, by post or otherwise for the purpose of being served upon the defendant, and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service

N B—For local amendments in Allahabad, Madras Nagpur and Oudh, Vide *infra*

Notes—A witness in a foreign state cannot be punished for non appearance after service of summons He should be examined on commission 142 Ind Cas 201=1933 M W N 677=A I R 1933 Mad 566=61 M L J 334

27 [S 422] Where the defendant is a public officer (not belonging to His Majesty's military "naval or air"† forces or

Service on civil public officer  
or on servant of railway com-  
pany or local authority

His Majesty's Indian Marine Service) or is the servant of a railway company or local authority,

the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant

N B—For local amendments in Allahabad and Madras, Vide *infra*

Notes—This rule invest the court with a discretion in the matter of effecting service of summons on public servant 9 O W N. 896—A I R 1932 Oudh 326

28 [S 468] Where the defendant is a soldier, "or airman" †, the Court shall send the summons for service to his commanding officer together with a copy to be

Service on soldiers  
retained by the defendant

N B—For local amendments in Allahabad Madras and Oudh vide *infra*

29 [Cf Ss 87, 88, 468] (1) Where a summons is delivered or sent

Duty of person to whom  
summons is delivered or sent  
for service

to any person for service under rule 24 rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgment of the

defendant, and such signature shall be deemed to be evidence of service

\* Substituted by s 2 and Sch I of the Second Repealing and Amending 1914 (17 of 1914)

† Added by Act V of 1927

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non service

N B—For local amendments in Allahabad and Madras vide *infra*

30. [Ss. 91, 92] (1) The Court may, notwithstanding anything herein-  
Substitution of letter for before contained substitute for a summons a letter  
summons

the opinion of the Court,

(2) A letter substitut  
required to be stated in a summons and, subject to the provisions of sub-rule  
(3), shall be treated in all respects as a summons

(3) A letter so substituted may be sent to the defendant by post or by a  
special messenger selected by the Court or in any other manner which the  
Court thinks fit, and where the defendant has an agent empowered to accept  
service, the letter may be delivered or sent to such agent

N B—For local amendments in Allahabad vide *infra*

## ORDER VI.

### *Pleadings generally*

Pleading 1. [New] 'Pleading' shall mean plaint  
or written statement

Pleading—No definition of the pleading is given in the Act But according to s  
hall include any  
of the claim or  
etc., and of the  
of summons is  
*Fallis v Jackson*

be  
D  
few  
Acts  
pleading in civil  
ngs says *Jesse*  
*M R* in *Thorpe v Holdsworth* (1876) 3 Ch D 637 639 is to bring the parties to  
an issue, and the meaning of the rule (relating to pleadings) was to prevent the  
issue being enlarged which would prevent either party from knowing when  
the cause came on for trial what the real point to be discussed and  
decided was In  
to definite issues,  
amount of testimony  
under the old A  
construed with the same strictness as in English Court But it seems that, that is  
no longer the law Party must make all necessary assertions to carry the reliefs  
and prove them in an alternative case A I R 1931 Cal 25=57 C 796=129 Ind  
Cas 355 Documents satisfying substantially the requirements of Order VI and  
Order VII is a plaint 17 S L R 223=85 Ind Cas 893 It is for the Court to  
find and examine all pleas of law applicable to the facts of a particular case A I R  
1928 Nag 206=107 Ind Cas 513

2. [RSO 19, r. 4] Every pleading shall contain and contain only,  
Pleading to state material a statement in a concise form of the material  
facts and not evidence facts on which the party pleading relies for his  
claim or defence, as the case may be, but not  
the evidence by which they are to be proved, and shall, when necessary, be  
divided into paragraphs, numbered consecutively Dates, sums and numbers  
shall be expressed in figures

**Scope**—The law of pleadings may be tersely summarised in four words 'Plead facts not law'. It is the duty of the parties to state only the facts on which they rely their claim. It is for the court to decide. 143  
 Ind Cas 713=A I R 1933 Sii 1932  
 Nag 23=2 N L R 37=A I Bom  
 L R 1178=128 Ind Cas 609 make  
 up the plaintiff's case and should be so framed as to enable the other party to know what case he has to meet. 22 C L J 254=20 C W N 310=31 Ind Cas 181  
 Under this rule besides pleas which should be definitely taken, facts constituting them should also be stated. A I R 1925 Pat 168=(1924) Pat 297-6 P L T  
 46=84 Ind Cas 386 The decision of a case should be based on pleading. In collision case plaintiff should be so framed as to enable the adversary to know the case he has to meet and to state the particular acts of negligence the result of which is collision. 25 C W N 311-34 C L J 178=66 Ind Cas 745 Assertion of non performance of marriage ceremony also includes denial of the validity of marriage. 64 Ind Cas 150 Inconsistent pleas each destructive of the other should not be permitted. A I R 1931 Nag 57=26 N L R 367=130 Ind Cas 108 But where not so destructive may be permitted. A I R 1925 Oudh 120=27 O C 175=11 O L J 619=82 Ind Cas 333 The plaintiff need not set out the evidence whereby he proposes to prove the facts which give him the title. 20 C W N 310 (312)=22 C L J 234 Under this rule facts and only material facts are to be stated in the plaint and not the evidence by which they are to be proved. A I R 1925 Pat 410=3 Pat. L R 36=86 Ind Cas 629

**3 [R C O 19 r 5]** The forms, in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

**4 [R S C. O 19 r 6]** In all cases in which the party pleading Particulars to be given where relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and necessary in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

**Scope**—The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to Ch D 413 C A Whenever *Fitzpatrick*, 38 or misconduct *Vide Halsbury* to his opponent the facts mu Vol XXII, p 454 'Under the contract law of India as well as by ordinary principles coercion undue influence fraud and misrepresentation, are all separate and separable categories in law. It is true that they may overlap or may be combined. There is a well known rule of pleading expressed in the frequently quoted language of *Lord Selborne* that—'With regard to fraud if there be any principle which is perfectly well settled, is that general allegations, however strong may be the words in which they are stated are insufficient even to amount to an averment of fraud of which any Court ought to take notice.' The law of India is in no way different from this and it has been decided over and over again e.g., in *Gunga Narain Gupta v Tilukram* L R 15 I A. 119, 19 C W N 745 P C.

**Misrepresentation**—Particulars of misrepresentation and fraud must be given at the instance of the auction purchaser in an auction to resist auction purchaser's title under s 6, A I R 1926 Bom 33=27 Bom L R 1318=91 Ind Cas 426

**Fraud**—In an action based on general allegations of fraud, breach of trust, specific particular constituting the fraud or the breach of trust must be given. Mere general allegations is insufficient. A I R 1930 Mad 78=57 M L J 609=30 L W 914=123 Ind Cas 15, see A I R 1921 Mad 759=51 M L J 644=28 L W 367=110 Ind Cas 763, 145 Ind Cas 118=A I R 1933 Rang 155, A I R 1930 Cal 621=34 C W N 809=129 Ind Cas 401, A I R 1928 Pat 112=9 P L T 476=104 Ind Cas 821, A I R 1913 All 566=21 A L J 488=L R 4 481 Cii =74 Ind Cas 964 A I R 1914 All 17=21 A L J 571=L R 4 464=4, A. 624=74 Ind Cas 466 Where fraud is alleged particulars must be given in plaint.

mere general allegation is not sufficient A I R 1921 Pat 193=2 P L T 528=6 P L J 373=62 Ind Cas 962, A I R 1921 Pat 209=2 P L T 528=62 Ind Cas 962, A I R 1933 Rang 169=146 Ind Cas 954, A I R 1933 Rang 123, 6 P L J 373 (F B)=58 Ind Cas 317, 23 C W N 1045=31 C L J 3=54 Ind Cas 197, 46 Ind Cas 676, 46 Ind Cas 342=(1918) U B R 69, 20 C W N 819=35 Ind Cas 339, 20 C W N 638=35 Ind Cas 284, 35 Ind Cas 252 In an action based on fraud it is necessary to prove that the representatives were either known to be false to the party making them or that they were made recklessly and were made for the purpose of being believed and acted upon and they were believed and acted upon and actual damage was caused for which the relief is claimed A I R 1924 All 17=21 A L J 571=74 Ind Cas 465, see also A I R 1926 Lah 96=6 Lah 512=92 Ind Cas 322, A I R 1930 Pat 357=125 Ind Cas 145, A I R 1930 Cal 22=56 C 868=121 Ind Cas 625, 103 Ind Cas 383 (Lah), A I R 1930 All 417=(1930) A L J 469=123 Ind Cas 759, A I R 1931 Oudh 5=7 O W N 1015=129 Ind Cas 168, A I R 1930 Sind 298=24 S L R 232=128 Ind Cas 682 If one kind of fraud set up as a basis of the case A I R 113 Ind Cas 219, A I R 192 A I R 1921 Pat 48=2 P L T Cal 202=34 C L J 529=26 C C L J 475=55 Ind Cas 689 Court is not entitled to go into the question of fraud if no such issue is raised A I R 1927 Mad 538=50 M 357=38 M L T 197=101 Ind Cas 399 Where plea of fraud was not set up in pleadings party being unwary it cannot be raised as soon as party comes to know of it 3 O L J 501=19 O C 334=36 Ind Cas 746 Plaintiff seeking the benefit of s 18 Limitation Act, must clearly allege the particular fraud and in detail by which he was kept in dark about his right 322 Strong evidence must be given if he wants to defeat plaintiff's case to it 21 C W N 864=41 C 30 or forgery it should be specifically pleaded in written statement If not, defence should not be easily accepted A I R 1926 P C 109=(1926) M W N 812=25 A L J 20=38 M L T 3 (P C)=97 Ind Cas 543 Burden of proof as regards allegations of fraud and collusion lies on those who assert them which must be proved from established facts or from inference legitimately drawn from them as a whole A I R 1923 P C 73=45 M L J 363=33 M L T 325=28 C W N 327=39 C L J 165 (P C)=73 Ind Cas 391, see also A I R 1921 Sind 106=17 S L R 9

**Undue influence**—In a case of an action based on fraud or undue influence particulars as regards the fraud or undue influence must be given A I R 1928 Oudh 204=114 Ind Cas 113 Undue influence is a fraud of a

relief notwithstanding inartistic pleadings 27 N L R 19=A I R 1931 Nag 63

**Custom**—In an action based on custom custom should be specifically pleaded and all the requisites to its validity must be proved 34 C L J 319 (F B)=66 Ind Cas 640 In a case it is not permissible to split up the custom set up by a party It must be taken as a whole and not piece meal A custom different from one set up by a party should not ordinarily be allowed to be proved A I R 1929 Oudh 204=114 Ind Cas 113

statement which are such  
; not always proper, though  
, raised and issue framed

thereon A I R 1926 Mad. 1052=96 Ind Cas 915

**Negligence**—In an action based on negligence all particulars, which constitute negligence must be specifically stated in pleading A I R 1922 Pat 17=3 P L T 222=67 Ind Cas 664



the contract is not necessary  
chaser for breach of contract

h 553=31 P L R 110=

121 Ind Cas 723

**Illegal contract**—In a suit for money advanced if defendant pleads illegality of contract, he must so clearly plead and give particulars and prove illegality A I R 1925 Rang 275=3 Rang 275=92 Ind Cas 270 A contract is not valid in absence of consideration, but if there is consideration contract exists though it may be voidable for fraud 39 P L R 1919=14 P W R 1919=51 Ind Cas 579

**Forgery**—Allegation of forgery may be inferred from the allegation that the document was not executed but that it was executed by fraud cannot be inferred therefrom A I R 1929 Cal 77=111 Ind Cas 746

**Easement**—Where the action be brought against the servient owner or a stranger a party cannot safely allege his right to an easement generally but should state specifically the manner in which he claims title to the easement, whether by grant (actual or lost) prescription at common law, or under the Act. 142 Ind Cas 438=A I R 1933 Cal 215

**Settled Accounts**—Vide 55 M 704=137 Ind Cas 636=1932 M W N 93=35 L W 302=A I R 1932 Mad 284=62 M L J 226

5. [R. S. C O 19. r. 7] A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

*Radford*, (1896) 1 Ch 29, *Maxim Nordenfett v Nordenfett*, (1893) 3 Ch 122  
r (1888) 38 Ch 110 C A  
where defendant knows  
give discovery before the  
(1901) 18 T L R 206,

*Yorkshire v Gilbert*, (1895) 2 Q B 148 The particulars tend to narrow the issue and to limit the enquiry at the trial *Thompson v Birkley* 31 W R Eng 230 Defendant can ask for particulars of allegations not precisely given in plaint, failure to do which operates as estoppel in second appeal 1 P L T 34=(1919) Pat 451=52 Ind Cas 964 Where particulars ordered are not supplied by defendant in time Court can strike out his defence even where penalty is not specified in Court's order A I R 1930 Mad 473=31 L W 387=59 M L J 22=53 M 645=126 Ind Cas 629, see also 45 A 627=74 Ind Cas 466=A I P 1924 All 17=21 A L J 571 Where in a suit under Bengal Tenancy Act, plaint did not give particulars in s 148, the defendant should ask for them, but on failure amendment of plaint should be allowed, if cause of action is given A I R 1931 Pat 135=11 P L T 617=128 Ind Cas 785

6 [R. S. C O 19 r. 14] Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading

**Scope**—The true principle appears to be that wherever a condition precedent goes to the root of the cause of action it is always proper and safer to allege it, and the performance of it, or the excuse for non performance of it, in the pleading and this rule only deals with the general allegation of the performance of the conditions and with minor matters such as the lapse of a reasonable time, etc. *Yearly Practice* p 266, *Bullen and Leakes P C* 6th Ed 157 Condition precedent and its non performance must be specified by defendant in pleading otherwise performance

will be presumed Plaintiff need not plead it. Pleadings if silent imply allegation of performance A I R 1924 Pat 205=72 Ind Cas 1

In a suit for damages for breach of contract averment of the validity of the contract is not a defence  
 Defendants  
 A. I R

founda-  
 tion of the defendant's liability the plaintiff must prove such service of notice, although an averment as regards service of notice in the plaint can be implied 60 C 733=37 C W N 504=146 Ind Cas 671

7 [R S C O 19, r 16] No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same

Object and scope—The effect of the rule is to prevent a plaintiff from setting up in his reply a new claim which is inconsistent with the cause of action alleged in the statement of claim *Yearly Practice* p 270 citing *Earp v Henderson* (1876) 3 Ch D 254

8 [R. S C O 19, r 20] Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract

Scope—  
 the contract v of  
 objection and his  
 may  
 have made by way of anticipation *Clarke v Callow* (1876) 46 L J C P 53, *Yearly Practice* p 274 But when it is brought to the notice of a Court that the consideration for a contract which it is asked to enforce is in whole or in part an unlawful consideration such Court is bound to give effect to the fact thus brought to its notice notwithstanding that the contract may appear upon the face of it to be perfectly legal contract and that the unlawfulness of the consideration therefore

the Court ought not to assist him See also *Gedge v Royal Exchange* (1900) 2 Q B 214 It is on the grounds of public policy\* said *Truro L C* namely that those who violate the law must not apply to the law for protection *Benyon v Nettlefold* 3 Mac N & G 94

9 [R S C O. 19, r 21] Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material

Notes—Precise words of the document need not be set out All that is required that the effect of the document should be stated *Derbyshire v Leigh* (1896) 1 Q B 115=65 L J Q B 360 see also *Phillips v Phillips* (1878) 4 Q B D 177

10 [R S C O 19 r 22] Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out circumstances from which the same is to be inferred.

Malice, knowledge etc

**Object and Scope**—Rule 2 provides that the material facts must be pleaded but not the evidence by which they are to be proved. So also in the case of malice, fraudulent intention, knowledge or other condition of the mind of any person, the circumstances from which the same is inferred is not to be stated. Mistake and *bonafide* belief and good faith cannot be presumed but must be distinctly alleged in the pleadings. A I R 1931 Mad 110=33 L W 78=130 Ind. Cas 506. In an action for malicious prosecution, malice must be alleged and proved. *Mitchell v Jenkins*, (1833) 5 B & Ad 588, *Hick v Faulkner*, (1881) 8 Q B D 167. The rule is the same as regards fraud or fraudulent intention. *Daly v Garret*, (1878) 7 Ch D 489. Facts constituting fraud must be given in detail. A I R 1921 Pat. 181=2 P L T 401=61 Ind. Cas 823, see also *Re Rica Gold Washing Co* (1879) 11 Ch D 36, 43, 47, (C A), *Idgrave v Hurl* (1881) 20 Ch D 112, *Smith v Chadwick* (1881) 20 Ch D 27, *Wallisford v Mutual Society*, (1880) 5 App. Cas. 685, 701. Allegation of fraud cannot be allowed to be made at a later stage of the suit. It must be made in pleadings. (1916) 1 W N 180=34 Ind. Cas 1. Where knowledge or abuse of it is material it should be stated expressly. Vide *Griffiths v London Docks*, (1884) 13 Q B D 259, *Osborne v Chocqua*, (1896) 2 Q B 109.

**11. [R S C O 19, r 23]** Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a

Notice

fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

**Scope**—Where notice is a part of the cause of action it should be pleaded specifically. To exercise the power of re-sale by vendor giving of notice is condition precedent. Plaintiff therefore pleads and proves notice. A I R 1924 Nag 162=28 Ind. Cas 1026 see also s 80 *supra* where notice should also be proved before the suit is decreed.

**12 [R S C O 19, r 24]** Whenever any contract or any relation between any persons is to be implied from a

Implied contract or relation

series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

**Notes**—Vide *Brogden v Metropolitan Co* (1877) 2 App. Cas 666.

**13 [R S C O 19 r 25]** Neither party need in any pleading allege any matter of fact which the law presumes in

Presumption of law

his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

**14 [Ss 51, 115]** Every pleading shall be signed by the party and his pleader (if any). Provided that where a

Pleadings to be signed

party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

**N B**—For local amendment in Calcutta vide *infra*.

**Application to Company**—Order 29 rule 1 C P Code relating to the procedure of signing and verification of pleadings in suits by or against corporation is only permissive in its nature and order 6, rule 14 applies to the case of companies as well as to private persons. Therefore a plaint in a suit by a company is properly signed if it complies with the provisions of order 6, rule 14. 32 P L R 655. see also 134 Ind. Cas 1170=A I R 1931 Sind 178.

**Sign**—The procedure for signing is the same for vakalatnama, affidavits and pleading. A I R 1928 Mad 175=34 M L J 65=(1977) 11 W N 835=51.

242=107 Ind Cas 304 Person named as co plaintiff is a plaintiff though he does not sign or verify plaint A I R 1924 Pat 104=3 Pat 67=2 Pat L R 169=5 Pat L T 591=79 Ind Cas 5 This rule does not apply to a suit on behalf of a limited company in which case the plaint must be signed and verified either by the Secretary or by a Director or other principal officer of the company A I R 1927 Sind 263=100 Ind Cas 450, see also A I R 1930 Bom 566=32 Bom L R 1305=128 Ind Cas 557 Persons not signing plaint can be impleaded on applica

there must be strict proof that they have been read out and explained to him 38 A 627=51 M L J 607=14 A L J 1248=18 Bom L R 1037=21 C W N 130=43 I A 112 (P C)=36 Ind Cas 104 Signing plaint is matter of procedure and defect therein can be cured at any stage of litigation even in Appellate Court as it is not a defect affecting merits of case A I R 1928 Pat 51=8 P L T 820=104 Ind Cas 747, see also A I R 1923 Rang 206=74 Ind Cas 100 69 Ind Cas 422, A I R 1922 Bom 113=46 B 150=23 Bom L R 911=68 Ind Cas 217, 44 A 147=44 Ind Cas 28, 25 Ind Cas 140, 54 C 380=31 C W N 397, 34 Bom L R 628=138 Ind Cas 797=A I R 1932 Bom 367=A L R 1932 Bom 457, A I R 1931 All 507 (F B)=1931 A L J 777=134 Ind Cas 26

Party to suit in the rule would include even a corporation 26 S L R 627=51 M L J 607=14 A L J 1248=18 Bom L R 1037=21 C W N 130=43 I A 112 (P C)=36 Ind Cas 104 Signing plaint is matter of procedure and defect therein can be cured at any stage of litigation even in Appellate Court as it is not a defect affecting merits of case A I R 1928 Pat 51=8 P L T 820=104 Ind Cas 747, see also A I R 1923 Rang 206=74 Ind Cas 100 69 Ind Cas 422, A I R 1922 Bom 113=46 B 150=23 Bom L R 911=68 Ind Cas 217, 44 A 147=44 Ind Cas 28, 25 Ind Cas 140, 54 C 380=31 C W N 397, 34 Bom L R 628=138 Ind Cas 797=A I R 1932 Bom 367=A L R 1932 Bom 457, A I R 1931 All 507 (F B)=1931 A L J 777=134 Ind Cas 26

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to prevent as far as possible disputes as to whether the suit was instituted with the plaintiff's knowledge and authority Such authority may be established by other means besides the signature This rule which requires a pleading to be signed by a party is merely a matter of procedure and it is the business of the Court to see that this provision is carried out 26 S L R 167=139 Ind Cas 114=A I R 1932 Sind 9

15 [Ss 51, 52, 115] (r) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case

ence to the numbered knowledge and what be true

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed

is ordinarily required 6 W R 213 One he is 366-

9 A 11 564 it is di 1030 L J 6--

allegations must be placed before the Court and plaintiffs must vouch for truth of legal evidence of its contents though a false verification may be the basis of a prosecution under s 19, 1 P Code 20 C W N 1192=43 C 1001=34 Ind Cas 235 A plaint with defective verification can always be amended and the defect remedied as the defect is one of form A I R 1924 Lah 28=5 Lah L J 217=74 Ind Cas 688, see also 87 Ind Cas 938=46 A 637, 30 L W 499=A I R 1929 Mad 790, 104 Ind Cas 747=A I R 1928 Pat 51, A I R 1931 All 507=134 Ind Cas 26 Signing and verification of pleadings is a mere matter of procedure and the omission can not affect jurisdiction of court 35 Bom L R 554=A I R 1933 Bom 317=145 Ind Cas

641, see also A I R 1932 Lah 28, 134 Ind Cas 626 It is not necessary for a plaintiff to verify the paragraphs in the plaint that raise law points A I R, 1932 Lah. 328=138 Ind Cas. 335 Cause title is not covered by the verification 58 C 418=A I R 1931 Cal 458

16. [R S. C. O. 19 r. 27] The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Scope—Parties should stick upto the pleadings as regards the facts stated therein.

30 Mau 814=32 L. W. 61=127 Ind Cas 292  
 articulars of his defence after being ordered by the court to have his defence struck out A I R. 1930 Mad 743=59 M. L. J. 22=53 M. 645=31 L. W. 387=126 Ind Cas. 629 Contradictory pleas cannot be refused A I R 1926 Nag 265=92 Ind Cas 926, see also A I R 1924 Pat 280=5 P. L. T. 49=(1923) Pat 357=75 Ind. Cas 433, 24 C. W. N. 145=30 C. L. J. 428=54 Ind. Cas 700, 40 Ind Cas 488=3 O. L. J. 230, (1916) 2 M. W. N. 115=4 L. W. 126=16 Ind Cas 365 The jurisdiction under order VI, rule 6, should be exercised with care and caution A I R 1925 Cal 860=20 C. W. N. 67=28 Ind Cas 417

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 15 r. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Scandalous—Allegations made in a pleading for the mere purpose of abusing or prejudicing the opponent are scandalous *Christie*

Yearly Practice p 2,  
 (Daniell on Chancery 11th ed. 101) but see 11th ed. 101  
 avoided in pleading scandal and the action on its own question still remains scandalous but they cannot be struck out of *Lord Justice*  
 scandalous which is relevant, or as put by *Lord Justice Brett* in *Millington v Lorrington* (6 Q. B. D. 196), the mere fact that these paragraphs stated a scandalous fact does not make them scandalous The sole question is as *Lord Chancellor Selborne* stated in *Christie v Christie* (L. R. 8 Ch. App. 499), whether the matter alleged to be scandalous would be admissible in evidence to show the truth of any allegation in the pleadings, which is material with reference to relief prayed" 14 C. W. N. 153 (156)=10 C. L. J. 414

Tend to prejudice and embarrass etc.—The rule that the court is not to dictate to the parties how they should frame their case is one that ought always to be observed and limiting which have been held to be unnecessary, and it becomes a pleading *Robertson*, 38 Ch. D. 263  
 long is embarrassing, and extremely long to allege clearly any fact which will bear the case at all 1909 A. L. J. 496  
 out by court at 20)

242=107 Ind Cas 804 Person named as co plaintiff is a plaintiff though he does not sign or verify plaint A I R 1924 Pat 104=3 Pat 67=2 Pat L R 169=5 Pat L T 591=79 Ind Cas 5 This rule does not apply to a suit on behalf of a limited company in which case the plaint must be signed and verified either by the Secretary or by a Director or other principal officer of the company A I R 1927 Sind 263=100 Ind Cas 450, see also A I R 1930 Bom 566=32 Bom L R 1305=128 Ind Cas 557 Persons not signing plaint can be impleaded on applica

627=31 M L J 607=14 A L J 1248=18 Bom L R 1037=21 C W N 130=43 I A 212 (P C)=36 Ind Cas 104 Signing plaint is matter of procedure and defect therein can be cured at any stage of litigation even in Appellate Court as it is not a defect affecting merits of case A I R 1928 Pat 51=8 P L T 820=104 Ind Cas 747, see also A I R 1923 Rang 206=74 Ind Cas 100, 69 Ind Cas 422, A I R 1922 Bom 113=46 B 150=23 Bom L R 911=68 Ind Cas 217, 44 A 147=44 Ind Cas 28, 25 Ind Cas 140, 54 C 380=31 C W N 397, 34 Bom L R 628=138 Ind Cas 797=A I R 1932 Bom 367=A L R 1932 Bom 457, A I R 1931 All 507 (F B)=1931 A L J 777=134 Ind. Cas 26

a corporation 26 S L R  
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15 [Ss 51, 52, 115] (x) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed

Scope—Verification by plaintiff is ordinarily required 6 W R 213 One partner can verify 12 B L R 35 A plaint may be duly authorized agent if he is well acquainted with the facts of the case 4 B 468, 26 A 154, 48 P R 1866=9 A 188, 1 P L T 647=59 Ind Cas 282, A I R 1927 Cal 773=105 Ind Cas 564 Where pleading is filed on behalf of corporation, affidavit that person signing it is duly authorised in that behalf is necessary A I R 1927 Cal 780=31 C W N 1030 Reply to objection must also be verified A I R 1924 Rang 273=3 Bur L J 68=82 Ind Cas 973 All facts relating to suit which are within plaintiff's knowledge must be placed before the Court and plaintiffs must vouch for truth of allegations in plaint 4 O L J 522=42 Ind Cas 416 Verified plaint is not legal evidence of its contents though a false verification may be the basis of a prosecution under s 19, I P Code 20 C W N 1192=43 C 1001=34 Ind Cas 235 A plaint with defective verification can always be amended and the defect remedied as the defect is one of form A I R 1924 Lah 28=5 Lah L J 217=74 Ind Cas 688, see also 87 Ind Cas 938=46 A 637, 30 L W 499=A I R 1929 Mad 790, 104 Ind Cas 747=A I R 1928 Pat 51, A I R 1931 All 507=134 Ind Cas 26 Signing and verification of pleadings is a mere matter of procedure and the omission can not affect jurisdiction of court 35 Bom L R 554=A I R 1933 Bom 317=145 Ind Cas

641, see also A I R 1932 Lah 28, 134 Ind Cas 626 It is not necessary for a plaintiff to verify the paragraphs in the plaint that raise law points A I R 1932 Lah 328=138 Ind Cas 335 Cause title is not covered by the verification. 58 C 418=A I R 1931 Cal 458

16 [R S C O. 19 r. 27] The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Scope—Parties should stick upto the pleadings as regards the fact to be proved at the trial inconsistent rights claimed alternatively should be permitted except when they are destructive of each other  
Cas 181 If court is not moved under

A I R 1930 Mad 743=59 M I J 22=53 M 645=31 L W 387=126 Ind Cas 629 Contradictory pleas cannot be refused A I R 1916 Nag 265=92 Ind Cas 926, see also A I R 1924 Pat 280=5 P L T 49=(1923) Pat 357=75 Ind Cas 433, 24 C W N 145=30 C L J 428=54 Ind Cas 700, 40 Ind Cas 488=3 O L J 250, (1916) 2 M W N 115=4 L W 126=6 Ind Cas 565 The jurisdiction under order VI, rule 6, should be exercised with care and caution A I R 1925 Cal 860=29 C W N 670=48 Ind Cas 435

### Unnecess

because it is

*Roberts* (1888)

Practice p 27

defendants written statement to be struck out as being unnecessary and scandalous is not a judgment A I R 1926 Mad 64=49 M L J 632=(1925) M W N 75=91 Ind Cas 666

Scandalous—Allegations made in a pleading for the mere purpose of abusing or prejudicing the opposite party and any indecent or offensive matters are scandalous *Ch*

Yearly Practice

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*Lorring* (6 Q B D 196), the mere fact that these paragraphs stated a scandalous fact does not make them scandalous The sole question is as *Lord Chancellor*

*Selborne* stated in *Christie v Christie* (L R 8 Ch App 499) whether the matter alleged to be scandalous would be admissible in evidence to show the truth of any

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14 C W N 153 (156)=10 C. L. J 414

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is unnecessary, and  
becomes a pleading  
*beris*, 38 Ch D 263

(259) It is for the the judge to decide whether a pleading is embarrassing  
*Russell v Shilbs* (1913) 2 K B 230 Where a plaint is verbose extremely long

t allege clearly any  
hear the case at all  
—1919 A L J 496  
out court at any

stage of the proceeding 20 O C 192=4 O L J 493=41 Ind Cas 903 Suit should be dismissed for inconsistent and embarrassing allegations in course of suit and not when occurring in plaint only 2 Pat L W 226=42 Ind Cas 620

**17 [R S C O 28 r 1]** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties

**Principle**—It is a well established principle that the object of courts is to do them for mistakes they make than in accordance with their not fraudulent or intended to be done without injustice to the discipline but for the sake of such amendments as a matter appears that the way in which

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*Tildesley v Harper* 10 Ch D 393, 1880, *Australian Steam Navigation v Smith* 14 App Cas 318, 16 Q B D 178 180, *In Re T* 11 T 498, 500 So the rule is that however negligent or careless the amending side And *Clarapade v* allowed at any stage of the real question in issue and there is no question of prejudice the object being to administer justice and not to punish for mistakes A I R 1931 Nag 20=130 Ind Cas 105, 7 O W N 1195=A I R 1931 Oudh 54, A I R 1921 Lah 20=3 Lah L J 227=60 Ind Cas 502

**Scope**—Under this rule amendment can always be allowed unless suit is changed or great inconvenience is caused to the defendant A I R 1930 Lah 221=50 P L R 645=119 Ind Cas 330 see also A I R 1931 Oudh 54=7 O W N 1195=130 Ind Cas 347, 24 C W N 749=58 Ind Cas 66, 73 Ind Cas 748, 71 Ind Cas 452=48 A 220=A I R 1923 All 112 Amendment for the sake, of saving time and money should be freely =92 Ind Cas 1019 All amendments necessary should be allowed A I R 1925 Sind 26=78 must be ordered to be amended but in no case nent A I R 1921 Sind 165=17 S L R 223=85 Ind Cas 893 Both original and Appellate Court have full powers of amendment to decide questions in issue properly 20 C W N 1276=1 Pat L J 393=35 Ind Cas 370 Court cannot compel the parties to amend their pleadings 111 Ind Cas 787 The three chief conditions on which an amendment should be *bona fide* (2) that no the nature of the case is 5 C W N 73=6, Ind Cas 85 Ind Cas 900=A I R 2 C L J 357 Amendment should be allowed A I R 875 A I R 1925 Sind 10 the defendant as cannot R 1=40 B 153=33 Ind Cas 264 Amendment has retrospective effect from the date of the application A I R 1927 Nag 95=98 Ind Cas 638



Suit against a dead person is a nullity and no question of amendment arises. 42 Ind Cas 539. The effect of abandonment of claim is as if the suit had never been commenced in respect of such claims. 12 Bur L T 155=9 L B R 275=51 Ind Cas 576. Right to object to an amendment is waived if not taken in the written statement. 20 C W N 636=32 In quired after the date of the plaint crinn I R 192, Mad 1021=22 L W 120=91 I R 19.6 Mad 6=49 M L J 479=22 L 19.6 Mad 754=22 L W 618=9, In L R 348=124 Ind Cas 244. A I R 1921 Lah 2.0=3 Lah L J 227, 67 Ind Cas 894, 31 Ind Cas 7=9 S L R 61. Amendment allowing the plaintiff to sue on a cause of action arising subsequent to the suit should not be allowed in second appeal. 6, Ind Cas 214.

Amendment setting up altogether a different case cannot be allowed. A I R 1923 P C 21=44 M L J 476=2 Pat 230=4 P L T 219=50 I A 58=37 C L J 369=27 C W N 901=71 Ind Cas 769. When the amendment entails a new trial it should be disallowed. 1.0 Ind Cas 163. Suit for rent based on lease cannot be changed into a suit for damages for use and occupation. A I R 1927 Mad 182=52 M L J 399=97 Ind Cas 977.

The plaintiff's suit was one for recovery of a sum of Rs 307 odd, said to be due on account of certain business transaction between the parties from 11.12.25 to 11.3.29, and after the original *ex parte* decree has been set aside and the suit restored, the plaintiff made an application to amend his plaint in answer to the written statement. In the written statement it had been pleaded that some of the items named in the plaint were barred by limitation and the plaintiff therefore applied to amend the plaint with reference to the acknowledgment said to have been made on 27 itself did not alter the nature of 55A 256=A I R 1933 Ml 374=145 I where fundamental character of the suit. owe I

that the proposed amendment would not change the character of the suit, nor would it cause irreparable injury to the defendant and all the facts necessary for the decision of the case on the proposed amendment are before the Court, the amendment of the plaint should be allowed. A I R 1934 Lah 245=33 P L R 694=13 Ind Cas 441. The amendment of a plaint relates back to the date of institution of the suit with regard to a quest.

Amendment rela

1934 Lah 412

order A I R.

ordinarily be al

ments may be applied to application to sue *informa* proprietas. A I R 1934 Lah 231. Amendment of prayer by way of abundant caution due to conflict of opinion, when the defendant is not injured should be allowed. A I R 1934 Ml 267. Prayer for consequential relief in a declaratory suit should not be allowed at the appellate stage. A I R 1934 Lah 235.

**Granting Amendment is discretionary**—Court has discretion to grant amendment at any stage. A I R 1927 Lah 103=8 Lah 257=91 M L J 25=28 P L R 15=77 Ind Cas 770, 87 Ind Cas 950=A I R 1925 Orls 622, 77

649, 32 Ind Cas 721=(1916) must be exercised judicially and 218 407 9 Bur L J 150=8 to be laid down for granting each case with due regard but unnecessary inhibition should may in its discretion allow an A I R 1923 Nk 385=24 since it should always be the Born L R 924=47 B 104=69 Ind Cas 20, unless it be *mal fide* even if defendant is grossly careless. A I R

33=117 Ind Cas 563, see also A I R 1928 Nag 203=109 Ind Cas 293.  
Order to pay costs of amendment in cash against pauper plaintiff is not proper

B 104=69 Ind Cas 207 Amend  
suit and which does not cause any  
owed 84 P R 1919=6 P L R 1919=

prejudice  
53 Ind Cas 464 A court can allow amendment on payment of court fee and cost  
to the defendant within a fixed time But in such a case the succeeding judge  
cannot extend the time for payment of court fee and cost 140 Ind Cas 373=36 C W  
N 869

At any stage of the p  
case may be allowed at  
trial or even after judgment  
of plaint was allowed by amendment  
Court may allow amendment of objection petition even after expiry of the time  
allowed for the same A I R 1926 Mad 396=24 L W 213=92 Ind Cas 100  
This rule gives very wide powers of amendment for the purpose of determining  
real question in controversy and this can be done at any stage of the proceedings  
A I R 1931 Nag 20=26 N L R 359=130 Ind Cas 105, see also A I R 1930  
Cal 534=57 C 398=127 Ind Cas 772, A I R 1923 Oudh 291=27 O C 231=11  
O L J 613=79 Ind Cas 1033, A I R 1924 Mad 883=47 M L J 540=82 Ind  
Cas 492, 29 C L J 206=50 Ind Cas 49, 36 C W N 112

Amendment setting out an inconsistent case at the final stage cannot be allowed  
22 C L J 309=31 Ind Cas 391, see also 30 Ind Cas 66=3 O L J 227, A I R  
1930 Cal 534=57 C 398=127 Ind Cas 772, 43 Ind Cas 894, 47 Ind Cas 906,  
51 Ind Cas 570=13 S L R 1 A I R 1921 Lah 156=3 Lah L J 437 In an  
action for damages—amendment of plaint by enhancing claim is permissible at  
any stage before trial commences 7 L W 415=23 M L T 312=45 Ind Cas 566  
Amendment seeking to change the nature of the suit altogether cannot be allowed  
at the judgment stage A I R 1921 Lah 53=3 Lah L J 184=69 Ind Cas 132,  
see also 5 Pat L J 164=46 Ind Cas 929, A I R 1929 Cal 223=26  
C W N 499=69 Ind Cas 963 A I R 1923 Mad 245=31 M L T  
449=70 Ind Cas 335, A I R 1923 Lah 675=75 Ind Cas 740, A I  
R 1924 Mad 247=86 Ind Cas 247 Alternative claim  
sought  
though  
M W

292  
599=9 Lah 289=29 P L R 471, see also 77 Ind Cas 384. Amendment of plaint if not sought in earlier  
30 P L R 41=110 Ind Cas 384. Amendment of plaint if not sought in earlier  
stages cannot be allowed in second appeal A I R 1928 Lah 32=9 Lah L J  
334=109 Ind Cas 334, see also 10 Lah L J 169=113 Ind Cas 87, A I R  
1927 Bom 1927 Bom 1927 Bom

All 355=  
ment wi  
and has  
to the  
cas  
be  
to  
166  
to amend  
60 Ind Cas 376 An amendment during argument in High Court was disallowed  
A I R 1933 Lah 712=34 P L R 5=14 Lah 306

23 Amendment cannot

The proper course is  
urt A I R 1924 Bom  
as given an opportunity  
red afterwards to do so

defendant—Amendment can be  
than which can be compensated

310 Ind Cas 328=3 U P L R (Lah) 44;  
A I R 1921 Lah 367=85 P L R 1922=67 Ind Cas 335, A I R 1925 Nag 155=  
82 Ind Cas 177, 77 Ind Cas 471=A I R 1923 Lah 305, 75 Ind Cas 539=A I  
R 1923 Sind 17, 64 Ind Cas 305 (Cal) A I R 1928 Oudh 305=5 O W N  
rule is to administer justice properly  
can be allowed even without formal  
is thereby caused 116 Ind Cas 884  
defendant is not taken by surprise and

h allegations 113 Ind Cas 757  
 amendment seeking to take away  
 s exception to this rule may also  
 8 C W N 1009, 78 Ind Cas  
 903=19 S L R 26=A I R 1924 Sind 144, 78 Ind Cas 846=A I R 1925  
 Sind 173, 35 Bom L R 929=A I R 1933 Bom 450 New cause of action  
 should not be allowed to be introduced if thereby the defendant is deprive his plea of  
 limitation A I R 1925 Rang 264=4 Bur L J 110=90 Ind Cas 639, see also  
 A I R 1926 Mad 827=23 L W 771=(1926) M W N 392=51 M L J 414=96 Ind  
 Cas 700, A I R 1927 Cal 733=46 C L J 51=104 Ind Cas 151 Where there  
 is no surprise on the part of the defendant, amendment may be allowed 139 Ind  
 Cas 441=39 P L R 694

New case—Amendment should be disallowed where it altogether changes the  
 nature of the rel ef claimed or purports to substitute one cause of action for another  
 A I R 1929 Lah 449=11 Lah 306=120 Ind Cas 279, A I R 1929 Rang 179=  
 7 Rang 140=117 Ind Cas 577, (1927) M W N 781=110 Ind Cas 775=A I R  
 1928 Mad 828 So amendment getting up a new and an inconsistent case is to be  
 disallowed A I R 1930 Mad 325=30 L W 557=120 Ind Cas 887, see also  
 130 Ind Cas 105=26 N I R 359=A I R 1931 Nag 20, A I R 1930 Lah 278  
 =11 Lah L J 553=31 P L R 340=120 Ind Cas 492, A I R 1929 Lah 710=  
 119 Ind Cas 429, A I R 1927 Mad 839=103 Ind Cas 670, A I R 1922 P C  
 249=24 Bom L R 682=30 M L T 28=48 I A 214=48 C 832=63 Sind Cas  
 914=4 U B R 30=(1921) M W N 316, P C), 71 Ind Cas 270=(1921) M W N  
 639 41 M L J 523 (1919) 3 U B R 171=52 Ind Cas 951, A I R 1933  
 nt introducing new cause  
 A I R 1928 Bom 516=  
 R 1931 Lah 260 Where  
 before but failed to do so  
 amendment resulting in totally different case specially at a late stage cannot be  
 Cas 441 Amendment  
 A I R 1927 Mad  
 f inability to perform  
 of contract A I R  
 1927 Mad 973=(1927) M W N 668=39 M L T 613=105 Ind Cas 563  
 Amendment altering the claim to one for a refund of losses paid upon wagering  
 contract cannot be allowed A I R 1922 Lah 408=5 P W R 1923=67 Ind Cas

performance of contract into one for damages in respect of prior contract amounts  
 to introducing a new case and hence cannot be allowed A I R 1922 P C 249=  
 24 Bom L R 682=30 M L T 28=48 I A 214=48 C 832=4 U B R 30=63  
 Ind Cas 914 (P C) But suit on promissory note can be allowed to be changed  
 into one on original consideration oral application being sufficient for the same,  
 52 Ind Cas 758, see also 35 Bom L R 965=A I R 1933 Bom 476 Claim for  
 share in ancestral property can be changed into one of maintenance in second  
 appeal A I R 1923 Nag 131=6 N I J 81=19 N L R 69=71 Ind Cas 566  
 Application for amendment will be refused in second appeal on the ground that if  
 granted plaintiff would start afresh on allegations inconsistent with original plant  
 46 C 168=27 C L J 299=45 Ind Cas 241 Amendment involving claim  
 for additional relief addition of new parties and change in the nature of  
 case, cannot in second appeal be allowed A I R 1923 Pat 590= Pat  
 925=(1923) P  
 Suit as princip  
 A I R 1925 B  
 had been rais  
 be allowed so  
 Ind Cas 357  
 not be allowe  
 Claim original y

inherited  
sought  
to assert  
Mad 49=(1922) M W N 42=42 M L J 43=15 L W 72=68 Ind Cas 703  
Where the effect of the amendment is to introduce new cause of action in appeal,  
A I R 1933 Lah 676=144  
if amendment introduces  
other evidence to be adduced  
by the party 33 Bom L R 1385=A I R 1931 Bom 590, see also 60 M L J  
713=A I R 1931 Mad 1=33 L W 213=132 Ind Cas 311, 32 P L R 278=A  
I R 1931 Lah 595=133 Ind Cas 646, A I R 1931 Lah 260=134 Ind Cas 110  
Suit for dissolution of partnership and accounts can not be changed for remuneration of defendants A I R 1934 Lah 38 Application for amendment at a late stage seeking to introduce new case should be rejected A I R 1934 Oudh 118

**Alternative case**—Merely because an amendment sets up an alternative case, is no ground for its refusal A I R 1927 M 458, see also 33 Bom L R 1385=A I R 1931 where the change is only in the nature 1931 Mad 369=122 Ind Cas 174 In a suit for damages, amendment can be allowed as to giving up of a claim for specific performance A I R 1922 Sind 36 see also 32 C W N 953=A I R 1928 P C 208=52 B 597=53 I A 360=30 Bom L R 292=41 Ind Cas 413=26 A L J 1220 In a suit on unstamped hundi amendment as a suit on original consideration should be allowed A I R 1922 Lah 394=10 P W R 1922, see also A I R 1927 Mad 378=99 Ind Cas 625, A I R 1933 Nag 57, A I R 1930 Lah 559=125 Ind Cas 329 In a suit for possession of certain plots and injunction in respect of the rest, amendment seeking to add the pryer as to the possession of latter plots also, should be granted A I R 1927 Oudh 513=4 O W N 975=105 Ind Cas 784 In a suit on registered mortgage seeking personal decree 115=6 Bur L J 49=10 be changed into a suit on mortgage 256=97 Ind Cas 936=24 I be decreed on the basis not be allowed in second appeal A I R 1922 All 5=20 A L J 15=65 Ind Cas 242, see also A I R 1925 Oudh 513=12 O L J 2, 3-87 Ind Cas 356 Where the plaintiff brings a suit on a promissory note which, he finds is improperly stamped and so inadmissible in evidence, he can not be allowed at the trial of the suit to amend his plaint so as to entitle him to sue on the original cause of action, that being a cause of action quite distinct from that based upon the promissory note 138 Ind Cas 783=34 Bom L R 643=A I R 1932 Bom 394, but see A I R 1931 Oudh 54=7 O W N 1195=130 Ind Cas 347, A I R 1931 Mad 533=1931 M W N 390=131 Ind Cas 1, A I R 1934 Cal 554

\* **Claim barred by limitation**—Amendment seeking to introduce time barred claims should be disallowed but exception may be made under special circumstances 39 L J 195=28 M L T 149=18 A L J 1095=22 Bom L R 1370=25 C W N 289=47 I A 255=48 C 110=2 U P L R (P C) 124=57 Ind Cas 606, 1932 M W N 1116=140 Ind Cas 500=36 L W 716=63 M L J 725, see also 50 C 878=27 C W N 1007=79 Ind Cas 287, 27 N L R 291=A I R 1931 Rang 74, A I R 1929 Bom 51=30 Bom L R 1588=114 Ind Cas 262, 31 M L J 688=4 L W 456=(1916) 2 M W N 362=38 Ind Cas 720 Amendment causing prejudice such as one which seeks to deprive defendant of right acquired by virtue of limitation can not be allowed A I R 1921 Pat 485=2 P L T 679=64 Ind Cas 125, see also A I R 1926 Cal 189=87 Ind Cas 218, 10 Rang 74=137 Ind Cas 39=A I R 1932 Rang 26, A I R 1928 Mad 828=(1927) M W N 284=110 Ind Cas 75, A I R 1925 Rang 49=2 Rang 414=84 Ind Cas 295, A I R 1933 Lah 774=144 Ind Cas 322, A I R 1931 All 160=(1931) A L J 56=150 Ind Cas 702, A I R 1931 Rang 74=138 Ind Cas 417, 22 C W N 104=27 C L J 403=13 Ind Cas 893, 43 Ind Cas 122, 61 M L J 316=A I R 1931 Mad 497, 137 Ind Cas 710=4 Bom L R 35=A I R 1932 Bom 117 Question of limitation does not arise where only misdescription of party is sought to be corrected A I R 1923 Nag 96=71 Ind Cas 39.

**Changing nature of suit**—Amendment changing nature of suit can not be allowed 35 Ind Cas 91, see also 41 Ind Cas 749 45 Ind Cas 173=11 S L R 103, 92 Ind Cas 753=A I R 1926 Rang 49=3 R 483, A I R 1925 All 705=89 Ind Cas 103, 88 Ind Cas 65=A I R 1925 Mad 794=22 L W 318=48 M L J 489 A I R 1921 Sind 159 (F B)=16 S L R 207=83 Ind Cas 360, A I R 1924 Mad 292=42 M 203=45 M L J 667=(1923) M W N 82,=19 L T 37=33 M L T 146=79 Ind Cas 510, 57 Ind Cas 426=22 Bom L R 735=44 B 51, 51 Ind Cas 435, 59 Ind Cas 63, A I R 1926 Lah 453=27 P L R 168=93 Ind Cas 871, A I R 1933 Pat 443, A I R 1931 Mad 330=60 M L J 315=150 Ind Cas 766=(1931) M W N 497 Amendment seeking to alter the nature of the suit can not at least be allowed in Privy Council A I R 1927 P C 18=6 Pat 523=54 I A 55=25 A L J 74=(1927) M W N 69=8 P L T 93=58 M L T (P C) 74=31 C W N 469=52 M L J 402=45 C L J 313=25 L W 63,=29 Bom L R 796 (P C)=100 Ind Cas 56 Amendment which does not seek for change of action should be allowed A I R 1925 Ind Cas 330, see also A I R 1925 484 To try to disclose further facts of action is not introducing fresh cause of action and hence there is no question of prejudice of defendant on point of limitation 78 Ind Cas 234 Where there is no change in the nature of the suit amendment may be allowed A L R 1932 Nag 157=29 N L R 115=A I R 1932 Nag 82, see also 17 R D 7

**Amendment to avoid multiplicity of suits**—Amendment to avoid multiplicity of suits may be allowed A I R 1925 Cal 944=86 Ind Cas 615 56 Ind Cas 115 A I R 1922 Oudh 266=9 O L J 359=68 Ind Cas 986 71 Ind Cas 452 A I R 1923 All 112=45 A 220 A I R 1925 Rang 282=4 Bur L J 141=3 Rang 183=89 Ind Cas 425, 87 Ind Cas 1055=A I R 1925 Oudh 718=11 T 459=A I R 1928 Mad 2=53 M L N 784=110 Ind Cas 775 124 Ind 507=124 Ind Cas 208 Amendment on should be allowed A I R 1925 Nag 195=78 Ind Cas 570

**Amendment to correct mistake**—Mistake of name of a party can be corrected even in appeal A I R 1921 Sind 63=24 S L R 478=131 Ind Cas 718 Amendment seeking to correct *bona fide* mistake made however negligently or carelessly can be allowed provided in justice is not done thereby to the other party 124 Ind 664=70 Ind Cas 284 A I R 1925 Rang 249=2 Rang 66=81 Ind Cas 41 C L J 511=A I R 1925 Cal 124 discovered after the written statements be plaintiff as to give cause of action necessary for the determination of the suit 124 Ind 474=126 Ind Cas 13 If in a

19 S L R 262=78 Ind Cas 905 Suit upon pronote can be changed into a suit on transaction referred to in the document it being a mere technical error 71 Ind Cas 968 In a redemption suit on one mortgage amendment which seeks relief on another mortgage cannot be allowed unless the mistake is caused due to the defendant (1918) M W N 139=7 L W 284=44 Ind Cas 447 Correction of dates in the plaint can be allowed on the ground of mistake 144 Ind Cas 250 =A I R 1933 Sind 131

amended if the property in the suit is 3=93 Ind Cas 103, see A I R 1922 All 50 also where the plaint is only one of the causes of action it may be allowed A I R 1925 Lah 441=

6 Lah 252=7 Lah L J 410=26 P L R 437=89 Ind Cas 279, see also A I R 1923 Bom 453=47 B 785=25 Bom L R 513=73 Ind Cas 107, 35 C W N C C H Vol I—58

432=134 Ind Cas 1200=A I R 1931 Cal 770, A I R 1929 Nag 261=117 Ind Cas 257, A I P 1928 Bom 191=30 Bom L R 117=109 Ind Cas 99, 24 S L R 478=131 Ind Cas 718=A I R 1931 Sind 63, 34 Bom L R 1410 Where minority of the plaintiff is discovered after an objection by the defendant, plaint should be allowed to be amended A I R 1924 Lah 157=69 Ind Cas 401 Where a major amendment of the a *bonafide* mistake

will not be done by asking plaintiff to bring fresh suit or if the change would be unprecedented one 2 Pat L J 379=40 Ind Cas 174 In a declaratory suit falling under s 7, Court fees Act, amendment should not be for consequential if a separate suit can lie for it A I R 1927 Lah 493=8 Lah 531=9 Lah barred by limitation amend- A L J 487=116 Ind Cas id appeal where the plaintiff is not open to him A I R 347, A I R 1931 Bom 53=44 M L J 515=1923 as lost owing to decree of plaint must be so allowed 56 Ind Cas 458 Where relief was asked for and equent amendment for the 15 Ind Cas 911

same should not be allowed A I R 1924 Lah 157=69 Ind Cas 401

#### Technical defect—

only if a slight amendr

1926 Lah 472=27 P L

necessary to the suit can l

error in the initials of

two years after *ex parte* decree was passed A I R 1928 Mad 367=110 Ind Cas 433 In a suit to recover possession, mistake as to date of dispossession can be corrected 12 L R 107 (Rev)=15 R D 293 Court can allow parties to make

138 Ind Cas 797=34 Bom L R 628=A I  
rection of pleadings can be made good by  
1 Cas 626

#### Additional Relief—In

of possession may be allow

599=(1925) M W N 802

of action is modified to some extent or another is added 122 Ind Cas 174, see

also 33 C W N 359=56 C 622=A I R 1929 Cal 519=119 Ind Cas 814, 92 Ind

Cas 772=A I R 1926 All 506=48 A 292=24 A L J 260 A I R 1927 Lah 723=

Ind Cas 125, A I R 1929 Mad 273=113 Ind Cas 296, A I R 1928 Mad

Pat 746=7 P L T 719=95 Ind

is a new relief, 41 Ind Cas

on after limitation ought not to be

allowed 13 Bur L T 201=64 Ind Cas 29 in a suit for possession of property

against wife on the ground of adultery amendment adding prayer for divorce should

1 " " " " in second appeal A I R 1923 Rang 160=2 Bur L J 65=75

#### Court—

Addition of parties—New plaintiff may be added for really deciding plaintiff's claim A I R 1931 Cal 765=2 C L J 357=58 C 561=129 Ind Cas 860 Opportunity should be given to parties to remove the defect of non joinder A I R 1930 Rang 295=129 Ind Cas 508, see also A I R 1923 Bom 305=25 Bom L R 689=47 B 809=83 Ind Cas 856 Amendment dates back the suit when no new party is added A I R 1926 Mad 487=50 M L J 442=93 Ind Cas 625 Amendment seeking to bring new plaintiff on record at a time when the suit would be time barred can not be allowed A I R 1925 Mad 917=85 Ind Cas 961 Whereby non joinder of necessary parties as respondent the appeal would be incompetent,

even in such case amendment can not be allowed where omission was due to negligence. A I R 1954 Lah 41 Adding parties at the stage of execution is not permissible 60 C 801=A I R 1930 Cal 668

**Amendment by Appellate Court**—In a proper case amendment can even be permitted for the first time in second appeal A I R 1926 Mad 1117=51 M L J 411=98 Ind Cas 39, see also A I R 1930 Sind 98=125 Ind Cas 828, 139 Ind Cas 678=34 Bom L R 175, A I R 1926 Mad 989=49 M 978=51 M L J 328=24 L W 304=7 O L J 1123=92 Ind Cas 643, 50 Ind Cas 180=6 O L J 55, A I R 1933 Lah 39=141 Ind Cas 168, A I R 1921 Lah 157=2 Lah 73=3 Lah L J 75=63 P L R 1921=61 Ind Cas 415, 63 Ind Cas 701, A I R 197, Pat 168=1924 Pat. 297=6 P L T 465=84 Ind Cas 386 al by which defendant is likely to lose his A I R 1927 Mad 650=25 L W 506= There plaintiff contended in the lower court an not be allowed to amend the plaint in second appeal 39 Ind Cas 861, see also 46 Ind Cas 471=119 P W R 918 Amendment which would cause trial *de novo* should not be allowed A I R 1921 Cal 125=33 C L J 380=25 C W N 552=68 Ind Cas 514 Amendment in second appeal seeking to introduce a new case altogether should not be allowed A I R 1923 Lah 530=77 Ind Cas 518 Whereby consent of parties in suit was limited to a particular cause of action amendment cannot be permitted in second appeal with a view to remand for retrial as it would mean starting retrial on causes voluntarily given up 6 O L J 32=52 Ind Cas 849 Grounds of appeal can be amended at any stage if they are not sufficiently clear A I R 1923 Lah 115=3 Lah 382=77 Ind Cas 207

**Appeal and Revision**—Amendment permitted by Appellate court is not subject to appeal 47 Ind Cas 455 Amendment allowed with the consent of the pleader of the opposite party cannot be objected in second appeal A I R 1976 Oudh 98=1 Luck 33=13 O L J 115=3 O W N 45=91 Ind Cas 927 Interference by the High Court with the discretion of the lower court in allowing an amendment will not be proper unless it was exercised in entirely wrong principles A I R 1926 Cal 1112=30 C W N 928=98 Ind Cas 751, see also A I R 1927 Lah 847=9 Lah L J 357=103 Ind Cas 701, A I R 1929 Rang 199=4 Bur L J 12=86 Ind Cas 509 Revision lies against improper refusal of amendment A I R 1925 Mad 585=(1925) M W N 469=48 M I J 349=21 L W 639=87 Ind Cas 90 see also A I R 1926 Mad 1124=(1927) M W N 256=97 Ind Cas 936, A I R 1925 Nag 195=78 Ind Cas 510 But the discretion of the lower court will not ordinarily be interfered with unless a strong case is made out for such interference A I R 1933 Lah 867

**18. [R S. C. O. 28, r. 7]** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court

**Scope**—Order VI rule 17 of the Civil Procedure Code only provides that the Court may allow an amendment, and if the party does not avail himself of it the only consequence he can not amend his pleading afterwards unless is extended by the Court Therefore where a when directed to do so the Court has no power, the suit 60 Ind Cas 376, see also 19 Ind Cas 472=169 P L R 1913=107 P W R 1913 Time however may be extended by the Court even after the expiry of the time originally fixed 16 B 348 Refusal to amend seeking to introduce a certain cause of action is no bar to bring a fresh suit on the same cause of action 99 Ind Cas 538=A I R 1927 Lah 8,

## ORDER VII

## Plaint

Particulars to be contained in plaintiff 1 [S 50, para 1] The plaintiff shall contain the following particulars —

- (a) the name of the Court in which the suit is brought,
- (b) the name, description and place of residence of the plaintiff,
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained,
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect
- (e) the facts constituting the cause of action and when it arose,
- (f) the facts showing that the Court has jurisdiction,
- (g) the relief which the plaintiff claims
- (h) where the plaintiff has allowed a set off or relinquished a portion of his claim, the amount so allowed or relinquished, and
- (i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits

a ( tendered to  
in 1 of an action  
a plaintiff A. I R 1921 Sind 166=17 S L R 223=85 Ind Cas 893 (22 M 494 foll)  
Formerly plaintiff meant in the superior court of England, the cause for which the

king's writ  
to be em  
sends its on  
on for trial  
he evidence  
is v Wilcox

8 A & E 33 Gantrel v Egerton L R 2 C P 371 20 C W N 310=22 C L J  
254 A plaintiff may in certain circumstances rely upon several different rights  
alternately though they may be inconsistent 34 C 51=11 C W N 26=4 C L J  
437 20 C W N 310=22 C L J 254 Phillips v Phillips 4 Q B D 127 Berdan  
v Greenwood 3 E X D 255, Hawkesley v Bradshaw 5 Q B D 303 Ir re  
Morgan 35 Ch D 496 The Court should look to the substance of the plaintiffs  
rather than to its wordings where they are prepared in mufassil courts 12 P L T  
636=131 Ind Cas 529=A I R 1931 Pat 179 Application under para 20 does not  
become suit to enforce award by mere fact of being brought under order 7 rule 1 A  
I R 1934 Mad 68

occ  
18 A 403  
nature of the suit A I R 1927 Sind 78=97 Ind Cas 257  
e word must which  
be a strong imperative  
does not determine the

when name 10 W R 366 An  
the name of all its members  
dine, in Chitpur Road in the  
place of abode Where the  
defendant is described as formerly of Calcutta the description also is insufficient,  
4 C L R 366 The name of the street and the number of the premises should be  
inserted The heading of  
the and description  
or not 26 S L R 431=  
described in the  
misdescription but may be cured  
A I R 1926 Cal 417=42 C L J

30=87 Ind Cas 159.

Clause (o) — The description contemplated by the code includes all the titles  
by which a party is known 18 W R 301=12 B L R 443 (P C) 12 W R 450



disapproved) Father's name and age should also be given as they fall under the word description 7 M L J 81. When a person is suing or is sued as executor of another person, it should be stated in the description of the party 9 A 188 corporate name 15 W R 534, 9 W R 206 mission of full description of the defendant in 35 Ind Cas 792

Clause (d)—For suits by or against minor vide Order XXII Where under a *bonafide* belief that the plaintiff is a minor and is represented by his mother as next friend, the suit is maintainable, notwithstanding the plaintiff is major A I R 1927 Cal 477=100 Ind Cas 469

Clause (e)— Cause of action' means every fact necessary for the plaintiff to prove if traversed to support his right to judgment of Court. It does not mean every piece of evidence necessary to prove each fact but every fact necessary to be proved. A I R 1921 Sind 200=17 S L R 41=80 Ind Cas 985 Under Order VII aggregate of claim put forward in plaint is treated as one suit though there may be several cau  
580-32 M L J

and when it arose 43 C 85=28 Ind  
L R 16, 19 C W N 18, 6 C W N  
he files his suit must allege the cause of  
e and must prove necessary allegations  
in so far as they are not admitted by the defendant 4 Bom L R 58=26 B 360  
of any express  
not been pleaded  
7 C W N 651  
, as administrator  
administration re  
city 12 C W N  
Code by granting  
the bar of limita  
tion he ought not to be precluded from taking another and not inconsistent ground  
should be latter advised that the latter is the true ground 10 Bom L R 346 Estoppel  
being rule of evidence should not be set out in plaintiff which should confine itself to  
facts 16 S L R 207=83 Ind Cas 360 The Court can disregard the form of  
of the plaintiff where in substance all the facts necessary to raise the point in  
controversy are mentioned in plaintiff A. I R 1927 Cal 806=46 C L J 149  
=10, Ind Cas 22

In a suit for defamation, plaint should allege specific time place and words and also individuals to whom words are spoken A I R 1926 All 672=96 Ind Cas 89

Only facts entitling plaintiff to decree need be set out in plaintiff A I R 1923  
ve that he is in time as regards a  
L J 218 A court must see whether  
A I R 1927 Cal 30=97 Ind Cas  
635 Where relied on as alternative ground adverse possession should be specifically  
pleaded A I R 1925 Md 1005=(1925) M W N 232=88 Ind Cas 249 Facts  
not specifically pleaded in plaintiff but admitted by the defendant can be relied on by  
the plaintiff to establish his claim A I R 1921 Bom 307=45 B 535=58 Ind Cas  
69 A person's authority to bring a suit is a question of principle but the proper  
signing and verification of the plaintiff is a matter of practice, omission therein may  
be amended at any time A I R 1925 Sind 159=19 S L R 286=80 Ind Cas

ie plaintiff  
A. I R  
- - date when  
confined to  
d co tain  
of facts  
separate  
R 1031

Cal 458=58 C 418 In a suit for redemption *prima facie* proof in support of the plaintiff's claim for redemption must be forthcoming 137 In 1 Cas 793=14 O L 452 8 O W N 732=A I R 1931 Oudh 378



3. [N<sup>o</sup> v] Where the subject matter of the suit is immoveable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers

N B—For local amendment in Bengal, Vide *infra*:

Scope—There is some apparent conflict of decisions on the point whether in a suit held that the plaintiff's title was no boundaries given of their title under of his judgment at p 5 Civil Procedure Code authority in suit cannot be identified. But in the above case it is submitted the learned judge's opinion is a mere *obiter dictum*. In 19 W R 81, the decree which was successfully objected to in a suit, such portion not was incapable of execution. But now it is clear from absolutely necessary but

the plaintiff shall contain a description also 18 W R 461, 5 C W N descriptions of the subject description that which is more mistaken or to have inserted subject matter 10 C L J

ed, or the and there ound to be

Idā (on W N property

4

4 [S. 50, para. 4] Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it

Scope—Representative capacity need not be stated in cause title. It is sufficient if it appears in the body of the plaint. 50 Ind Cas 525=46 C 877, see also A I R 1928 Nag 319=109 Ind Cas 785, 19 C W N 1193=28 Ind Cas 818, 34 C 548. The plaintiff must contain a statement that the suit is brought in a representative capacity. A I R 1925 Nag 183=82 Ind Cas 201, see also 7 B 467, 8 B 309, 5 C 144, 12 C 437. 77 Ind Cas 1028. In a suit by the manager of an undivided family on a promissory note passed in his name by the defendant the other members are not necessary parties and the suit is not bad for non joinder. A I R 1922 Bom 283=46 B 358=23 Bom L R 1135=64 Ind Cas 966 see also 14 B 597

he Succession Act of the suit makes A I R 1913 Cal.

1=50 C 49=36 C L J 35 see also 15 B 105, 38 C 327, 37 B 158, 12 C W N 758. But Mahomedan executors need not take out probate before suing 11 C 37

Suit by or against a club—In a suit by or against an unregistered club the names of all the members should be given. Vide 14 M 362, 20 A 497

5. [S. 50, para 5] The plaintiff shall show that the defendant is or Defendant's interest and claims to be interested in the subject matter, liability to be shown and that he is liable to be called upon to

#### Scope—A

The Court in of action correctly against each defendant A I R 1924 Nag 191=79 Ind Cas 614, see also 25 Ind Cas 77=12 A L J 339

6 [S. 50, para 6] Where the suit is instituted after the expiration Ground of exemption from of the period prescribed by the law of limitation, the plaintiff shall show the ground upon limitation law which exemption from such law is claimed.

Scope—This rule should be construed liberally and reasonably Where exemption from limitation is not stated in the plaintiff the Court should allow the inclusion of that ground Where that point is express in the plaintiff r 6 is satisfied but in such a case plaintiff may try to get over the bar of limitation by putting forth another ground if he believes the latter to be true 3 Lah L J 22=60 Ind Cas 772 Where suit is *prima facie* barred by limitation plaintiff must state in plaintiff the ground on which the bar is saved 52 Ind Cas 243=(1919) M W N 429=9 L W 82, 51 Ind Cas 956=1 Lah 21 145 Ind Cas 343=34 P L R 841=A I R 1933 Lah 491 A ground to save limitation which has not been taken in the plaintiff cannot be taken unless the plaintiff is amended 1933 M W N 931 (30 C 699, 31 C 193, 17 M L J 281, 1919 M W N 429, 1933 M W N 595 Fol), see also A I R 1933 Mad 395=64 M L J 317=1933 M W N 595 Where nothing is stated and no issue is framed, no evidence can be given to prove facts that limitation has been saved 25 M L T 295=1919 M W N 429=9 L W 82=31 Ind Cas 956, A I R 1922 Lah 39=4 Lah L J 190=3 Lah 233=69 Ind Cas 419, 31 C 106, 34 B 540, 26 Ind Cas 441 Though an acknowledgment is not pleaded in plaintiff yet it can be set up in reply to defence of the defendant A I R

1921 Nag 1=17 N L R 209=6, Ind Cas 279 see also 12 C W N 617=7 C L J 560 14 C W N 128, 8 Ind Cas 81=13 C L J 139 60 Ind Cas 772=A I R 1922 the plaintiff is defective in 116 P W R 1918=102 has no application in 1

case when *prima facie* the case is not time barred 25 Ind Cas 463=70 P R 1914=260 P L R 1914, see also A I R 1923 Lah 591=82 Ind Cas 866 In a suit to redeem mortgage alleged to have executed within 60 years it is not necessary for plaintiff to Cas 283=17 A L J 330 An 1 suit filed on the day the court 1 the dismissal of the suit The R 198=56 Ind Cas 976 Where plaintiffs *onus* is on the plaintiffs 39=30 P L R 102=103 Ind Cas

331 An acknowledgment of liability sufficient under s 19 of the Limitation Act to give a fresh period of limitation from the date thereof should be pleaded specifically A I R 1924 Pat 806=5 P L T 551=78 Ind Cas 919 The plaintiff having mentioned one ground of exemption in the plaintiff is not debarred from taking

but where no ground 1 knowledge is a R 1922 Lah 39= limitation ought to limitation can be raised at =69 Ind Cas 194 Objec exemption from limitation 36 Ind Cas 593

relief to be specifically stated

7 [R S O 20, r 6] Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and

it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

**Scope**—The same cause of action can give rise to different reliefs. A plaintiff may claim them, separately, or collectively. It has always been the practice of the Court to confine the relief given under the power to grant general relief made out on the pleadings, and *Dickens*, Mont D & D 45, V Ry Co (1854) 5 De G M & G. The power of Court to grant undoubted is always subject to the condition that the relief so granted is not inconsistent with that specifically claimed and with the case raised by the pleadings. A I R 1933 Lah 267.

**General or other relief**—under the new Code plaintiff is entitled to it if not specifically pleaded. A I R 1930 Nag 92=26 N L R 94=120 Ind Cas 321, see also A I R 1930 Pat 71=10 P L T 630=120 Ind Cas 292, 118 Ind Cas 381=A I R 1919 All 555. So a prayer for general relief is unnecessary. All that is necessary is that the necessary foundation of facts must be laid in the plaint. A I R (1923) Pat 386=(1923) Pat 153=5 P L T 350=76 Ind Cas 940. A I R 1921 Lah 125=2 Lah 256=107 P L R 1921=64 Ind Cas 895, A I R 1921 Pat 14=6 Pat L J 190=2 P L T 32=60 Ind Cas 980. 54 Ind Cas 797. Court can give the plaintiff a decree for less than what he had demanded if the Court finds him entitled to less relief. A I R 1923 Sind 5 F B=16 S L R 112=71 Ind Cas 161. 44 Ind Cas 557. 33 M L J 631. 27 M L T 391=(1918) M W N 110=43 Ind Cas 760. Where the plaint set out facts in issue that are material the plaintiff is entitled to relief which those facts will sustain under the general prayer but he cannot desert specific relief prayed and under the general prayer ask specific relief on another description unless the facts and circumstances mentioned in the plaint will consistently with the rules of the Court maintain that relief. A I R 1924 Lah 324=69 Ind Cas 501, see also 43 C 743=22 C L J 419=20 C W N 446=32 Ind Cas 437. Accounts can be directed to be taken, although there is no prayer in the the plaint to that effect but only a general prayer. 23 C W N 500=29 C L J 280=51 Ind Cas 597. Rights to which a person is found entitled cannot be refused on ground of an exaggerated claim. 140 P W R 1918=13 P R 1919=46 Ind Cas 679. Court can in a proper case pass a decree for redemption of a mortgage, though the suit as framed was one in ejectment. 44 Ind Cas 921. Where in a suit for khas possession, plaintiff was found not entitled to possession till after expiry of term decree for declaration at the end of such term can be granted. 1 P L W 405=39 Ind Cas 596. In a suit for partition decree for ejectment can be given, if that was asked for in effect and defendant was not taken by surprise. 13 S L R 159=53 Ind Cas 722.

The discretion under Order VII rule 7 and Order XLI rule 33 covers the granting of a declaratory decree in a suit for possession, where alternative relief is claimed therein. A I R 1923 Lah 422=85 Ind Cas 95. Decree in a suit should conform with the rights of the parties as they were at the time of its institution. 44 C 47=24 C L J 140=20 C W N 1099=34 Ind Cas 869. A suit for share of inheritance is an administration suit, though not brought in that form and decree should be passed on lines of model decrees in App D forms 17 and 20 C P Code 41 Ind Cas 579. Where written contract is inadmissible in evidence for want of stamp oral evidence is admissible to prove the said terms. A suit should be brought within three years of the date of the transaction if it can be maintained on the original consideration. 29 C L J 508=51 Ind Cas 945.

Where in a suit for possession by partition the estate is found impartible a decree for joint possession should be given and the suit must not be dismissed although plaintiff may not have expressly asked for a declaratory decree. A I R 1921 All 106=43 A 318=19 A L J 61=60 Ind Cas 873. But where right of ejection has been claimed but has not been established, the Court cannot give relief to plaintiff on basis of natural right not specifically

claimed and create a new case 57 Ind Cas 504 In a suit on a negotiable instrument, relief on the strength of the original consideration can be granted if prayed for in the alternative 46 C 663=29 C L J 340=17 A L J 405=25 M L T 258=36 M L J 429=21 Bom L R 606=23 C W N 937=50 Ind Cas 216 (P C) But in a suit for ejectment where property is found encumbered, prayer for redemption cannot be allowed 4 O L J 365=41 Ind Cas 171 In a suit to enforce transfer unenforceable under law, transferee cannot recover consideration money as damages 4 O L J 425=41 Ind Cas 435

**8 [R S. C O 20. r 7]** Where the plaintiff seeks relief in respect of

Relief founded on separate grounds and distinctly. several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately

the property the first claim cannot include the second and plaintiff as rule 8 A I R 1929 Nag 347=120 Ind Cas 404

**9. [S 58] (1)** The plaintiff shall endorse on the plaint, or annex

Procedure on admitting plaint thereto, a list of the documents (if any) which he has produced along with it, and, if the plaint is admitted, shall present as many copies to defendants, unless the Court by number of the defendants, or for to present a like number of concise statements of the nature of the claim made, Concise statements or of the relief claimed in the suit, in which

is defendant or any of the defendants such statements shall show in what s or is sued.

or the Court, amend such statements so the plaint

(4) The Court or of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct

N B—For local amendments in Allahabad, Calcutta Madras, Oudh and Rangoon Vide *infra*

**Suit instituted**—A suit is instituted when the plaint is filed and not when it is ordered to be registered 34 C L J 465=66 Ind Cas 923

**Documents**—There is distinction between documents sued upon and documents relied upon by the plaintiff 24 C W N 302=56 Ind Cas 457 There is no provision of law which he relies on the ground that the plaint on which he relies is ill-umens on produce them at a later stage A I R 1930 Lah 480=122 Ind Cas 480

**\*10 [S 57] (1)** The plaint shall at any stage of the suit be returned to Return of plaint be presented to the Court in which the suit should have been instituted.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Procedure on returning plaint.

\* This section has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act 1903 (Ben Act VI of 1903)



no jurisdiction to try a suit it cannot try it on merits. If a decree be passed it can be set aside in revision. A I R 1925 Oudh 735=88 Ind Cas 991. Plaintiff cannot be returned for amendment. After returning it on the Court file the plaintiff must if necessary be ordered to amend it within a certain time. A I R 1921 Sind 165=17 S L R 223=85 Ind Cas 893.

Where a suit under s 92 included claim for possession Court should not return plaint altogether. The Court may allow the plaintiffs, to amend the plaint by striking off the claim for possession or may dismiss the claim with regard to that particular relief in its judgments. A I R 1905 All 683=47 A 770=23 A L J 661=891r. plaintiff's refusal to pay Court fee though for a reject the plaint. If plaintiff pays the requisite turned for presentation to proper Court. A I R 1924 Mad 616=46 A 77 Ind Cas 781. The provisions of N 163=10 L W 535=53 Ind Cas 30 entertain plaint. 18 O C 364=3 by the second class subordinate J correct procedure would be to make an application to the District Judge under the provisions of order 46 rule, 7. 145 Ind Cas 261=A I R 1933 Nag 221. Where the plaint of a pauper suit has been returned by a Munsiff's Court as being undervalued the plaintiff must get fresh leave to sue as pauper from the subordinate Judge. 1933 M W N 197. Out of two claims, one which is out of jurisdiction shall be regarded as a separate claim. A I R 1921 All 193=19 A L J 822=64 Ind Cas 688. see also 54 Ind Cas 655, 54 Ind Cas 364=6 O L J 640=41 Ind Cas 125-4 O L J 374. In case of want of jurisdiction the plaint must be returned for being presented to the proper Court. 41 M 701=(1918) M W N 497=24 M L T 46=25 M L J 27=46 Ind Cas 266. The Revenue Court must Court 6 L W 239=4 is not contested 18 O procedure such as could the suit. A I R 1922 Bom 152=46 B 229=23 Bom L R 1086=64 Ind Cas 919. Where a

suit which is ordinarily to be instituted in a Munsiff's Court is filed in a subordinate Judge's Court who has jurisdiction to entertain the suit and the evidence has been gone into and concluded on both sides but objection is raised when arguments are being heard that the suit ought to have been instituted in the Munsiff's Court, the subordinate judge should bring the hearing to a conclusion and deliver judgment and not direct the plaint to be returned to the Munsiff's Court, even though it is irregular on the part of the plaintiff to have instituted the suit in the subordinate Judge's Court. A I R 1934 Cal 524.

been added in the new code. codes. Still under the old any stage of the suit, where to try the suit. 23 W R 263, 8 C 834, 8 M 62, 2 A 357, 8 B 313 (1 B). The plaint should be at once returned where the court discovers that the valuation is beyond its jurisdiction. A I R 1931 Mad 69=59 M L J 890=(1930) M W N 656=33 L W 68=129 Ind Cas 625, A I R 1927 Pat 258=6 Pat 351=103 Ind Cas 435, A I R 1922 All 424=44 A 686=70 Ind Cas 98. Where suit is not cognisable by Small Causes Court, plaint should be returned at any stage but should not be dismissed. 27 C L J 590=41 Ind Cas 103.

Want of on of  
plaint, suit is be d for  
presentation to, fees  
have been tried and proceed as provided by law. The former court has no such power. A I R 1931 Mad 67=129 Ind Cas 826, see also A I R 1930 Mad 699=31 L W 831=58 M L J 651=126 Ind Cas 111. The jurisdiction in a 1928  
t be  
A I R  
tuted  
could  
be more advantageous to the defendant to have the suit tried in that court. The



A I R 1927 Cal  
 termine jurisdiction  
 787 Where some  
 a court the court  
 jurisdiction and try  
 the case For the struck out part, the plaintiff may file another suit in proper court  
 A I R 1906 Bom 383=28 Bom L R 521=91 Ind Cas 783 Where return of  
 plaint has been ordered, but plaintiff is willing to drop part of his claim to bring his  
 case e plaint is amended.  
 A I 92 Ind Cas 800  
 it has no jurisdiction  
 A I R 1926 Mad  
 280 Where Judge holds  
 dismiss the suit on the  
 turns the plaint, he fails  
 to exercise jurisdiction vested in him by law and the order is open to revision A I  
 R 1906 All 51=48 A 163=24 A. L. J 83=92 Ind Cas 353 Under order 7, rule  
 10 a court which finds that it has no jurisdiction to entertain a suit should return  
 it nil or for presentation to the proper court The suit cannot be dismissed  
 6

1933 A. L. J 667=A I R. 1933 All 745

trial of the suit,  
 it for presentation  
 1 M 197, 5 W  
 R Act X Ruling 87, 8 C 126, 9 B 259, 9 B 266, 7 C L J 152 There is no  
 bar for the exercise of this power even in second appeal 9 B 259, 9 B 266, 10  
 M 211 By virtue of s 107, order VII r 10 applies to appeals A I R 1923 Nag  
 310=8 N L R 53=74 Ind Cas 93 The order of an appellate court returning a  
 plaint is appealable 8 C 126, 3 C W N 243=27 C 275 It is within the power  
 of the High Court to decide questions of jurisdiction necessary for the trial of the  
 suit A I R. 1922 Pat 368=2 P L T 739=64 Ind Cas 495

Limitation—Where a plaint is returned the time to be excluded under s 14  
 Limitation Act, is the period from the date of presentation to the date of return of  
 plaint A I R 1926 Mad 178=22 L W 816=92 Ind Cas 373 Court ordering a  
 return of plaint for presentation to proper Court on payment of additional Court fee,  
 cannot review its order and extend time previously fixed for payment of Court fee  
 W N 804=92 Ind Cas 800 No

he passed his order on 25th March  
 hand over the plaint to him, in  
 pursuance of the order returning the  
 plaint was actually returned by the offic  
 Court was closed owing to an end

laches or delay of the Court  
 were not justified in throwing out  
 1933 Lah 1207=A I R 1933

Lah 711=145 Ind Cas 5=34 P L R 634

Appeal—The return of a plaint does not deprive the plaintiff of his right of  
 appeal, even after filing the plaint in the directed Court 41 M 721=34 M L J  
 397=45 Ind Cas 89 Where on appeal from an order returning a plaint to be

no jurisdiction to try a suit it cannot try it on merits. If a decree be passed it can be set aside in revision. A I R 1925 Oudh 735=88 Ind Cas 991. Plaintiff cannot be returned for amendment. After retaining it on the Court file the plaintiff must if necessary be ordered to amend it within a certain time. A I R 1921 Sind 165=17 S L R 253=85 Ind Cas 893.

Where a suit under s 92 included claim for possession, Court should not return plaint altogether. The Court may allow the plaintiffs, to amend the plaint by striking off the claim for possession or may dismiss the claim with regard to that particular relief in its judgments. A I R 1925 All 683=47 A 770=23 A L J 661=89 Ind Cas 40. A Court should on plaintiff's refusal to pay Court fee though for a claim exceeding its jurisdiction reject the plaint. If plaintiff pays the requisite Court fees the plaint shall be returned for presentation to proper Court. A I R 1924 Mad 616=46 M I L T 34=44 M I L T 92=77 Ind Cas 338, 77 Ind Cas 81. The provisions of N 163-10 L W 535-531 Ind Cas 30. entertaining plaints 18 O C 364=31 by the second class subordinate Judge correct procedure would be to mail the provisions of order 46 rule, 4.

Where the plaint of a proper suit undervalued, the plaintiff must get Judge 1933 M W N 197. Out of two claims, one which is out of jurisdiction, shall be regarded as a separate claim. A I R 1921 All 193=19 A L J 822=64 Ind Cas 688. See also 54 Ind Cas 655, 54 Ind Cas 364=6 O L J 640=41 Ind Cas 125=4 O L J 374. In case of want of jurisdiction the plaint must be returned for being presented to the proper Court. 41 M 701=(1918) M W N 497=24 M L T 46=35 M L J 27=46 Ind Cas 266. The Revenue Court must admit the plaint when it is returned to it by the Civil Court. 6 L W 239=42 Ind Cas 483. 18 O C 364-33 Ind could have given the C 1922 Bom 152=46 I suit which is ordinarily

Judge's Court who has jurisdiction gone into and concluded on both sides but objection is raised when arguments are being heard that the suit ought to have been instituted in the Munsif's Court, the subordinate judge should bring the hearing to a conclusion and deliver judgment and not direct the plaint to be returned to the Munsif's Court, even though it is irregular on the part of the plaintiff to have instituted the suit in the subordinate Judge's Court. A I R 1934 Cal 524.

been added in the new code of codes. Still under the old any stage of the suit, where to try the suit. 23 W R

263, 8 C 834. 8 M 62, 2 A 357, 8 B 313 (A B). The plaint should be at once returned where the court discovers that the valuation is beyond its jurisdiction. A I R 1931 Mad 69=59 M L J 890=(1930) M W N 656=33 L W 68=129 Ind Cas 625, A I R 1927 Pat 258=6 Pat 351=103 Ind Cas 435, A I R 1922 All 424=44 A 686=70 Ind Cas 98. Where suit is not cognisable by Small Causes Court, plaint should be returned at any stage but should not be dismissed. 27 C L J 590=41 Ind Cas 203.

**Want of jurisdiction**—Where a court finds that on correct valuation of a plaint suit is beyond its pecuniary jurisdiction the plaint should be returned for whether proper court fees former court has no such so A I R 1930 Mad brought A I R 1928 t or application must be of the suit itself. A I R 1927 Cal 711=46 C L J 46=104 Ind Cas 349. Court in which the suit is instituted cannot return the plaint for presentation to the proper court on the ground that it would be more advantageous to the defendant to have the suit tried in that court. The

07. A I R 1927 Cal  
determine jurisdiction  
Cas 787 Where some  
of a court, the court  
the case For the struck out part, the plaintiff may file another suit in proper court  
33 Where return of  
claim to bring his  
plaint is amended  
2 Ind Cas 800

to try the suit but it should be returned for proper presentation A I R 1926 Mad  
140=22 I W 522=(1923) M W N 771=91 Ind Cas 280 Where Judge holds  
dismiss the suit on the  
urns the plaint, he fails  
open to revision A I  
33 Under order 7, rule  
the plaint for presentation to the proper court The suit cannot be dismissed  
straightway 133 Ind Cas 411=A I R 1931 All 661, see also 129 Ind Cas 826  
-14 I W 117

33 Nag 82,  
arguments  
and return  
jurisdiction and  
where the court  
esentation to a  
29 N L R  
the jurisdiction  
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unts the plain  
r representation

to some other court, which on the plea of the defendants, would have jurisdiction  
1933 A. L. J 657=A I R 1933 All 745

**The return of plaint by appellate court**—Even after the trial of the suit,  
the appellate court is competent to order for the return of the plaint for presentation  
to the proper court 1 B 538, 55 P R 1878, W R (1864) 65, 11 M 197, 5 W  
R Act X Ruling 87, 8 C 126, 9 B 259, 9 B 266, 7 C L J 152 There is no  
bar for the exercise of this power even in second appeal 9 B 259, 9 B 266, 10  
M 211 By virtue of s 107, order VII r 10 applies to appeals, A I R 1923 Nag  
310=8 N L R 53=74 Ind Cas 93 The order of an appellate court returning a  
plaint is appealable 8 C 126, 3 C W N 243=27 C 275 It is within the power  
of the High Court to decide questions of jurisdiction necessary for the trial of the  
suit A I R 1922 Pat 368=2 P L T 739=64 Ind Cas 496

**Limitation**—Where a plaint is returned the time to be excluded under s 14,  
Limitation Act is the period from the date of presentation to the date of return of

persuance of the order returning the  
plaint was actually returned by the office  
Court was closed owing to an epid  
presented on 22nd April, when Court  
the suit holding that

Held that no litigant  
or its office and that  
the plaintiff's suit as barred  
Lah 711=145 Ind Cas 5=34 P L R 634

**Appeal**—The return of a plaint does not deprive the plaintiff of his  
appeal, even after filing the plaint in the directed Court 41 M 721=34 M L  
397=45 Ind Cas 89 Where on appeal from an order

presented to the proper Court, an order is passed remanding the case to the trial Court no further appeal therefrom lies, nor is it liable to a revision 125 Ind Cas 581 High Court can revise the order directing the plaintiff to be returned for representation to proper Court A I R 1930 All 158=(1929) A L J 1157=124 Ind Cas 478 An appeal lies against an order wrongly returning the plaintiff to be presented to the proper Court A I R 1930 Nag 207=13 N L J 4=121 Ind Cas 668 Where a plaintiff is returned by a Civil

1925 Oudh 499=12 O L J 362=2 O W N 499=89 Ind Cas 511 An appeal lies from an order returning a plaintiff for presentation to the proper Court but a second appeal does not lie in such a case 134 Ind Cas 203=32 P L R 362=A I

Court A I R 1933 All 745=1933 A L J 667=A L R 1933 All 537 An appeal is provided under Order 43, rule 1 clause (a) on an order returning plaintiff under Order VII rule 10 The order by the Appellate Court becomes final under 119=24 L W 630=97 Ind Cas 759 An appeal presented should be dismissed as the High Court will in such cases refuse to return the memorandum of appeal A I R 1925 Cal 335=80 Ind Cas 858 Where plaintiff has been returned for presentation to proper Court, the plaintiff can present the same to proper Court even after unsuccessful appeal if it is not barred by limitation A I R 1925 Bom 418=27 Bom 652=89 Ind Cas 68 Order returning a memorandum of appeal to be presented to the proper Court can be revised A I R 1925 Lah 479=7 Lah L J 285=26 P L R 584=90 Ind Cas 603

**Representation**—Where a plaintiff is returned for presentation to proper court, A I R 1931 Mad 8= When a plaintiff is returned for presentation on date of such presentation in continuation of the suit filed 21=30 Bom I R 970=52 B 548=113 Ind Cas 511, A I R 1926 Cal 355=30 C W N 90 The presentation of a plaintiff in another court, after its return by the court to which it is first presented by mistake is a continuation of the original suit and therefore a fresh *Vakallnama* in another court is not necessary A I R 1923 Nag 182=19 N I R 2-6 N L J proper court, to hear the Bom 257= is amended in the meantime increasing the amount of courtfee payable thereunder the plaintiff should be credited with originally paid courtfee A I R 1926 Cal 355=30 C W N 90=91 Ind Cas 862

11 [S 54.] The plaintiff shall be rejected in the following cases—

- where it does not disclose a cause of action,
- where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so,
- where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being

required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so :

(d) where the suits appears from the statement in the plaint to be barred by any law.

N B.—For local amendment in Calcutta, Vide *infra*

Scope—This rule applies to first proceedings only A I R 1930 Nag 224=26 N L R 183=124 Ind Cas 241 This rule is only a rule of procedure and is only meant to secure proper courtfees and stamps A I R 1930 Cal 686=58 C 281=131 Ind Cas 587 An order refusing permission to sue in *forma pauperis* does not come under the rule. A I R 1928 Nag 24=10 N L J 177=105 Ind Cas 30 Provisions of this rule is not exhaustive, plaint may be rejected under s 151 A I R 1924 Oudh 413=11 O L J 260=83 Ind Cas 778 The dismissal of a suit and rejection of a plaint are not identical terms In one case a decree is passed In the other it is merely an appealable order 54 A 525=138 Ind Cas 396=1932 A L J 489=A I R 1932 All 543, see also 59 C 388=138 Ind Cas 613=A I R 1932 Cal 482 This rule read with s 107 (2) would seem to make it clear that the memorandum of appeal should first be returned for correct stamping 1932 M W N 104 Suit not otherwise bad and which has reached the stage of arguments must be dismissed and not rejected A I R 1928 Oudh 495=5 O W N 927=114 Ind Cas 510 It is not absolutely necessary to draw up a decree in an order rejecting a plaint A I R 1929 Lah 83=108 Ind Cas 597 Court can dismiss the suit filed by next friend of minor, if not in minor's interest A I R 1924 Oudh 413=11 O L J 260=83 Ind Cas 778 Plaint must be rejected as a whole but with due discretion A I R 1921 Sind 106=17 S L R 9=80 Ind Cas 938 Proceedings taken in a plaint insufficiently stamped are not bad in law A I R 1928 Lah 221=106 Ind Cas 817 Dismissal for default cannot be set aside on the ground that plaint ought to have been rejected A I R 1924 Pat 271=2 Pat 784

Clause (a)—Does not disclose cause of action—Cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his judgment of the Court It does not contemplate any rule of limitation barring the claim 54 A 525=138 Ind Cas 396=1932 A L J 489=A I R 1932 All 543 A suit should not be wholly dismissed for non compliance with s 80 C P Code A I R 1931 Mad 175=32 L W 810=59 M L J 923=54 M 416=129 Ind Cas 456 In a suit for damages against Railway, omission to give details is not fatal A I R 1929 All 597=1929 A L J 859=51 A 895=119 Ind Cas 95 In a suit to set aside a mortgage decree on the ground that the execution of the mortgage was fraudulent fraud in conduct of mortgage suit need not be alleged A I R 1925 Mad 792=48 M L J 351=(1925) M W N 162=91 Ind Cas 717, A I R 1931 Lah 77=31 P L R 946=131 Ind Cas 129 Where plaint states no cause of action, it must be rejected A I R 1923 Lah 290=75 Ind Cas 165, 64 Ind Cas 919=A I R 1922 Bom . . .

220, 7 C 343, 3 A 766, 15 C

given even though cause of act

1932 Cal 100=6 Cal I I 21=75 Ind Cas 562 Mortgage given Government revenue

for money,

505=35 Ind

A I R 1924

by Appellate

Court operates as *res judicata* 57 Ind Cas 684 If the plaint is defective, suit cannot be dismissed or rejected Court is bound to give time for amendment 1 Pat L T 188=2 U P L R (Pat) 29=55 Ind Cas 445

Clause (b)—This rule

has jurisdiction to try the s

1927 Bom 257=51 B 236

should not be dismissed by

Court 41 Ind Cas 167

133 Ind Cas 654=32 P L

considered to value suits

are not to be taken into

Ind Cas 982, see also 17 B 56, 33 C

only to a case in which

consideration A I R 1924 Cal 969=40 C L J 120=79

734=9 C W N 690. This clause applies

Ind Cas 982, see also 17 B 56, 33 C

relief claimed is undervalued 59 C 388=135 Ind

only to a case in which

Cas 643=A I R 1932 Cal 482 A plaint returned for presentation to the proper Court if again returned on a count of wrongful valuation by the latter Court to the Court which first returned it can not be said to have been filed on the later date of presentation to the Court first returning it A I R 1929 Lah 409=30 P L R 206=11 Lah L J 251=116 Ind Cas 317 Where a Court finds that on a correct valuation of the plaint it is not cognizable by it, the proper thing to be done is to return the plaint so that it may be presented to the proper Court. It has no jurisdiction to ask the plaintiff to amend his valuation and pay additional court fee and then return the plaint A I R 1931 Mad 67=61 M L J 438=129 Ind Cas 269 This rule controls Court fees Act, s 7 sub-section (4) A I R 1934 Cal 448 (F B)

Clause (c)—The words 'properly valued' are sufficiently wide to cover the case where a proper valuation has been arrived at by the Court, equally with the case where the proper valuation has been stated by the plaintiff himself 36 C W can make proper plaintiff to supply of the plaintiff

161, see also A I R 1932 Pat 111=133 Ind Cas 449=A L R 1932 Pat 451 The question whether a plaint ought to be rejected under order 7, rule 11 can not depend on a thing which the defendant may say in his written statement The defect which entitles the Court to reject the plaint ought to be apparent on the face of the plaint, and it is the duty of the Court under order 7 to examine a plaint before issuing summons The discovery of the patent defect should, as a rule, not be deferred until the summons has gone out and the written statement has come in A I R 1933 Sind 1=142 Ind Cas 501 the ordinary way and subsequently when he applied to continue the suit in *forma pauperis* allow him to continue the suit, which has been instituted in *forma pauperis* A L R 1933 Cal 567=60 C 827=57 C L J 441 see also A I R 1933 Mad 498=64 M L J 728=1933

2/4-12 1923 All 538=45 A 518=21 A L J 387=74 Ind Cas 358, A I R 1922 Pat 56=3 P L T 142=70 Ind Cas 373

Order rejecting plaint for non payment of fee cannot be restored if signed by Court but is subject to review A I R 1923 Pat 514=2 Pat 504=4 Pat L T 261=72 Ind Cas 629 In arbitration suit failure to pay stamp duty is distinguished from Court fee should not incur dismissal of suit after decree has A L J 493=50 Ind Cas 886 No after the suit is dismissed A I R 266 The Lower Court returned the 78010 make up the proper court fee of the court and returned rect The court held that the original plaint would not at the outset and reject lower court was wrong and action of his claim in order to

bring it within a certain court fee 1931 M W N 677=A I R 1931 Mad 716=  
134 Ind Cas 815=34 L W 252

by any law, plaint should be rejected  
✓

version is the only one which should be considered  
198=22 N L R 147=98 Ind Cas 22 The L  
the form of the suit and the relief claimed are the only criterion for the applicability  
of a particular article A I R 1927 Nag 10=22 N L R 147=9 N L J 198=  
98 Ind Cas 22 It may be doubtful whether the Legislature has intended that,

52,=1931 A L J 189=A I R 1931 All 543=138 Ind Cas 596=A L R 1933 All  
689 There is revision from an order wrongly dismissing a suit as time barred  
A I R 1928 Lah 274=115 Ind Cas 757

**Appeal**—High Court cannot call for revision of a plaint which is rejected for  
there is scope for appeal or rejection A I R 1930 Pat 277=15 P L T 172=122  
Ind Cas 152 An order passed in appeal on rejection of a plaint that no appeal  
lies is also a decree and is therefore  
A I R 1927 Cal 226=49 C L J 81  
appeal from an order disallowing  
Court fees to be paid on a fixed  
A I R 1909 Lah 125=112 Ind Cas  
High Court order holding that cer  
1925 Mad 772=48 M L J 514=1925 M W N 104=87 Ind Cas 25 Appeal on  
rejection of plaint for undervaluation cannot be rejected for deficiency of stamps  
without ascertaining value of the suit even though valuation is not changed in  
appeal A I R 1926 Cal 427=87 Ind Cas 651

**12 [S 55]** Where a plaint is rejected the Judge shall record  
an order to that effect with the reasons for  
Pro edure on rejecting plaint such order

**Notes**—A memorandum of appeal can be rejected under order XL I rule 3 or  
under this rule on the grounds set forth under rule 11 of order VII But when it  
is so rejected the reasons for rejection ought to be recorded 15 A 367

**13 [S 56]** The rejection of the plaint on any of the grounds  
herembefore mentioned shall not of its own  
force preclude the plaintiff from presenting  
Where rejection of plaint does not preclude presenta  
tion of fresh plaint a fresh plaint in respect of the same cause  
of action

**Notes**—Unless it is barred by limitation a fresh suit can be brought on the same  
subject matter even after the rejection of the plaint under order 7 rule 11 14 W R  
dismissal of a suit under ss  
tion of a plaint 12 A 129  
trial, a subsequent suit on  
1d Cas 694=(1920) M W  
N 616=12 L W 457 Not amending plaint rejected for multifariousness within  
time given by court is not fatal to fresh suit for same cause A I R 1927 Lah 83=  
99 Ind Cas 538

#### *Documents relied on in plaint*

**14 [S 59] (1)** Where a plaintiff sues upon a document in his posses  
sion or power he shall produce it in Court  
Production of document on when the plaint is presented, and shall at the  
which plaintiff sues same time deliver the document or a copy  
thereof to be filed with the plaint

**(2)** Where he relies on any other documents (whether in his possession  
or power or not) as evidence in support of his  
List of other documents claim, he shall enter such documents in a  
to be added or annexed to the plaint

**Scope**—It is mandatory to produce along with plaintiffs accounts and other documents basing his claim. Other documents of evidence must be produced at the hearing. Loh 6=6 P W R 1920=19 P L R 1920=57 Ind Cas 187, see hearing; Loh 6=6 P W R 1920=19 P L R 1920=57 Ind Cas 187, see hearing; Loh 6=6 P W R 1920=19 P L R 1920=57 Ind Cas 187, see hearing.

tence at the date of suit and necessarily excuse rejection of suit 44 Ind Cas. 21 Documents in possession of third party may be produced during the conduct of the suit 38 P W R 1916-37 Ind Cas 619 Plaintiff not suing on documents such as are not filed along with plaint cannot create by them new rights Document can be treated as evidence only 32 M L J 137=26 C L J 273=21 C W N 553=19 Bom L R 394-35 Ind Cas 243 (P C) Documents not filed with plaint may or

to file a list of \_\_\_\_\_ The petitioner  
objected to the application on the ground that until issues had been framed or until  
defence had been filed he did not know what documents must be relevant. *Held*  
that the petitioner was bound under s 59 of the C P Code of 1882 to file a list of  
all letters and documents in his possession or power which he relied on relating to  
the adultery charge. 11 P R 1902. None of the rules under order 7 require to  
allow documents which are part of the evidence of the suit to be annexed to the  
plaint. 38 C 418-134 Inf Cas 538-A I R 1931 Cal 458. The right of in-  
spection under order 11 rule 15 extends to documents entered in the list annexed to  
the plaint. A I R 1931 Mad 825=61 M L J 704

Statement, in case of documents not in his possession or power

N B—For local amendment in Oudh vide *infra*

16. [S. 61] Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, Suits on lost negotiable instruments and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

**Notes**—Where plaintiff bases his claim on a lost *hundis* or other negotiable instruments he must furnish security against possible claims. 16 Ind Cas 769=166 P L R 1912=273 P W R 1912. In a suit on promote if it is not returned to the defendant, court may refrain by way of security for paying money on promote to plaintiff. 2 L W 147=59 Ind Cas 363.



17 [S 62] (1) Save in so far as is otherwise provided by the \*Bankers Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies

(2) The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed

N B—For local amendment in Allahabad, *vide infra*

Notes—This section does not require the Court to inspect the document, but the judge or the officer should mark it for identification 3 B 92, see also 15 B 687, 57 Ind Cas 185=6 P W R 1920=19 P L R 1920=1 Lah 6

18 [S 63] (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit

(2) Nothing in this rule applies to documents produced for cross examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory

N B—For addition of new rules in Allahabad Bombay Lahore, Oudh and Patna *Vide infra*

Scope—Although the Courts are vested with a discretion under Act VII of 1859 as to the reception of documents not submitted with the plaint sufficient reason must be assigned for the delay in producing them 98 P R 1867 The policy underlying this rule is to exclude evidence, as to the existence of which at the date of the suit there may be reasonable doubt and as to the genuineness of of which suspicion might rightly arise because it was produced at a late stage 13 C W N 797=10 C L J 33=2 Ind Cas 946, see also 12 C W N 312=8 C L J 147 The words of this rule are imperative 1 Ind Jur O S 125, 1 Hyde 145, W R 1864 Act X 67, 18 W R 515 Certified copies does not come within the purview of this rule A I R 1922 Pat 322=67 Ind Cas 686 The Court may also accept a registered document 4 M 417 Documents relied upon in plaint need be entered in the list unless their existence is known to the plaintiff If such document is admitted in evidence without their being objected to, such objections cannot be allowed for the first time in appeal A I R 1921 Nag 49=4 N L J 33=63 Ind Cas 968, see also 6 C 666=7 C L R 497 Appellate Court will not interfere with refusal to admit document if discretion is not properly exercised A I R 1927 Cal 168=44 C L J 385=99 Ind Cas 258 Not production of documents does not check working of Order XVII, rule 3 A I R 1924 Lah 608=76 Ind Cas 254

Where relevant documents containing deposition of witnesses, in a former suit, filed by the plaintiff after the plaint, but before the examination of the witnesses, it was held plaintiff was entitled to cross examine witnesses cited on his behalf Defendant's witnesses are also hostile witnesses under Order VII, rule 18 (c) 54 Ind Cas 311, see also 77 Ind Cas 848=(1922) Pat 300=4 U P L R 1st 97= A I R (1922) Pat 569=4 Pat L T 322

## ORDER VIII.

*Written Statement and Set-off.*

1. [S. 110] The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence

N B—For local amendment in Lahore and Oudh, *vide infra*

Scope—Ordinarily written statements should be submitted before the first hearing of the suit 5 W R Act X 39, 4 B 576 But the Court may extend time for filing the same 4 B 56 A written statement filed at or before the first hearing requires no stamp duty 12 C I R 367, 5 B 400 Where the Court calls for a written statement after the first hearing, it is also exempt from stamp duty 5 B 400 In Small Causes Court suits written statement is not necessary in the absence of specific notice in the summons But, should such a statement be found necessary, time should be granted without burdening the defendant with adjournment costs A I R 1930 Oudh 171=4 Luck 529=7 O W N 894=121 Ind Cas 894 Exaggeration of claims by the parties does not render them to criminal prosecutions 129 Ind Cas 111=32 Cr L J 238 Written statement should be filed by the defendant or by his agent Filing of written statement on behalf of the defendant by a stranger is not sanctioned by the Code 53 A. 466=131 Ind Cas 548=1931 A L J 181=A I R 1931 All 333

2 [R S. C O. 19, r 15] The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality

Scope—In written statements it is necessary to plead facts only and not points of law A I R 1930 Bom 511=32 Bom L R 1178=128 Ind Cas 609, see also A I R 1923 Cal 578=76 Ind Cas 603 Defendants having admitted execution of documents raised, (Ind Cas 980 Unless suit is barred enquiry as regards bar by limitation, plea of limitation under special law must be pleaded specifically 28 C L J 216=46 Ind Cas 787, see also 69 Ind Cas 194, 34 C L J 236=60 Ind Cas 280 There when the basis of the claim is ground of fraud release limitation, etc legal necessity in a mortgage suit by the manager of a joint Hindu family cannot in an appeal be raised for the first time A I R 1922 Pat 356=3 P L T 367=1 Pat 612=67 Ind Cas 790

3 [R S C O 19 r 17] It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages

Scope—Order VIII rule 5 should be considered along with rule 3 A. I R 1925 Mad 950=22 L W 26=85 Ind Cas 900 In a mortgage suit defendant putting plaintiff to proof of mortgage deed means requiring him to prove that it was duly executed 6 O L J 600=54 Ind Cas 107

Except damages—In 43 C 1001=20 C W N 1192=34 Ind Cas 235, Sanderson C J said 'It should be noted that in this case where the claim is for unliquidated damages, even of a written statement had been put in, it would not have been necessary for the defendant to deny specifically the damages, it would have been quite sufficient if they had pleaded generally to the damages and in that case

even though all other material facts were admitted in the defence, there would still have been the necessity for some enquiry to be made either by the court which heard the case, or by the official referee or some other person to whom the court might refer the enquiry, to ascertain the amount of damages to which the plaintiffs would be entitled."

4 [R S C O. 19, r 19] Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Scope—Pleadings should be specific A I R 1929 All 721=(1929) A L J 1153=122 Ind Cas 598, see also 115 Ind Cas 425=29 P L R 715=A I R 1928 Lah 769, A I R 1923 Cal 578=76 Ind Cas 603 Under certain circumstances an evasive denial may tantamount to admission 113 Ind Cas 370=A I R 1929 Sind 7 Denial by defendant of plaintiff's allegation as to the date of certain event is no evasive denial, nor is it admission notwithstanding the failure of the defendant to give therein his own date A I R 1924 Mad 838=47 M. L. J 520=20 L W 399=(1924) M W N 788=82 Ind Cas 584

5 [R S C O. 19, r 13] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Scope—This rule implies that the defendant making written defence shall make it specific. But this rule has no application where the defendant had not put in any written defence. A I R 1930 Pat 293=126 Ind Cas 369, A I R 1928 Lah 769=10 Lah L J 339=29 P L R 715=115 Ind Cas 425 Where allegation in plaint is not denied specifically or by implication, it is deemed as admitted and the plaintiff need not prove it unless ordered by Court 49 Ind Cas 783; see also A I R 1923 Nag 7=68 Ind Cas 664, 49 Ind Cas 733 This rule should be read with rule 3 A I R 1925 Mad 950=22 L W 26=85 Ind Cas 900 Though wording of this rule is defective, it clearly means that evasive denials of facts alleged in the plaint should be taken as admission of alleged facts A I R 1927 All 225=96 Ind Cas 778, see also A I R 1924 All 180=46 A. 55=21 A L J 830=79 Ind Cas 562, A I R 1929 Sind 7=113 Ind Cas 370, but see 71 Ind Cas 779=A I R 1923 Lah 409 Provisions expressly made applicable to allegations in plaint, and to defendant's failure to deny them should not be applied to an oral pleading of the defendant so as to infer from the absence of a reply by plaintiff that the latter accepted it as true A I R 1925 Nag 380=85 Ind Cas 768

Omission to deny in written statement plaintiff's title does not amount to constructive admission of plaintiff's title. are not given strict construction. High Court inspite of exclusion on the ground, plaint except in cases

8, rule 5 is limited in its application. In a suit for recovery of land omission to deny the plaintiff's title thereto, does not mean that the plaintiff had no cause of action against the defendant. written statement in favour of plaintiff. M L J 724 would be wrong.

M W N 512=28 M L T 213=60 Ind Cas 554 Under order VIII rule 5 omission to deny allegation of facts is not admission in case of minor defendants 47 Ind Cas 589=35 M I J 372 Defendant's statement that they do not admit plaintiff's allegation as to the date of a certain event is not evasive denial or admission notwithstanding that defendants do not give their own date for the event A I R 1924 Mad 838=47 M L J 520=20 L W 399=(1924) M W N 788=82 Ind Cas 584 It is not necessary to prove document relied upon by a party and not specifically denied by the other 41 B 89=18 Bom L R 946=38 Ind Cas 14 A fact admitted by the defendant's mukier is not conclusive before the framing of the issues and may be required to prove otherwise A I R 1924 Lah 744=6 Lah L J 358=82 Ind Cas 617 It cannot be held that the pleading 'not known' is tantamount to the pleading 'not admitted' A I R 1931 All 423=133 Ind Cas 414 Where the statement in the written statements admits plaintiff's claim, no proof on the plaintiff's part is necessary 131 Ind Cas 206=12 L L J 293=A I R 1931 Lah 203 A recital in the written statement that a certain allegation in the plaint is not admitted can not be deemed to be an admission, but amounts to len it by necessary implication 55 A 700=145 Ind Cas 802=1933 A L J 998-V I R 1933 All 521

6 [S. 111] (1) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off

(2) The written statement shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set off, but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set off

#### Illustrations

(a) A bequeats Rs 1000 to B. B dies and D takes the legacy, for which they fill with respect to the payment of the Rs 1000

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase money by C against B the latter cannot set off the debt against the price, for C fills two different characters one as the vendor to B, in which he sues B, and the other as representative to A

(c) A sues B for compensation on account of trespass. B holds a promissory note for Rs 1000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so for, as soon as A recovers both sums are definite pecuniary demands

(f) A and B sue C for Rs 1000

(g) A sues B and C for Rs 1000

(h) A owes the partnership firm of B and C a debt of Rs 1,500. A sues C for a debt of Rs 1,500. B sues A for a debt of Rs 1,500.

N B—For local amendment in Patna vide *infra*

**Equitable Set off**—This rule deals with legal set off only and does not apply to equitable set off. 6, P W R 1917=62 P R 1917=39 Ind Cis 508. An equitable set off can be claimed independently of the specific provisions of the Civil Procedure Code. 128 Ind Cas 763=A I R 1930 All. corresponding section in Act VIII of 1859 the High Court of Madras. "These are pro only, and whilst we think that the language right of set off, we ought at the same time to say that according to our present opinion the Civil Procedure Code was not intended to take away right of set off, whether legal or equitable, which parties would have independently of its provisions. It seems to us that the right of set-off will be found to exist not only in the cases of mutual debts and credits but also where cross demands arise out of one and the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit." 2 M 296, see also 3, C W N 17=132 Ind Cis 195=A I R 1931 Cal 358, 17 C W N 1050=19 C L J 152, 11 C 557, 16 C 711, 40 B 407, 20 C 527, 7 A 284, 15 A 9, 27 A 143, 8 C W N 174, 19 C W N 1183, 20 W R 410. Claim of equitable set-off can be allowed independently of the provisions of C P Code and no Court fees need be charged. A I R 1930 All 875=128 Ind Cas 763. The principle underlying the equitable set off is that even if it is not ascertained sum it must arise out of the same transaction so as to make it inequitable that the plaintiff should recover and A I R 1930 Lah 808=126 Ind Mad Cas 787 90 Ind Cis 465=49 Mad 830. Under order XX r 19 eq Court for in a suit for account. A I R 1931 Cal 358=35 C W N 17=132 Ind Cas 195.

**In a suit for recovery of money**—Every suit in which the final decree is for money is a suit for recovery of money. 10 A 587. It is doubtful whether a mere suit for account is a suit for recovery of money. 13 I A 48 (56)=13 C 124. A suit for enforcement of mortgage security is not a suit for recovery of money. 8 C W N 174. Set-off cannot be claimed in a suit for damages for breach of contract. 2 L B R 196. Even in a money suit set off cannot be allowed unless the sum is ascertained and legally recoverable. 1 P L W 615=2 P L J 451=40 Ind Cas 350, see also 38 Ind Cas 203. That the suit is based on negotiable instrument is no bar to a claim for set off by the defendant. A I R 1931 Nag 12=130 Ind Cas 87. In a suit for money the defendant claimed to set off a sum of money under a mortgage in his favour and in which a current decree had been passed directing an account to be taken of what will be due to the mortgage, held as the amount has not been ascertained and as there is difficulty in treating the written statement to set off as a claim the defendant is not entitled to claim set off. A I R 1931 Cal 23=129 Ind Cas 420=57 C 855. A suit on a promissory note accompanied by deposit of title deeds is a claim for recovery of money as the words suits for recovery of money do not necessarily mean a suit for money pure and simple. A I R 1931 Rang 13. Set off under rule 6 has wider meaning than English set off, 43 A set-off under order 8, rule 6, the plaintiff is denied. Set off a decree may be granted to the dismissed. *Ibid* Court must treat defendant's claim under order 8, rule 6, as plaint and grant decree under order 20 rule 19 (1). *Ibid* Where a plaintiff sues several defendants, alleging a joint debt, a defendant who denies the joint debt may plead a set off due to him alone. The illustration (g) to this rule does not prohibit this. There is nothing in the wording of this rule to show that such a set off could not be pleaded. *Ibid*

does not mean sum admitted by the of unliquidated damages that is the It excludes both unliquidated damages

2=130 Ind Cas 87, see also 62 Ind Cas 340, 22 A L J 844, 46 A 922, A I R 1924 All 822 12 S L R 70=49 Ind Cas 193. Ascertained sum means conclusive and indisputable amount. 37 Ind Cas 367. A counter claim for a definite amount by way of set off though not admitted is a claim for an ascertained sum. A I R 1933 Rang 13. Preliminary

decree for sale directing accounts to be taken of what is due under the mortgage cannot be a set off under Order VIII, rule 6 A I R 1931 Cal 23=57 C 855=129 Ind Cas 420 Set off claimed under the basis of damages to be ascertained after the protracted enquiry cannot be allowed as such A I R 1929 All 52=111 Ind Cas 790 Party can set off the costs awarded to him by one order in the same suit as against those awarded to another party by a subsequent order in the same suit 2 P L W 62=39 Ind Cas 888 Sums specified are not necessarily ascertained, so that they may be legally recoverable within the meaning of Order VIII, rule 6 A I R 1926 Sind 225=21 S L R 385 In a money suit set off cannot be allowed unless the sum is ascertained and legally recoverable 40 Ind Cas 350=2 P L J 451=(1917) Pat 279, 38 Ind Cas 203

**Counter Claim**—Distinction between set off and counter claim is that set-off is for ascertained sum or it must arise out of the same transaction as the plaintiff's claim. Counter claim need not arise out of the same transaction. Set off is ground of defence and it should be pleaded in the written statement. Counter claim is not any defence to the plaintiff's claim; it is good ground of independent action.

Limitations is pleaded in defence of set off his plea must prove that the set off was barred on. In the case, however, of counter claim it is enough for the plaintiff to prove that the counter claim was barred when it was pleaded A I R 1923 Bom 113=24 Bom L R 998=77 Ind Cas 943, see also 66 Ind Cas 209=48 C 817=25 C W N 800=A I R 1921 Cal 67, 67 Ind Cas 326=24 Bom L R 328=47 B 182=A I R 1923 Bom 24 A I R 1934 All 427, A I R 1923 P C 114=40 C L J 1=28 C W N 689=50 A 162=4 Lah 281=L T 349=40 C L J 1 (P C) cross suit A I R 1924 Rang m must be within time at the date

provision is made by C P Code, as 371 No provides for set off 80 Ind Cas suits though it of the tenancy land cannot be a set off in a suit for contribution of rent between by manager plaintiffs and the defendant b I R 1926 Nig 155=8 N L J 103=92 Ind t allowed to set up a counter claim n Court may grant equitable relief to the defendant in an appropriate case and enable the defendant to claim compensation for loss occasioned by the act of the plaintiff 59 C 833 Where defendant makes a counter claim to the plaintiff's suit and the Court decides to hear two together but the plaintiff withdraws his suit with liberty to bring a fresh one, the counter claim can be continued as a plaint and proceeded on merits A I R 1934 Rang 160

**Same Character**—Claim to set off is not allowable where the parties claiming are in different capacities A I R 1927 Lah 228=8 Lah 105=28 P L R 427=101 Ind Cas 762 see also 39 B 131=16 Bom L R 746, 5 A 299 Where capacities of the parties are not varied defendant is entitled to set off wages due to him by the plaintiff 41 C 163=19 Bom L R 67=39 Ind Cas 17 Where a principal is also a banker under another name in a suit by principal against the agent for sale proceeds in agent's hands agent can set off the amount deposited in the bank A I R 1921 P C 103=15 L W 201=24 C W N 1004=76 Ind Cas 944 Employer cannot counter claim to set off month's salary as damages in the same suit 39 A 362=15 A L J 262=38 Ind Cas 206. In a rent suit, tenant can set off commission for rent collected 38 Ind Cas 71

**Omission to claim set-off**—Omission to claim an equitable set off or a counter claim does not bar a fresh suit A I R 1926 Mad 1020=51 M L J 253=97 Ind Cas 437 see also 90 Ind Cas 465=49 M L J 192=125 M L W N 228=A I R 1925 Mad 830 Set off which is not claimed as such in the suit cannot be so claimed in execution A I R 1924 Oudh 434=11 O L J 517=27 O C 248=81 Ind Cas 651 Omission to plead set off does not bar a fresh suit but it was so pleaded, and was within the competence of the Court, but was not allowed by the Court, bars a fresh suit in respect of the whole or part of it as the case may be 12 L W 173=60 Ind Cas 226

**Limitation**—If statute of limitation is pleaded in defence of set off the plaintiff in order to establish his plea must prove that the set off was barred when the plaintiff commenced his action A I R 1923 Bom 113=24 Bom L R 998=77 Ind Cas 943, see also 7 A 284, 39 M 939, 31 P L R 107=122 Ind Cas 490 But time barred debt may be claimed as equitable set off A I R 1926 Pat 77=7 P L T 158=90 Ind Cas 783, see also 14 C W N 170, 12 C W N 60, 19 C W N 1183, 32 C 576 Expiry of the period of limitation only bars the remedy and does not extinguish the right Limitation affects only the plaintiff and not the defendant A I R 1926 Lah time of filing written statement 47 Ind Cas 938, 44 Ind Cas 428=34 M L J 10 L W 183=26 M L T 276=53 Ind Cas 234

**Not exceeding the pecuniary jurisdiction.**—The whole of the sum claimed as set off should be within the jurisdiction of the court A I R 1925 Rang 22=2 Rang 140 84 Ind Cas 971=A I R 1921, Rang 65=2 Rang 462

21 C 419, .  
the set-off

the plaintiff, . . .  
cognizance of the court A Court cannot entertain a set off if its nature is such that if it is made the subject matter of a separate suit, it will not come within its jurisdiction But a court can entertain a set-off as a defence to an action, even if it would have no territorial jurisdiction in respect of the subject matter of the set off if a suit were filed in respect of such subject matter In this respect there is a distinction between set off and counter claim. In one

his option, subject to certain rules in order to avoid multiplicity of proceedings between the parties 34 Bom L R 1401

[A I R. 1934 All 115

**Attorney's lien**—No set off can be allowed at least to the extent of the lien when a creditor's petition against the debtor is dismissed with costs to be debtor A I R 1930 Bom 516=32 Bom L R 1076=128 Whether an attorney's lien should or should not be allowed to intervene between the parties to a suit is in India a matter of discretion Attorney allowed to prevail over rights of parties to a suit 34 Bom L R 1401 1932 Bom 619=A L R 1932 Bom 1195

**7. [R. S. C. O 20, r 7]** Where the defendant relies upon several grounds of defence or set off founded on separate grounds separate and distinct facts, they shall be stated as far as may be, separately and distinctly

**8 [New]** Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set off may be raised by the defendant or plaintiff, as the case may be in its written statement.

degree for sale directing accounts to be taken of what is due under the mortgage cannot be a set off under Order VIII, rule 6 A I R 1931 Cal 23=57 C 85=129 Ind Cas 420 Set off claimed under the basis of damages to be ascertained after the protracted enquiry cannot be allowed as such A I R 19-9 All 52=111 Ind Cas 790 Party can set off the costs awarded to him by one order in the same suit as against those awarded to another party by a subsequent order in the same suit 2 P L W 62=39 Ind Cas 883 Sums specified are not necessarily ascertained, so that they may be legally recoverable within the meaning of Order VIII, rule 6 A I R 1926 Sind 225=21 S L R 38, In a money suit set off cannot be allowed unless the sum is ascertained and legally recoverable 40 Ind Cas 350=2 P L J 451=(1917) Pat 279, 38 Ind Cas 203

**Counter Claim.**—Distinction between set off and counter claim is that set-off is for ascertained sum or it must arise out of the same transaction as the plaintiff's claim Counter claim need not arise out of the same transaction Set off is ground of defence and it should be pleaded in the written statement Counter claim is not any defence to the plaintiff's claim it is good ground of independent action against the plaintiff If the statute of Limitations is pleaded in defence of set off the plaintiff in order to establish his plea must prove that the set off was barred when the plaintiff commenced his action In the case however of counter claim it is enough for the plaintiff to prove that the counter claim was barred when it was pleaded A I R 1923 Bom. 113=24 Bom L R 998=77 Ind Cas 943, see also 66 Ind Cas 209=48 C 817=25 C W N 800=A I R 1921 Cal 67, 67 Ind Cas 326=24 Bom L R 328=47 B 182=A I R 1923 Bom. 24, A I R 1934 All 427, A C 2

A I R. 1925 Nag 445=89 Ind Cas 371 No Order 8 for counter claims in money suits though it provides for set off 80 Ind Cas 192 Claim to share of profits realised by manager of the tenancy land cannot be a set off in a suit for contribution of rent between the plaintiffs and the defendant but can be allowed as a counter claim A I R 1926 Nag 15=8 N I J 20=92 Ind Cas 74 Ordinarily a defendant is not allowed

fresh one the counter claim can be continued as a plaint and proceeded on merits A I R 1934 Rang 160

**Same Character.**—Claim to set off is not allowable where the parties claiming are in different capacities. A I R 1927 Lah 2-8=8 Lah 105=28 P L R 427=101 Ind Cas 762 see also 39 B 131=16 Bom L R 746, A 299 Where capacities of the parties are no varied, defendant is entitled to set off wages due to him by the plaintiff 41 C 163=19 Bom L R 67=39 Ind Cas 17 Where a principal is also a banker under another name, in a suit by principal against the agent for sale proceeds in agent's hands agent can set off the amount deposited in the bank A I R 1921 P C 103=15 L W 201=24 C W N 1004=76 Ind Cas 944 Employer cannot counter claim to set off month's salary as damages in the same suit. 39 A 562=15 N L J 26=38 Ind Cas 206. In a rent suit, tenant can set off commission for rent collected 38 Ind Cas 71

**Omission to claim set-off.**—Omission to claim an equitable set-off or a A I R 1926 Mad 10-0=51 M L J 46,=49 M L J 192=19, M W N h is not claimed as such in the suit cannot Judh 454=11 O L J 517=27 O C 248=81 Ind Cas 631 Omission to plead set off does not bar a fresh suit but it was so pleaded, and was within the competence of the Court, but was not allowed by the Court, bars a fresh suit in respect of the whole or part of it as the case may be 12 L W 173=60 Ind Cas 226



**Limitation**—If statute of limitation is pleaded in defence of set off the plaintiff in order to establish his plea must prove that the set off was barred when the plaintiff commenced his action A I R 1923 Bom 113=24 Bom L R 998=77 Ind Cas 943, see also 7 A 284, 39 M 939, 31 P L R 107=122 Ind Cas 490 But time barred debt may be claimed as equitable set off 226 Pat 77=7 P L T 153=90 Ind Cas 78r N 60, 19 C W N 1183, 32 C 576 the remedy and does not extinguish it and not the defendant A I R 1926 La 844 Claim time barred at the time of filing written statement cannot be allowed to be set off 47 Ind Cas 938, 44 Ind Cas 428=34 M L J 32, 42 M 863=37 M L J 193=10 L W 183=26 M L T 276=53 Ind Cas 234, 62 Ind Cas 852=41 M L J 370.

**Not exceeding the pecuniary jurisdiction**—The whole of the sum claimed as set off should be within the jurisdiction of the court A I R 1925 Rang 22=7 Rang 349=84 Ind Cas 956 84 Ind Cas 971=A I R 65=2 Rang 462 see also 20 C 527 3 N 1890, 21 C 419 14 1890, the set-off which the plaintiff cognizance of the set-off must also be within the jurisdiction of the court cannot entertain a set off of this nature is such that if it is made the subject matter of a separate suit, it will not come within its jurisdiction But a court can entertain a set-off as a defence to an action, even if it would have no territorial jurisdiction in respect of the subject matter of the set off if a suit were filed in respect of such subject matter In this respect there is a distinction between set off and counter claim In one sense both are cross actions but a set-off is also a ground of defence if established, it accords answers to the plaintiff's claim either wholly or *pro tanto*, for a set off is really a debt claimed by the defendant against the plaintiff balancing debt claimed by the plaintiff against the defendant A counter-claim on the other hand is really a weapon of offence and enables a defendant to enforce a claim against the plaintiff as effectually as in an independent action It is allowed to be pleaded by the defendant at his option subject to certain rules in order to avoid multiplicity of proceedings between the parties 34 Bom L R 1401

**Court fee**—Court fee is payable for the excess over plaintiff's claim in case of claim to set off exceeding plaintiff's claim and if the decree for the excess is prayed for A I R 1927 Nag 74=97 Ind Cas 916 What is a plea of satisfaction cannot be a set off and the Court fee was unnecessary A I R 1927 Nag 120=9 N L J 227 A legal set off requires a Court fee because it is a claim and might be established by a separate suit in which a Court fee would have to be paid But there is no such fee required for a set off which is for an amount that may

of the plaintiff where a Court fee has been set off may however only be claimed by the plaintiff's claim

207 115

of Attorney's costs to be paid 34 Bom L R 1076=128 Ind Cas 24 Wh 34 Bom L R 1076=128 Ind Cas 24 between the parties to a suit is in India a matter of discretion Attorney's lien is not allowed to prevail over rights of parties to a suit 34 Bom L R 1429=A I R 1932 Bom 619=A I R 1932 Bom 1195

**7. [R. S. C. O 20, r 7]** Where the defendant relies upon several distinct grounds of defence or set off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly

**8 [N. w.]** Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set off may be raised by the defendant or plaintiff, as the case may be, in its written statement.

9 [S 112] No pleading subsequent to the written statement of a defendant other than by way of defence to a Subsequent pleadings set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same

Notes—In order to file pleadings subsequent to written statement, order of Court is necessary A I R 1925 Bom 390=27 Bom L R 890=91 Ind Cas 272 But Court has discretionary power to allow additional written statement setting up totally new case (1918) Pat 323=48 Ind Cas 746 Order VIII, rule 9 and Order XIV, rule 5 preclude party to adduce evidence with regard to any plea unless if written statement is amended and issues framed accordingly 25 M L T 257=(1919) M W N 23=9 L W 198=49 Ind Cas 273

10 [S 113] Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit

Procedure when party fails to present written statement called for by Court

N B—For addition of new rules in Allahabad Lahore Oudh and Patna *vide infra*

Scope—This rule applies only on failure to file written statement required by Order 8 rule 9 and not in other cases A I R 1925 Oudh 567=12 O L J 532=2 O W N 391=88 Ind Cas 540, see also A I R 1928 Rang, 261=6 Rang 463=112 Ind Cas 438 This rule enables the Court to strike out the statement of the 1st defendant on his failure to file written statement J N 241=40 Ind Cas 223 Order 17 rule 10 would be interpreted otherwise decree M L J 504=39 M L T 273=1 party A I R 1929 Lah 459=115 Ind Cas 31 Provisions of this rule apply to corporations as well as to other litigants A I R 1929 Lah 459=115 Ind Cas 31 Order refusing to strike out the plaint is not subject to appeal A I R 1931 Lah 77=131 Ind Cas 129=31 P L R 946

## ORDER IX

### *Appearance of Parties and Consequence of Non appearance.*

1 [S 96] On the day fixed in the summons for the defendant to appear and answer, the parties shall be present in attendance at the Court and their respective pleadings shall be heard unless the day fixed by the Court

Scope of Order IX.—The provisions order IX are not applicable to execution proceedings A I R 1929 Lah 744=121 Ind Cas 189, see also A I R 1925 Oudh 552=28 O C 158=85 Ind Cas 450 A I R 1925 Cal 510=41 C L J 286=79 Ind Cas 351, A I R 1921 Sind 55=17 S L R 105=83 Ind Cas 749, 8 S L R 325, 5 P L W 203, 15 A 84, 18 B 429, A I R 1926 Mad 412=50 M L J 220=23 L W 227=(1926) M W N 245=92 Ind Cas 533, A I R 1927 Cal 420=100 Ind Cas 518, A I R 1926 Cal 735=43 C L J 285=94 Ind Cas 172 This order is also not applicable to Provincial Insolvency Act regarding annulment order A I R 1926 Mad 942=49 M 935=51 M L J 209=(1926) M W N 674=97 Ind Cas 706 Order IX also does not apply to Order X rule 4. A I R 1921 Mad 417=14 L W 15=63 Ind Cas 961 This order is not applicable where Courts sit after prescribed times without consent of parties and pleaders A I R 1925 Pat 772=4 Pat 646=26 Cr L J 1441=89 Ind Cas 961 By virtue of section 141 C P Code this order is extended to applications under Order IX itself A I R 1926 Mad. 325=50 M L J 75=23 L W 409=92 Ind Cas 802 The rules of this order in strictness does not apply to Probate Proceedings 29 Ind Cas 133=13 A L J 441=37 A 380 The provisions of this order do not in terms apply to

execution proceedings but applications can be restored under the inherent powers of Court 13 Lah 761=142 Ind Cas 686=34 P L R 70=A I R 1933 Lah 99, see also 145 Ind Cas 995=1933 A L J 1032=A I R 1933 All 783 (F B), 143 Ind Cas 1=37 M L W 607=1933 M W N 566=64 M L J 664=56 Mad 490=A I R 1933 Mad 418 (F B), 133 Ind Cas 65=25 S L R 475=A I R 1931 Sind 97 (F B)

**Scope of the section**—*Ex parte* decree cannot be justified when the case is taken for hearing on a wrong date and a party apply for time A I R 1929 Pat 609=10 P L T 589=120 Ind Cas 304 Mere presence of party is appearance A I R 1924 Nag 26=76 Ind Cas 288, see also A I R 1927 Pat 485=1 Pat 188=68 Ind Cas 337 Appearance by a pleader means appearance by a pleader when he is duly instructed and able to answer all the material questions A I R 1928 Mad 831=110 Ind Cas 377, A I R 1929 All 729=96 Ind Cas 564, 82 Ind Cas 107=47 M L J 514, 22 A 66, 4 C 318, A I R 1922 Pat 485=1 Pat 188=69 Ind Cas 837 8 A 140, 4 B H C R A C 206, 70 A 195, 12 C 605, 23 B 414 The term day fixed in the summons refers to the day fixed for the first hearing of the suit 2 A 67=51 A 233 The mere putting of a written statement is not appearance 1 N W P H C R 154

2. [S. 97] Where on the day so fixed it is found that the summons has not been served upon the defendant is consequence of the failure of the plaintiff to pay the court fee or postal charges (if any) chargeable for such service the Court may make an order that the suit be dismissed

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs

Provided that no such order shall be made although the summons has not been served upon the defendant if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent

N B—For local amendment in Allahabad vide *infra*

**Scope**—When a time is not fixed for the deposit of process fee an order for dismissal is irregular 3 B L R App 25=11 W R 290 This section is only applicable to cases in which plaintiff fails to file *tallubana* for the first hearing 65 P W R 1908 The default under this rule owing to the plaintiff's omission to deposit the requisite *Tallubana* in the proper Court is not excused by the fact of its having been committed by an ignorant *karpurdar* 11 W R 417 The failure contemplated by order IX rule 2 is not confined to an entire omission to pay the requisite Court fee, but also includes an omission to pay that fee within the time which the Court is required to fix for payment under Order XLVIII rule 1 7 N L R 114 A guardian *ad litem* is not a defendant in a suit, and the penal provisions of order 9 r 2 of the code have no application to the case of a failure to pay in process fee for summons to be served on him 115 P W R 1911 Court can dismiss a suit under this order, for plaintiff's failure to pay damages for not getting summons served A I R 1927 All 464=100 Ind Cas 691 Dismissal under order 9 rule 2 on failure to pay postal charges (according to proviso of Lahore High Court) when process fee is paid is not proper A I R 1927 Lah 157=9 Lah L J 96=99 Ind Cas 909 Dismissal is not proper where process fee was paid not on fixed day but in sufficient time for service of summons A I R 1912 Lah 63=4 Lah L J 71=67 Ind Cas 945 Dismissal under order IX rule 2 is not justified if plaintiff fails to give defendants correct address or does not accompany process server A I R 1922 Lah 170=9 Lah L J 135=99 Ind Cas 898 Where process fee has not been paid for one defendant, dismissal as against other defendants is improper A I R 1921 Pat 422=2 P L T 256=60 Ind Cas 377 Court should give reasonable time for paying process fee.

When application amounts to appearance. 53 Ind Cas 4  
A suit for default is not appealable 38 A 357=14 A L J 347=53 Ind Cas

There is no appeal from the order of an appellate court restoring a suit dismissed for want of payment of process fee 9 Ind Cas 484 Where the plaintiff deposited process fee several times for service of summonses on the defendant but the summonses could not be served and the court ultimately dismissed the suit held that in the circumstances it was the duty of the court to direct the issue of substituted service under order 5 rule 20 and that the dismissal of the suit was bad 12 P L T 644=135 Ind Cas 99=A I R 1931 Pat 420 Non payment of process fee required for fresh summons with the application is no ground for dismissal of suit A I R 1933 Pat 582

Where neither party appears  
suit to be dismissed

3 [S 98] Where neither party appears  
when the suit is called on for hearing, the Court  
may make an order that the suit be dismissed

-4  
the Court has no power to dismiss the suit under this rule 10 P R. 1899 The dismissal of a suit for default on an adjourned date of which the parties had no notice is illegal 14 C P L R 134 The officers presiding over Courts of Justice, when on tour should not dismiss any suit for default in appearance, without satisfactory evidence that due notice of the exact date and place of hearing was given to the parties 37 P R 1904 Where parties are absent on date of re hearing fixed for want of time of Court the dismissal if made is under order 9 rule 3 and not under order 17 rule 3 32 Ind Cas 714 Where defendant is absent but plaintiff fails to produce evidence, the dismissal is one under order 17 rule 3 and not under order 9 rule 3 and no fresh suit is barred 40 A 590=16 A L J 462=46 Ind Cas 390 Where parties are absent on day fixed for hearing preliminary issues suit should not be dismissed A I R 1929 Lah 830=31 P L R 441=122 Ind Cas 465 Where date is fixed for hearing application in suit only suit cannot be dismissed A I R 1927 Sind 228=102 Ind Cas 416 Where preliminary mortgage decree for sale has been passed an application for final decree cannot be dismissed  
Where plaintiff is ill and the  
restored if dismissed for default  
deposited the fee for service

off his file on neither  
W R 219, 21 W R  
before the arbitrators,

y the Court  
sue summons  
300=A I R  
unavoidable  
side, A I R  
to be issued

along with amended plaint and summons was not issued on account of failure of plaintiff to file copies of amended plaint, the non appearance of parties on day fixed is governed by rule 3 and not by rule 5 A I R 1934 Pat 18

A suit cannot be dismissed for non appearance on day fixed for judgment A I R 1927 Lah 888=9 Lah L J 178=28 P L R 324=100 Ind Cas 472 Where date is only for seeing date fixed for defendant's appearance absence of plaintiff does not entail dismissal A I R 1925 Lah 96=78 Ind Cas 15 Dismissal for non appearance of pleader is wrong if authorized agent is present with witness A I R 1922 P  
when parties  
T 760=63 Ind

a Court dismissed  
the C P Code the  
the Court could

not be said to have acted under rule 3 order 9 because the plaintiff's pleader did in fact appear and ask for an adjournment and there was nothing in the order recorded to show that he was not willing to prosecute the suit upon the original plaint without amending it 4 Pat L J 277=51 Ind Cas 189 Where date for defendant's appearance has not been fixed rule 3 does not apply A I R 1927 All 439=49 A 592=25 A L J 437=101 Ind Cas 676, see also A I R 1921 Lah 320=27 P L R 1921=60 Ind Cas 475 A I R 1931 Lah 69=130 Ind Cas 771

In case of dismissal under (fresh suit or in an applicati

63 Ind. Cas. 239 ; 43 Ind. Cas

22 Bom. L. R. 328 = 56 Ind. Ca

Ind. Cas. 788 = A. I. R. 1925

130 Ind. Cas. 542. Where application for restoration of a case dismissed under rule 3 is filed, no notice need be served on the other party. A. I. R. 1923 Oudh. 55 = 24 O. C. 347 = 9 O. L. J. 52 = 64 Ind. Cas. 767. Where dismissal under rule 3 is by Court

Cas. 203

R. 1920 = 2

of suit as

M. W. N.

1921 M. W.

sideration

be dismissed. A. I. R. 1934 Lah. 237

**Appeal.**—An order of dismissal under this section is not a decree and hence no appeal lies from it. 29 C. 60. No application for review is either maintainable. 33 P. L. R. 1909 = 44 P. L. R. 1909 = 31 P. R. 1907 (2 C. W. N. 318 F.)

4. [S. 99.] Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court fee and postal charges (if any) required within the time fixed before the issue of the summons or for his non appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

**N. B.**—For local amendment in Bombay Vide *infra*

**Scope.**—In case of dismissal under rule 3 fresh suit lies 14 R. D. 395, see A. I. Cas. 118. In case of 1924 Rang. 161 = 2 Bur. plaintiff whose suit is ly of bringing a fresh not mutually exclusive he still has the remedy

of bringing a fresh suit 63 Ind. Cas. 239, A. I. R. 1926 All. 678 = 96 Ind. Cas. 187. Where the plaintiff is in jail and his muktār is absent through mistake, restoration

24 Ind. Cas. 187. Where

of 560. In

A. I. R. efficient

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Pat. 372 = 71 Ind. Cas. 484. Where claim is substantial and is likely to be time barred, inherent power ought to be used. A. I. R. 1923 Pat. 1924 Pat. 280 = 72 Ind. Cas. 666. Where execution applicat rule 2 or rule 3, proceedings under rule 4 : in not be tr

1925 Oudh

552=28 O . . . . . to proceed  
 but asked . . . . . 1928 Pat.  
 335=7 Pa . . . . . under this  
 rule notice to defendant is not necessary A I R. 1923 Oudh. 55=9 O L.  
 J 52=24 O C 347 Suit can be restored on payment of cost where the  
 dismissal is owing to the mistake or laches of pleader 43 C. 157=20 C. W.  
 N 394=23 C L J 443=34 Ind Cas 634 Order IX does apply to execution  
 proceedings 35 Ind Cas 337 Rule 4 does not apply where date is  
 fixed no for leaving of case but for paying process fees. A I R. 1921 Pat.  
 422=2 P L T 236=60 Ind Cas 377 A suit cannot be dismissed against all  
 defendants where default to pay process fees for the attendance of one of several  
 defendants is made 2 P. L. T. 236=60 Ind. Cas 377. Where suit has been  
 dismissed for default also application for restoration has been dismissed for default,  
 application under order IX, rule 9 lies 44 C. 950=21 C W. N 30=24 C. L. J.  
 446=35 Ir I Cas 613 Cases under Order XXI, rules 100 and 101 are not suits  
 within . . . . . application for insolvency is  
 dismissal 1928 Pat. 116=107 Ind. Cas.  
 842 In . . . . . rule 2, time covered by restoration  
 proceed . . . . . A. I  
 99=116 Ind Cas 509 Section 5, Limitation Act  
 under Order IX, rule 4 A I R. 1928 Mad 556=116  
 47 see also A I R. 1929 All 127=51 A 487=  
 767 No judge other than one who dismissed  
 set as to order of dismissal 2 Lah L. J 48=100 P L R 1920=19 P W. R 1920=  
 56 Ind Cas 884 Restoration application is not to be dismissed summarily A I R  
 1927 Lah 71=27 P L R 564=9 Ind Cas 1055 Dismissal of application for  
 making final decree does not bar subsequent application 140 Ind Cas 324=63  
 M L J 719=36 M L W 638=56 M 310=A. I R. 1933 Mad 55  
 If sufficient cause is shown Court must restore case to file 141 Ind Cas 48=  
 28 M L J 295=A I R 1933 Nag 39 Where the suit restored  
 under this section, notice must as of right be issued to defendant of this date. 145  
 . . . . . All 522 After dismissal of first  
 . . . . . gone into, a second application  
 . . . . . event The application may also  
 . . . . . order 141 Ind Cas 48=28 N L  
 are also resto  
 view A I R . . . . .  
 for default, A  
 A I R 1933 Pat 208 Where remedy under Order 9 rule 4 or 9 is barred by  
 limitation application under Order 47, rule 1 merely to escape limitation is not  
 maintainable A. I R 1933 Pat 557

6\* [S 99A] (1) Where, after a summons has been issued to the  
 plaintiff, after summons re- returned unserved, the plaintiff fails, for a period  
 turned unserved, suits three of three months from the date of the return  
 months to apply for fresh made to the Court by the officer ordinarily  
 summons certifying to the Court returns made by the

serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

- (a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or
- (b) such defendant is avoiding service of process, or
- (c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit

Scope—Order IX rule 5, of the Civil Procedure Code is only an enabling provision enacted for a special purpose only 5 Ind Cas 537 This rule is not very happily expressed, but it means that when a plaintiff fails for a period of three months from the return of summons unserved to apply for the issue of a fresh summons the Court that he has used his best endeavours to discover the defendant who has not been served, or that there is any other sufficient cause for extending the time, then and only then the Court may extend the time for making such application for such period as it thinks fit

not time barred 2 Lah L J 774=1 Lah 137=56 Ind Cas 191 When records of suit were placed in the record room on account of non service of summons on one of the defendants, the Court may make an order for the discharge of the defendant, and the suit may proceed on the basis of the summons served on the other defendants. A I R 1927 Bom 68=50 B 815=28 Bom L R 1446=100 Ind Cas 147, see also 17 Ind Cas 294, but see 21 Ind Cas 420=25 M L J 451 Order 9 rule 5 applies to a case where the suit was consigned to the record room merely because the defendants' address was not furnished by the plaintiff and order 9 rule 2 has no application, A I R 1931 Lah 655=132 Ind Cas 524 Where summons issued to defendant returned unserved dismissal of suit before expiry of the three months is premature and irregular A I R 1933 Pat 575 Court can not dismiss suit simply because summonses are not served, it should proceed under order 9 rule 1 135 Ind Cas 817=33 Bom L R 1056=A I R 1931 Bom 253, see also 135 Ind Cas 347=1931 M W N 1002=A I R 1931 Mad 795 Inherent power of court can be exercised when power expressly conferred are exhausted A I R 1933 Pat 582

Procedure when only plaintiff appears 6 [S 100] (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

When summons duly served (a) if it is proved that the summons was duly served, the Court may proceed *ex parte*,

When summons not duly served (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant,

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement

Scope—The phrase 'when the suit is called on for hearing' when an appearance under order IX is in question means on the first day of hearing, and when an appearance under order XVII

is in question means on a preliminary issue but the Court may proceed A I R 1924 Lah 224=72 Ind Cas 500 Order IX rule 6 contemplates a hearing of the suit on the day fixed in the summons for the defendant's appearance. Order IX rule 2 contemplates hearing adjourned Subject to Order IX all events at the first hearing some other date to which

the suit is adjourned, the modes of disposing of the suit directed by Order IX apply and the decision is *ex parte* A I R 1922 Pat 485=1 Pat 188=69 Ind Cas 837, see also 69 Ind Cas 883 Rule 6 is not penal but is meant to prevent undue delay 134 Ind Cas 268=27 N L R 50=A I R 1931 Nag 122 Where pleader engaged by defendant merely to apply for adjournment made that application but the Court refused adjournment and decreed suit *ex parte* the Court's decision was decree and defendant's remedy was by appeal 133 Ind Cas 622=1931 A L J 646=A I R 1931 All 703

Clause (a).—This rule lays down when the Court may proceed *ex parte* but there appears to be no explanation in the Code what are *ex parte* procedure is though the plaintiff is always called upon in quite general terms to prove his case A I R 1923 Nag 83=69 Ind Cas 619, see also 39 A 143=14 A L J 1226, 20 C W N 192=43 C 1001=34 Ind Cas 235 Even in an *ex parte* said plaintiff must prove his case by reliable evidence A I R 1929 All 612=118 Ind Cas 527, 37 Ind Cas 27=3 O L J 468, 81 Ind Cas 867=A I R 1924 Cal 806=39 C L J 279, 108 Ind Cas 895, 108 Ind Cas 879=11 N L J, 78=A I R 1928 Nag 165, A I R 1926 Oudh 192=92 Ind Cas 119, A I R 1924 Cal 647=28 C W N 300=77 Ind Cas 551 Court cannot pass *ex parte* decree without giving proper notice of the date fixed for disposal of the suit to defendant 38 Ind Cas 678=15 A L J 24 On the date fixed for hearing the defendant was absent, and the suit was decided on evidence produced by plaintiff and the Court remarked in the judgment that it was to be an *ex parte* decree held that the proper procedure for the Court to have adopted is that under Order XVII r 3 A I R 1923 Oudh 18=9 O L J 543=72 Ind Cas 394 Where Court orders that the suit should proceed *ex parte* and fixes a date on that date if defendant appears an *ex parte* decree should not pass A I R 1922 All 10=20 A L J 270=66 Ind Cas 892, see also 64 Ind Cas 958=A I R 1922 All 33=20 A L J 39

7 [S 101] Where the court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing appears and assigns good cause for his previous non appearance he may upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance

Scope—Court has discretion to set aside order declaring proceedings *ex parte* A I R 1931 Oudh 159=8 O W N 1927 Mad 1197=27 L W 361=1928 Cas 664=A I R 1928 Mad 211=39

M L T 656 What rule 7 requires is that if sufficient cause is shown for non appearance the defendant may upon terms, be placed in the same position, retrospectively as if he had appeared at the earlier stage A I R 1926 Sind 181=92 Ind Cas 493, see also A I R 1923 Oudh 177=26 O C 10=10 O L J 36=73 Ind Cas 591, A I R 1922 Bom 345=70 Ind Cas 762, 9 B L R App 15, A I R 1922 All 110=20 A L J 270=66 Ind Cas 892 No evidence in support of the facts stated in his petition need be given 8 C 272 Application under order 1A, rule 7 can be made through a vakil even when court has decided to proceed *ex parte* owing to the non appearance of the defendant in person as per order of the court 27 M L T 71=(1920) M W N 241=11 L W 289=55 Ind Cas 945



operation of order VII cannot be extended to the subsequent hearings of the suit, of his appearance A I R 91 Ind Cas 545 Court re ordering dismissal for Ind Cas 523 Application 1922 All 223=44 A 407 set aside order declaring *ex parte* decree is passed against a defendant it is open to the defendant to apply under order IX, rule 13, to set aside that order or to prefer an appeal from the *ex parte* decree and in such an appeal the question whether the lower court was wrong in proceeding to decide the suit *ex parte* can be gone into 113 Ind Cas 409, 87 Ind Cas 222=A I R 1925 Oudh 645=28 O C 85

8 [S 102] Where the defendant appears and the plaintiff does not appear Procedure where defendant when the suit is called on for hearing, the Court only appears shall make an order that the suit be dismissed unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder

Scope—This rule is not applicable to execution proceedings A I R 1929 Bom 217=31 Bom L R 400=118 Ind Cas 700 This rule is clearly intended to have application to proceedings before a decree is passed and not after a decree is passed A I R 197 Oudh 49=3 O W N 971=98 Ind Cas 1029 Where suit is dismissed in default of plaintiff the decree is really one under order IX rule 8 1929 A L J 391=116 Ind Cas 757 see also A I R 1908 Pat 335=7 Pat 333=9 P L T 669=3=2 O W N 432=89 Ind Cas 418 of issues is the date fixed for hearing of suit for plaintiff's non appearance, 31 Ind Cas 869 Dismissal of suit issal for default 3 P L J 355=47 Ind Cas 27 Non appearance of one of two or more plaintiffs does not entail dismissal of suit as against others 4 P L J 152=50 Ind Cas 323 Rule to dismiss the suit for default under order IX, rule 8 is mandatory and defendant's statement cannot be recorded 55 Ind Cas 966 see also 72 Ind Cas 75=A I R 1921 report does not entail in case where plaintiff A I R 1921 Lah 139=3 next friend adversely I 317=63 Ind Cas day fixed is illegal

and does not become *res judicata* A I R 1922 Pat 252=(1922) Pat Sup 87=6 P L J 650=2 P L T 672=63 Ind Cas 570 If one of two plaintiffs appears case comes under purview of order IX rule 10 and not under order IX rule 8 A I R 1921 Cal 176=48 C 57=62 Ind Cas 112 Order of dismissal of suit for default after framing of suit is under rule 8 A I R 1922 Mad 416=(1922) M W N 483=72 Ind Cas 482 Appearance of plaintiff by pleader without instruction on day of hearing entails dismissal of suit for default A I R 1922 All 68=20 A L J 123=Ind Cas 942 The Court has absolute 66 Ind Cas 789=A I R 1921 Sind caution should be exercised when on A I R, 1923 Bom 27=24 Bom L R 275=46 B 10 6=63 Ind Cas 514

Order of dismissal of suit for default after plaintiff's death is a nullity where the fact of death is not known A I R 194 Oudh 114=73 Ind Cas 238 Where the plaintiff is absent and fails to pay additional court fees as ordered on the date of hearing or later for dismissal is under order VII rule 11 A I R 1909 Mad 344=117 Ind Cas 789 Where suit for ejectment is barred under this rule fresh suit is barred on the same added as plaintiff original suit A I for non appearance

rent power to restore a case dismissed for

A I R 1927 Rang 58=5 Bur L J 139=99

Court after the order of dismissal is passed, he is entitled to have the suit restored on payment of costs A I R 1925 Bom 123=27 Bom L R 685=89 Ind Cas 225, A I R 1925 All 601=87 Ind Cas 118 In case of dismissal of suit in default, remedy is to apply for a review or apply for an order to set aside the order of dismissal A I R 1925 Bom 395=80 Ind Cas 128 After dismissal of a suit for default, a second suit is barred on the same cause of action But a single fact alone makes different cause of action and fresh suit lies A I R 1925 Nag 366=87 Ind Cas 35 Fresh suit is not barred on the same cause of action by the order of dismissal so far as absentee defendants are concerned A I R 1926 All 169=48 A 97=23 A L J 993=90 Ind Cas 2

Mistake of pleader as to the date fixed and consequential failure to appear need not be excused A I R 1925 Oudh. 682=2 O W N 574=89 Ind Cas 64 Where pleader's clerk is present in Court when case is called, but the suit is

room, order of dismissal

243=78 Ind Cas 123

it is adjourned on his

14=5 P L T 424=1924

Pat 215=78 Ind Cas 224 Where after the transfer of the suit the transferee Court issued notice to plaintiff and his counsel to appear on certain day, but notice on plaintiff was not served whilst notice on counsel was served but he refused to accept notice the Court is not competent to dismiss the suit on the ground that service of notice on counsel is good A I R 1934 Lah 91 Where preliminary

ed unless decree is reversed in appeal

e word appear in this rule means

in precincts of Court or in Court room

ave appeared 138 Ind Cas 87=36

C W N 158=59 C 756=A I R 1932 Cal 418 Where plaintiff's pleader was engaged elsewhere when suit was called and the Court asked the plaintiff to engage another pleader and on his failure to do so dismissed the suit, an application for restoration is one under Order 9 rule 9 138 I I Cas 342=36 C W N 160=59 C 906=A I R 1932 Cal 425 Where party is absent on date of hearing and the suit is dismissed for non production of evidence the dismissal is not on merits but for default 132 Ind Cas 206=A I R 1931 Lah 305 In a representative suit, when the plaintiff on record dies the Court cannot dismiss the suit for default because the persons represented are not co-defendants and they cannot be said to be in default A I R 1931 Mad 590=60 M L J 659=132 Ind Cas 289=54 M 70

**Admission in defence**—If cause of action exists plaintiff must get decree on admission of defence A I R

admitted 60 Ind Cas 724 Where defendant partly admits the claim and sets up counter claim, part of the claim admitted should be decreed even in the absence of the plaintiff A I R 1921 Sind 50=15 S L R 173=66 Ind Cas 789 Where plaintiff was present in court in all hearings except one and part of his claim is admitted, dismissal of his suit for default is not proper A I R 1925 Pat 712=3 P L R 249=89 Ind Cas 614

**Appeal.—Improper**

appeal 54 Ind Cas

r 8 A I R 1925 Bor

Appeal lies against

A.

228

by

451

not

3 P L W 428=1 P L W 790=39 Ind Cas. 916

Order for restoration of application dismissed in default for restoration of the suit

appealable. 4 P L W 366=

ability to produce evidence is

e subject to appeal and review

Order of dismissal of an appli-

for restoration of the suit

dismissed in default, is appealable A I R 1923 Nag 293=19 N L R 119=75 Ind Cas 589 Order dismissing suit for default where part of claim is rejected is appealable. A I R 1923 P C 114=40 C L J 1=28 C W N 689=50 I A 162

plaintiff  
of the  
ssal of  
appeal,

A I R 1927 Cal 76=53 Cal 844=31 C. W N 22=98 Ind Cas 781

Appeal does not lie against the order of dismissal of suit for default Appeal may be treated as revision if question of jurisdiction is involved A I R 1925 Pat 374=6 P L T 127=86 Ind Cas 787 Order of dismissal of suit after preliminary decree is open to revision A I R 1925 Pat 433=6 P L T 152=86 Ind Cas 785

9. [S 103] (1) Where a suit is wholly or partly dismissed under rule 8, Decree against plaintiff by the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action default bars fresh suit But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party

N B—For local amendment in Bombay and Lahore vide *infra*

452=132 Ind  
R 1927 Cal  
I 355=25 L.  
W 191=52 M L J 123=99 Ind Cas 954, A I R 1925 Mad 126=47 M L J.  
269=20 L W 192=1924 M W N 672=81 Ind Cas 841, A I R 1926 Mad 980=  
50 M 67=51 M L J 219=(1926) M W N 890=26 L W 878=97 Ind Cas 1008

After a decree has once been made in a suit, a suit cannot be dismissed without reversing the decree in appeal The parties have on the making of the decree acquired rights or incurred liabilities which are fixed unless or until the decree is varied or set aside A I R 1924 P. C 198=5 P. L T. 623=35 M L J 147=47

and should be set aside in revision A I R 1931 Cal 319=52 C L J 23=129 Ind Cas. 778 Order setting aside order of dismissal without considering evidence is vitiated by material irregularity 132 Ind Cas 431=1931 A L J 92=118 A I R 1931 All 452 Court is not empowered under Order 9, rule 9 to set aside dismissal of a suit for default of appearance as a matter of grace A I R 1925 M. I 109= L W 829=48 M L J 152=85 Ind Cas 499

174=106 Ind C1s 830 Court has inherent power to restore a case dismissed for  
 1927 Rang 58=5 Bur L J 139=99  
 the order of dismissal is passed,  
 nt of costs A I R 1925 Bom 123  
 =27 Bom L R 685=89 Ind Cas 225, A I R 1925 All 601=87 Ind C1s 118  
 In case of dismissal of suit in default, remedy is to apply for a review or apply for an  
 order to set aside the order of dismissal. A I R 1925 Bom 395=80 Ind Cas 128  
 After dismissal of a suit for default, a second suit is barred on the same cause of  
 action. But a single fact alone makes different cause of action and fresh suit lies  
 A I R 1925 Nag 366=87 Ind Cas 35. Fresh suit is not barred on the same  
 cause of action by the order of dismissal for default so far as absentee defendants  
 are concerned A I R 1926 All. 169=48 A 97=23 A L J 993=90 Ind Cas 2

Pat 215=78 Ind Cas 224 Where after the transfer of the suit, the transferee  
 Court issued notice to plaintiff and his counsel to appear on certain day, but notice  
 on plaintiff was not served whilst notice on counsel was served but he refused to  
 accept notice the Court is not competent to dismiss the suit on the ground that  
 service of notice on counsel is good. A I R 1934 Lah 91 Where preliminary  
 is reversed in appeal  
 in this rule means  
 urt or in Court room  
 8 Ind Cas. 87=36,  
 ntiff's pleader was  
 he plaintiff to engage  
 , an application for  
 C W. N 160=59 C  
 of hearing, and the  
 al is not on merits but  
 for default 132 Ind C1s 206=A I R 1931 Lah 505 In a representative suit,  
 when the plaintiff on record dies, the Court cannot dismiss the suit for default  
 because the persons represented are not co-nominee parties and they cannot be  
 said to be in default A I R 1931 Mad 590=60 M L J 659=132 Ind. Cas  
 289=54 M 770

**Admission in defence**—If cause of action exists plaintiff must get decree on  
 admission of defence A I R 1921 Pat 207=61 Ind C1s 611 The words in rule 8

**pre-emption** is admitted. 60 Ind Cas 724 Where defendant partly admits the  
 claim and sets up counter claim, part of the claim admitted should be decreed  
 even in the absence of the plaintiff A I R. 1921 Sind 50=15 S L R 172=66  
 Ind Cas 789 Where plaintiff was present in court in all hearings except one  
 and part of his claim is admitted, dismissal of his suit for default is not proper.  
 A. I. R. 1925 Pat. 712=3 P L R 249=89 Ind C1s 614

**Appeal**—Improper dismissal is subject to revisional proceedings and not to  
 appeal 54 Ind Cas 568 No review lies in case of dismissal of suit in default under  
 r 8 A I R 1925 Bor  
 Appeal lies against  
 A I R 1926 Cal

288 Order of dismiss  
 by one of the plaintiffs who was present is decree ai  
 45 Ind Cas 189 Dismissal of suit for plaintiff's  
 not dismissal under order IX, rule 8 and is there  
 3 P L. W. 428=1 P L W. 790=39 Ind Cas. 946.  
 cation for restoration of application dismissed in

precludes those claiming through the plaintiff from bringing fresh suit A I R 1929 Pat 485=9 Pat 447=11 P L T 505=122 Ind Cas 801 Cause of action depends on grounds and not on relief A I R 1929 Pat 685=9 Pat 447=11 P L T 505=122 Ind Cas 801 If causes of action are different order 9, rule 9 does not bar the second suit A I R 1930 Oudh 510=7 O W N 988=6 Luck. 106=130 Ind Cas 65, see also 16 C 98=151 A 156, 9 C 426, 10 B 28, 12 A L J 53, 14 C W N 298, 45 A 81=74 Ind Cas 991 For the application of this rule, the suit must be by the same plaintiff and cause of action must be the same 144 Ind Cas. 651=34 P L R 73=14 Lih 485=A I R 1933 Lah 365 A previous dismissal of a suit for redemption of a mortgage does not bar a second suit for redemption A I R 1928 Bom 67=52 B 111=30 Bom L R 34=108 Ind Cas 27 Death of plaintiff during a suit where part of his claim is admitted does not bar fresh suit but is subject to Order VIII r 3 A I R 1930 Oudh 3=, 1 A L J 741=113 Ind Cas 855 Two suits have same cause of action if material facts and occasions giving rise to cause of action are the same in each A I R 1929 Pat 685=11 P L T 505=9 Pat 447=122 Ind Cas 801 If sale proceeds of the mortgaged property are insufficient and application for personal decree is dismissed a fresh application is barred A I R, 1930 Rang 257=8 Rang 516=126 Ind Cas 648 Where the dismissal for default is under rule 3 order IX there is no bar to a fresh suit while a dismissal under rule 8 of order IX precludes a second suit It is incumbent on the party who relies on the bar of order IX to show that the dismissal of the previous application was under s 8 A I R 1925 Mad 986=85 Ind Cas 982 The provisions of order IX r 9 cannot be nullified in the case of minor plaintiffs by only changing the guard and *id item* from time to time and alleging their knowledge at various times A I R 1921 Sind 200=80 Ind Cas 985 A subsequent suit in effect the same as previous suit but claiming a different relief, is barred by r 9 A I R 1926 Lah 562=96 Ind Cas 207 The dismissal of a prior application for probate without trial of the question as to genuineness of the will is not decision binding for all purposes and this rule does not apply to such cases A I R 1926 Cal 1057=53 C 578=98 Ind Cas 374 Where a suit for partition and separate enjoyment is dismissed for default, a subsequent suit by the assignee based on assignors right of partition is not barred. A I R 1926 Mad 1018=49 M 939=51 M L J 254=24 L W 298=(1926) M W N 815=97 Ind Cas 622 Where application to restore suit is dismissed for default and plaintiff appeals and assigns his interest, the substituted plaintiff is estopped from bringing a fresh suit for same cause of action A I R 1929 Pat 685=9 Pat 447=11 P L T 505=122 Ind Cas 801 But attaching creditors are not bound by dismissal if mortgagees fraudulently allowed it to be dismissed A I R 1929 All 861=122 Ind Cas 766

If decree gives decree holder right to apply for personal decree for balance, separate personal decree must be passed for it on application Dismissal of application for default bars fresh application A I R 1930 Nag 188=26 N L R 154=124 Ind Cas 249 Where suit is dismissed for non payment of proper Court fee, fresh suit is not barred under order 9 rule 9 but the case comes under order 7 rule 11 133 Ind. Cas 449=A I R, 1932 Pat 11 Where a suit for declaration was dismissed for default a subsequent suit for partition and possession of a share is not barred the cause of action being different 12 L W 431=39 M L J 412=60 Ind Cas 201 Plaintiff after his suit has been dismissed on one cause of action is not precluded from bringing another suit upon another cause of action A I R 1923 All 409=45 A 81=74 Ind. Cas 991

**Restoration on sufficient cause**—Showing sufficient cause is condition precedent for restoration of suit Section 151 does not work in the absence of good cause A I R 1930 Rang 65=126 Ind Cas 542 Dismissal for non appearance of pleader of *parda nashin* lady for being engaged in another Court is restorable if application is made on same day A I R 1930 Lah 943=31 P L R 550=129 Ind Cas 890 Non appearance of plaintiff's agent under *bona fide* belief that he had no work amounts to sufficient cause A I R 1929 Rang 224=122 Ind Cas 288 If false cause is shown for non appearance, Court is justified in refusing to restore suit False cause is not sufficient cause A I R 1929 Rang 224=122 Ind Cas 288 Execution can be dismissed for default must be restored if good cause and exercise of due diligence is shown by decree holder A I R 1929 Lah. 509=30 P L R 243=11 Lah L J 142=120 Ind Cas 276 If the Court is of opinion that there a reasonable attempt by the 'r to appear or be represented but that 1

An application by a pleader instructed only to apply for an adjournment, which is refused is not an appearance within the meaning of C P Code A I R 1927 Rang 46=4 Rang 403=99 Ind Cas 717 As regards the meaning of the word appearance, vide, 34 C 403=11 C W N 329 (F B) 23 B 414, 13 Bom L R 1222, 21 A L J 500=74 Ind Cas 845 47 M 819 (F B)=82 Ind Cas 102; A I R 1928 All 760, 46 Ind Cas 488=3 P L J 481 Without enquiry a trial Court ought not to summarily dismiss an application for restoration of the suits 106 Ind Cas 821 (Lah) Order 9 rule 9 is applicable to applications for setting aside sales in execution made under Order XXI rule 90 20 C W N 1203=33 Ind Cas 581, 23 O C 349=59 Ind Cas 57, If an appeal from an *ex parte* decree is dismissed for default the first Court can allow the application to set aside that *ex parte* decree 39 A 393=15 A L J 286=39 Ind Cas 519 A stranger to a decree made a claim under Order XXI r 100 and his claim was dismissed for non appearance on the date fixed for hearing He applied under Order XI, rule 9 for re hearing of the case Held that the Court would re hear the application 3 Pat L J 250=4 Pat L W 102=43 Ind Cas 951 Plaintiff can apply for review of judgment when the suit is dismissed for default and he has not appealed under Order IX, rule 9 to set the order aside 37 M L J 59=9 L W 311=50 Ind Cas 327 It has no application to proceedings in execution instituted under Order 21, rule 90 4 Pat L J 135=49 Ind Cas 617= (1919) Pat 75 (F B), see also 47 Ind Cas 154=5 Pat L W 208=4 Pat 9 is not applicable side a sale held in inherent power to the ends of justice =64 P L R 1921= lication for probate

52 Ind Cas 639

Where an order dismissing a suit for default is set aside under order IX rule 9 such order may operate in favour of all the plaintiffs though some of them setting aside the order of dismissal so directs 7 re case was fixed for the plaintiff's compliance XI r 12 and su under order IX rule 21 such dismissal cannot order IX rule 9 Such order is a decree and is appe

not being a proceeding in execution A I R 1914 Oudh 30=26 O C 194=74 Ind Cas 701 The plaintiff's pleader was instructed only to ask for adjournment which was not granted and the case dismissed, held the dismissal was under Order XVII r 2 and an application for restoration under Order 9 rule 9 was maintainable rule 9 does not apply Cas 7, 16 can apply 1923 Pat 2 Where an application for default, - with s 141 A I R 1923 Oudh 146=9 O L J 627=74 Ind Cas 380

Application under s 158 Bengal Tenancy Act for fair assessment of rent when no rent was paid previously is not a suit within the meaning of Order IX, rule 9 A I R 1923 Pat 381=2 Pat 192=4 P L T 702=74 Ind Cas 464

Plaintiff shall be precluded from bringing a fresh suit — Dismissal of suit by a Burman Buddhist for administration of estate bars a fresh suit by him for

precludes those claiming through the plaintiff from bringing fresh suit A I R 1929 Pat 485=9 Pat 447=11 P L T 505=122 Ind Cas 801 Cause of action depends on grounds and not on relief A I R 1929 Pat 685=9 Pat 447=11 P L T 505=122 Ind Cas 801 If causes of action are different order 9 rule 9 does not bar the second suit A I R 1930 Oudh 510=7 O W N 988=6 Luck. 105=130 Ind Cas 65, see also 16 C 98=15, I A 156, 9 C 426, 10 B 28, 12 A L J 53, 14 C W N 298, 45 A 81=74 Ind Cas 991 For the application of this rule, the suit must be by the same plaintiff and cause of action must be the same 144 Ind Cas 651=34 P L R 73=14 Lah 485=A I R 1933 Lah 365 A previous dismissal of a suit for redemption of a mortgage does not bar a second suit for redemption A I R 1928 Bom 67=52 B 111=30 Bom L R 34=108 Ind Cas 21 Death of plaintiff during a suit where part of his claim is admitted does not bar fresh suit but is subject to Order XXII r 3 A I R 1930 Oudh 510=7 O W N 988=6 Luck. 105=130 Ind Cas 65, Two suits have same cause of action if material facts and occasions giving rise to cause of action are the same in each A I R 1929 Pat 685=11 P L T 505=9 Pat 447=122 Ind Cas 801 If sale proceeds of the mortgaged property are insufficient and application for personal decree is dismissed a fresh application is barred A I R 1930 Rang 257=8 Rang 316=126 Ind Cas 648 Where the dismissal for default is under rule 3 order IX there is no bar to a fresh suit while a dismissal under rule 8 of order IX precludes a second suit It is incumbent on the party who relies on the bar of order IX to show that the dismissal of the previous application was under s 8 A I R 1925 Mad 986=85 Ind Cas 982 The provisions of order IX r 9 cannot be nullified in the case of minor plaintiffs by only changing guard and *ad litem* from time to time and alleging their knowledge at various times A I R 1921 Sind 200 80 Ind Cas 985 A subsequent suit in effect the same as previous suit but claiming a different relief is barred by r 9 A I R 1906 Lah 562=96 Ind Cas 207 The dismissal of a prior application for probate without trial of the question as to genuineness of the will is not decisive binding for all purposes and this rule does not apply to such cases A I R 1926 Cal 1057=53 C 578=98 Ind Cas 374 Where a suit for partition and separate enjoyment is dismissed for default a subsequent suit by the plaintiff is not barred A I R 1926 Mad 298=(1926) M W N 815=97 Ind is dismissed for default and plaintiff plaintiff is estopped from bringing a fresh suit for same cause of action A I R 1929 Pat 685=9 Pat 447=11 P L T 505=122 Ind Cas 801 But attaching creditors are not bound by dismissal if mortgagees fraudulently allowed it to be dismissed A I R 1929 All 861=122 Ind Cas 766

If decree gives decree holder right to apply for personal decree for balance separate personal decree must be passed for it on application Dismissal of application for default bars fresh application A I R 1930 Nag 188=26 N L R 154=124 Ind Cas 249 Where suit is dismissed for non payment of proper Court fee fresh suit is not barred under order 9 rule 9 but the case comes under order 7 rule 1 133 Ind Cas 449=A I R 1932 Pat 11 Where a suit for declaration was dismissed for default a subsequent suit for partition and possession of a share is not barred the cause of action being different 12 L W 431=39 M L J 412=60 Ind Cas 201 Plaintiff after his suit has been dismissed on one cause of action is not precluded from bringing another suit upon another cause of action A I R 1923 All 409=45 A 81=74 Ind Cas 991

**Restoration on sufficient cause**—Showing sufficient cause is condition precedent for restoration of suit Section 151 does not work in the absence of good cause

511 for non appearance of pleader

Court is restorable if application

P L R 510=129 Ind Cas

*vide* belief that he had

224=122 Ind Cas 288

cause is shown for non appearance, Court is justified in refusing to restore

false cause is not sufficient cause A I R 1929 Rang 224=122 Ind Cas

151 be restored if good cause

A I R 1929 Lah 507=30

If the  
appear or

pin on  
d but

unable to do so because of causes which he could not reasonably control, then it must be held that there is a good case for restoration A I R 1929 Lah 96=10 Lah 570=30 P L R 628=114 Ind Cas 76 Where the absence of one of the parties for fetching his pleader and of other because of his blindness, in such a case restoration should be ordered A I R 1928 Lah 454=10 Lah L J 70=111 Ind Cas must depend on the facts of each case. in the adjoining court room and did not applied for restoration Held, that there was sufficient cause for restoration A I R 1927 Sind 228=102 Ind Cas 416

Plaintiff's explanation for his counsel's absence is condition precedent for restoring suit dismissed for default 117 Ind Cas 382 Where suit is dismissed for pleader's absence mere negligence is not a ground for restoring the suit though it may be ground for a suit for damages against the agent or pleader A I R 1929 Lah 148=112 Ind Cas 379 No orders of dismissal in default should be passed till the end of the day when the court rises for the day, because there can be no default until the court rose for the day The court has inherent power to rescind mistaken order of dismissal for default under s 151 A I R 1928 All 301=26 A L J 382=108 Ind Cas 576 The pleader being busy elsewhere the plaintiff's agent's going to call him is no excuse for restoring the suit A I R 1927 Oudh 211=4 O W N 508 A m's judgment by a Counsel as to the time when his case would be taken up, who does not state that he was engaged in some other court, is not a sufficient ground for absentsing himself when his case is taken up A I R 1927 Lab 224=100 Ind Cas 793 Late arrival of a train which prevented a party from appearing in court is a sufficient cause within rule 9 A I R 1927 Lah 40=98 Ind Cas 868 Where plaintiff after calling of case ran away to call his pleader and returned a few minutes after the suit was dismissed, the case should be restored A I R 1926 Lah 650=96 Ind Cas 821 The dismissal of suit for default must be set aside Where plaintiff or his counsel is not informed about the adjournment 96 Ind Cas court but went to a well in order to ease him case had been dismissed in default, held 8 Lah L J 422=27 P L R 431=96 Ind

Cas 402

The provisions of s 151 should be applied with the greatest caution Where a party is absent from the Court when he ought to have been present, and does not give any satisfactory reason for his absence then Court should not exercise its inherent powers in his favour so as to interfere with the rights of third parties such as an auction purchaser which have come into existence owing to his default A I R 1926 Bom 377=50 B 457=28 Bom L R 686=96 Ind Cas 411 But Court has power to interfere under s 151 in fit cases where sufficient cause under order IX, r 13 is not shown A I R 1926 Sind 249=20 S L R 266=95 Ind Cas 533 Illness of plaintiff can be a sufficient cause A I R 1926 Lah 541=95 Ind Cas 240 A party who has engaged a counsel to represent him can remain personally absent, therefore if his counsel fails or betrays him he has sufficient cause for his 27=9 N L J 145=9, Ind Cas 260 A rove the cause of his non appearance though ordered to appear in the Court Applications under order IX, rule 6 on the ground that they are *bona fide* or otherwise 22 C W N 671=42 Ind Cas 649 Restoration of suit without sufficient cause is not bad 48 Ind Cas 561

Where  
application  
727 An o  
missed by  
51 Ind Ca

for default made on the application of some of the plaintiffs may operate in favour of all of them if the Court setting aside the order so directs 7 O L J 1=2 U P L R 46=23 O C 18=33 Ind Cas 481

Puncture of tyre on the way to Court amounts to sufficient cause A I R 1934 Lah 416 Where plaintiff is absent but his pleader is present and is willing to argue the case, the case should not be dismissed A I R 1933 All 539 So also where notice of transfer of a case was not served upon the plaintiff and the case has been dismissed for default by the transferee court it should be restored on the



application of the plaintiff A I R 1933 Lah 558=14 Lah 240=34 P L R 540  
 Where a suit has been dismissed for default, it should only be restored on showing  
 R 1933 Lah  
 power cannot  
 A I R 1933  
 it as no steps  
 ps were taken  
 1933 Mad 5  
 f guardian on  
 t court should  
 his duty unless  
 774=21 L. W.  
 in Court is not  
 a sufficient cause for his absence A I R 1921 Sind 55=17 S L R 105=83 Ind.  
 Cas 747 Order IX, rule 9 makes it compulsory on a Court to set aside a  
 dismissal where the plaintiff satisfies the court that there was sufficient cause  
 for non appearance Still the Court can restore the case for any other valid  
 reason 44 B 82=21 Bom L R 932=53 Ind Cas 252, see also 54 Ind Cas 44=  
 12 Bur L f 158

Where plaintiff was a female and her husband was in Court with her witnesses  
 on the day in question, nor was vakil actually engaged in another Court, when

Pat 784=74 Ind Cas 847  
 was present in Court left the  
 in another Court, the case had  
 Held, that in the circum-  
 stances of the case the suit should be restored for re hearing on condition of the  
 plaintiff paying into the Court the costs of the defendant within a prescribed time  
 failing which his application should stand dismissed A I R 1923 All 189=71  
 Ind Cas 283

with the suit, during various  
 of the last date of hearing is no  
 A I R 1921 Mad 617=13  
 L. W 334=62 Ind Cas 378 Words "satisfies" and "was prevented by sufficient  
 cause" should receive same interpretation as in order 41, r 19 and Limitation Act,  
 s 5 A I R 1934 Nag 183

Notice—No notice need be given to judgment debtor if execution application  
 dismissed for default is restored provided notice of date of attendance is not given  
 to him A I R 1930 Lah 20=11 Lah 93=31 P L R 375=119 Ind Cas 494

Revision—Wrongful dismissal of suit for default after preliminary decree is  
 passed is subject to revisional proceedings A I R 1930 Mad 158=57 M L J  
 781=53 M 395=30 L W 979=124 Ind Cas 605, A I R 1928 Mad 963=28 L W  
 496 Where the suit was dismissed under Order 9 rule 8 and was restored under  
 Order 9, rule 9, no revision is competent from order of restoration 143 Ind Cas  
 307=1932 A L J 1100=A I R 1933 All 118, see also A I R 1933 Oudh  
 331=143 Ind Cas 222 But  
 suit dismissed for default is  
 599=51 A 908=117 Ind Cas

Appeal can be against an order of  
 of the application dismissed in default,  
 A I R 1923 Nag 293=19 N L R.

119=75 Ind Cas 589

dismissal under rule 9 because s 141 application is in time, it may be If it is not in time s 151 may be

revoked A I R 19 but see 94 Ind Cas 1926 Ran. 74 With default is dismissed either under Order IX J 817=47 A 878= aside a dismissal for 287=51 Ind Cas 152 An order dismissing for default an application to set aside the dismissal of a suit under order IX, rule 9 does not come rule 1 (c) of order 43 and therefore is not appealable A I R 1928 Pat 335=2 Pat 333=9 P L T 669=109 Ind Cas 264

**Limitation**—Application under order 9 rule 9, made after period of limitation cannot be entertained A I R 1931 Cal 319=52 C L J 23=129 Ind Cas 778 Section 5 and Art 164 of the Limitation Act apply to applications under Order IX rule 9 A I R 1929 Bom 262=53 B 453=31 Bom I R 484=122 Ind Cas 76 Application for an order to set aside the dismissal, must be filed with the period of 30 days Extension of that period can not be made by a court under s 151 A I L T 573=58 Ind Cas on Act does not apply to art cannot admit the application for not preferring his -27 Bom L R 1150=49B *ex parte* decree is dismissed e decree A I R 1924 All 503=46 A 319=22 A L J 191=78 Ind Cas 358, 41 Ind Cas 586=21 C W N 769

# 10 [S 105] Where there are more plaintiffs than one, and one or more

Procedure in case of non attendance of one or more of several plaintiffs of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit

**Notes**—Where one of several plaintiffs in a suit does not appear, the Court has discretion under Order IX, rule 10 of the Code of Civil Procedure to permit the suit to proceed in the same way as if all the plaintiffs had appeared A decree therefore, in a suit on a mortgage bond by two plaintiffs in favour of both the plaintiffs although one of them only has appeared, is not illegal To such a case Order IX rule 8 Civil Procedure Code, does not apply 62 Ind Cas 112

# 11 [S 106] Where there are more defendants than one, and one or

Procedure in case of non attendance of one or more of several defendants more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear

**Scope**—Where all the defendants did not enter appearance and a decree is passed against all of them on a ground common to them all it was held that the decree was not an *ex parte* decree against those defendants who were not present 12 W R 376, see also 9 W R 597 but see 15 W R 210 Order IX rule 13 must be read with rule 11 and effect should be given to all the provisions contained in them It cannot be laid down as an inflexible rule of law that whenever an order is made under s 108 of the Code, the effect is to set aside the whole decree although it may have been made against some of the defendants after a contest, or although an unsuccessful effort may have been made by some of the defendants to set aside the *ex parte* decree 6 C L J 226 There is nothing in this rule which conflicts with or limits the operation of order 9, rule 13 and the application of the latter rule is not limited to the case of a sole defendant who has not appeared, or to the case where there are several defendants and none of them has appeared



837 The first object and purpose for which courts sit is that the parties shall be heard. The object of the rule is to ensure within reasonable limits as to public convenience, that every defendant shall have a hearing 22 C 981 This rule con-

continue such pro-  
is not competent  
*ex parte* decree

has been passed to apply to the court under this rule to get such *ex parte* decree set aside, since the section in term is limited to the defendant against whom the decree has been passed *ex parte* 21 A 274=A. W. N 1899 58 (29 C 33 Diss) Court should valent to miscon- out right so far as I R 1923 Mad

63=16 L. W 583=46 M 60=43 M L J 632=68 Ind Cas 97 The Court to which business of the court is transferred can entertain an application to set aside an *ex parte* decree passed by the other court A I R 1922 Mad 10=42 M L J 344=15 L W 458=65 Ind Cas 787 Knowledge that a particular decree has been passed against him in a particular court in favour of a particular person for a particular sum is essential befo 1923 Bom 193=25 Bom L R 74=47 B has no jurisdiction to set aside *ex parte* decree at by the decision, and expressly exempted from the decree 61 Ind Cas 484 A minor defendant not represented in the suit by a properly appointed guardian cannot

to set aside the *ex parte* decree under order IX, r 13 of the code A I R 1922 Mad 33=14 L W 609=(1921) M W N 796=42 M L J 12=30 M L T 15=66 Ind Cas 59 Where order to set aside *ex parte* decree was passed on condon of payment of cost but no cost was deposited, the Appellate Court cannot set aside the *ex parte* decree A I R 1922 Oudh 14 Failure to impose any condition as to costs does not make the order setting aside an *ex parte* decree *ultra vires* 32 Ind Cas 984 Contesting defendants can apply under Order 9, rule 13 A I R 1934 All 163 Where an order under Order 17 rule 2 has been passed the proper procedure is to set it aside by an application under Order 9 rule 13 and not by review application A I R 1934 Cal 116

An *ex parte* decree must be set aside where suit is transferred without notice to defendant A I R 1923 Lah 444=34 Ind Cas 238 Where notice of adjourned hearing is not given to defendant *ex parte* decree against him should be set aside A I R 1923 All 79=20 A L J 912=77 Ind Cas 91 An *ex parte* decree could not be set aside without notice to plaintiff and the plaintiff's pleader does not represent the plaintiff after the *ex parte* decree 63 Ind Cas 47 Where a case was disposed of in the absence of defendants after cost has been

1135 A Dec 21 134 Ind Cas 800=55 Mad 17=61 M L J 348=1931 M W N 533=A I R 1931 Mad 656 (F B) Where an *ex parte* decree has been passed against a minor and the guardian was found to be improper and negligent the Court can set aside the *ex parte* and order for the appointment of a new guardian 143 Ind Cas 326=1932 A L J 1128=55 A 136=A I R 1933 All 116 This rule does not apply to set aside an *ex parte* order 135 Ind Cas 547=53 A 715=1931 A L J 529=A I R 1932 All 92 Execution application can be restored under inherent power of the Court 142 Ind Cas 686=13 Lah 761=34 P L R 70=A I R 1933 Lah 99

Decree is passed *ex parte*.—Where pleader is present decree passed is not *ex parte* though party himself is absent A I R 1927 Pat 291=6 Pat 383=9 Pat

L. T 63=63 Ind. Cas 71, A I R 1922 All 497=77 Ind Cas 527 But where pleader for defendant was present but took no part in the proceedings, decree would be *ex parte* A I R 1924 Bom 139=25 Bom L R 1922=82 Ind Cas 124 Where defendant's pleader was instructed to ask for an adjournment which was refused, consequently the defendant and his pleader though present in Court took no part in the trial, and the Court after hearing evidence and arguments on plaintiff's behalf, decrees the suit the decree being *ex parte* is liable to be set aside under Order IX, rule 13 for sufficient cause A I R 1922 Pat 485=1 Pat 188=69 Ind Cas 837, see also A I R 1934 Oudh 171 But where a pleader on behalf of the defendant, applies for examination of a witness on commission, which is refused and then retires, in that case a decree if passed would not be an *ex parte* decree. A I R 1931 All 794=1931 A L J 377 Where defendants were not present to prosecute the application to set aside the award, a decree passed against them is not *ex parte* decree A I R 1924 Pat. 603=1924 Pat 170=3 Pat. 339=6 P L T 212=83 Ind Cas. 26 An *ex parte* decree may be passed even in a case in which the Court acts under Order 17, rule 3 A I R 1923 Lah 281=67 Ind Cas 363 It can never be said that a decree

he has not appeared. A  
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has no instruction but Court pro  
Order IX, rule 13 but Order XXX.

Ind Cas 1028 Where a date  
*ex parte* decree cannot be passed  
a suit is decided *ex parte* again

in appeal the party against whom the *ex parte* decree was passed can apply to the trial Court for setting aside the *ex parte* order 24 O C 282=64 Ind Cas 308 A decree against a minor in a case in which he is fully represented by his father as guardian *ad litem* though *ex parte* is binding on him 37 Ind Cas 389

Application to set aside *ex parte* decrees—In considering whether *ex parte* decree should be set aside court should come to a finding whether the facts set forth

1927 Mad 722=53 M L J 110=26 L W 19=103 Ind Cas 146

Decree passed by fraud—Separate suit is maintainable to challenge *ex parte* decree passed against plaintiff by practising fraud on him A I R 1926 Nag 388=94 Ind Cas 56, see also 55 Ind Cas 412, 58 Ind Cas 317=2 U P L R (Pat) 242, 1 Lah 344=22 P W R 1920=2 Lah L J 623=56 Ind Cas 878, A I R 1922 Sind 20=16 S L R 209=70 Ind Cas 852, A I R 1924 Pat 241=5 Pat L T 37=75 Ind Cas 343, A I R. 1925 Rang 200=4 Bur L J 18=3 Ring 65=86 Ind Cas 537 If an application to set aside a decree on the ground of fraud is dismissed, a

1924 Pat

A I R.  
298=24 S

a separat  
I R 1933

no part  
obtained

plaintiff  
of fraud

Mad 679

133 Ind Cas 769=1931 M W N 1016=34 M L W 69=A. I R. 1931

Legal representative whether can apply—Where *ex parte* decree has been passed heirs of defendant can apply for setting it aside A I R 1923 All 30=83 Ind Cas 601 A legal representative can file application to set aside *ex parte* decree before he is actually brought on record A I R 1925 Oudh 370=27 O C 299=85 Ind Cas 529 Representatives of deceased can get usual period of six months for applying to be brought on record in an application under order IX, rule 13 96 P R 1918=47 Ind Cas 96

Inherent powers of Court to set aside *ex parte* decrees—In the absence of conditions mentioned in rule 13 Court has no jurisdiction to restore suit A I R

**Decree is passed ex-parte.**—Where pleader is present decree passed is not *ex-parte* though party himself is absent. A. I. R. 1927 Pat. 291=6 Pat. 383=9 Pat.

L. T. 63=63 Ind. Cas. 7

pleader for defendant

rule 13 for sufficient cause A I R 1922 Pat 485=1 Pat 188=69 Ind. Cas. 837; see also A I R 1934 Oudh 171. But where a pleader on behalf of the defendant, applies for examination of a witness on commission, which is refused, and then retires, in that case a decree if passed would not be an *ex parte* decree A I R 1931 All 294=1931 A. L. J. 377. Where defendants were not present to prosecute their application to set aside the award, a decree passed against them is not *ex parte* decree A I R 1924 Pat 603=1924 Pat 170=3 Pat 339=6 P. L. T. 212=83 Ind. Cas. 26. An *ex parte* decree may be passed even in a case in which the Court acts under Order 17, rule 3 A I R 1923 Lah 281=63 Ind. Cas. 368. It can never be said that a decree he has not appeared A

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has no instruction but Court proceeds with case on merits order is not under Order IV, rule 13 but Order XXXVII, rule 3 applies A I R 1925 Mad 316=82 Ind. Cas. 1028. Where a date is fixed for argument and defendant remains absent *ex parte* decree cannot be passed A I R 1924 Lah 224=72 Ind. Cas. 900. Where a suit is decided *ex parte* against one of the defendants, and the decision is upheld e was passed can apply to the 4 O C 282=64 Ind. Cas. 308. A y represented by his father as 37 Ind. Cas. 389

1927 Mad 722=53 M. L. J. 110=26 L. W. 19=103 Ind. Cas. 146

**Decree passed by fraud**—Separate suit is maintainable to challenge *ex parte* decree passed against plaintiff by practising fraud on him A I R 1926 Nag 388=94 Ind. Cas. 56, see also 55 Ind. Cas. 412, 58 Ind. Cas. 317=2 U. P. L. R. (Pat) 242, 1 Lah 344=22 P. W. R. 1920=2 Lah. L. J. 623=56 Ind. Cas. 878, A I R 1922 Sind 20=16 S L. T. 37=75 Ind. Cas. 5=86 Ind. Cas. 537 dis missed, a suit of 1924 Pat 238=2 Pat 833=5 P. L. T. 66=2 P. L. R. 65=74 Ind. Cas. 826, see also

of fraud 133 Ind. Cas. 769=1931 M. W. N. 1016=34 M. L. W. 69=A I R 1931 Mad 679

**Legal representative whether can apply**—Where *ex parte* decree has been passed heirs of defendant can apply for setting it aside A I R 1923 All 30=83 Ind. Cas. 601. A legal representative can file application to set aside *ex parte* decree before he is actually brought on record A I R 1925 Oudh 370=27 O. C. 299=85 Ind. Cas. 529. Representatives of deceased can get usual period of six months for applying to be brought on record in an application under Order IV, rule 13 96 P. R. 1918=47 Ind. Cas. 96

**Inherent powers of Court to set aside *ex parte* decree**—In the absence of conditions mentioned in rule 13 Court has no jurisdiction to restore an A I

1931 All 294=(1931) A L J 377 (F B), see also 34 C W N 419=52 C L J. 524=128 Ind Cas 94=A I R 1930 Cal 488, A I R 1930 Rang 152=127 Ind Cas 176, 34 C W N 222=A I R 1930 Cal 387=126 Ind Cas 779, 97 Ind Cas 936=24 L W 439=(1926) M W N 707, A I R 1922 Pat 479=1 Pat 277=65 Ind Cas 341, A I R 1922 All 441=19 A L J 907=64 Ind Cas 527, A I R 1921 Sind 38=15 S L R 61=63 Ind Cas 131, 26 M L T 377=43 M 94=37 M L J 599=10 L W 606=53 Ind Cas 847, but see 32 C W N 10=A I R 1928 Cal 772=35 C 473=106 Ind Cas 91, where it has been laid down that in dependency of order IX, r 13 Court has discretion. It is the general practice on the original side to follow the analogy of r 13 Order IX. But the terms of rule 13 do not prevent the Court where there is an element of negligence from restoring the suit on proper terms. A I R 1928 Cal 864=32 C W N 411=116 Ind Cas 633. Court can under special circumstances set aside *ex parte* decree on the appl.

A I R 1928 Rang 273=6

, i to set aside dismissal does

e remedy open to him but

failed to resort to it within time. A I R 1924 Rang 274=8 Bur L J 47=82 Ind Cas 413. If an appeal from an *ex parte* decree is dismissed for default, the first Court can allow application to set aside *ex parte* decree. 39 A 393=15 A L J 286=39 Ind Cas 519. Court which passed the *ex parte* decree has no jurisdiction to set aside an *ex parte* decree once decree has been affirmed on appeal. A I R 1921 Oudh 141=24 O C 282=64 Ind Cas 603, see also A I R 1923 Pat 331=4 P L T 115=71 Ind Cas 383. Where appeal against *ex parte* decree is dismissed, original Court can not set it aside. A I R 1929 Oudh 35=5 O W N 1037=4 Luck 201=114 Ind Cas 319. Court can not set aside *ex parte* decree when defendant's absence is not shown to be for sufficient cause. A I R 1923 Lah 147=73 Ind Cas 660. Where *bonafides* of defendants are doubtful, terms should be imposed.

Order XXXIV, r 6 passed by oversight against person not a mortgagor. A I R 1921 Pat 491=60 Ind Cas 368. A Court has no jurisdiction to set aside an order setting aside an *ex parte* decree at the instance of a third party. 61 Ind Cas 534.

**Service of summons** — No decree shall be made against a party behind his back. This is the cardinal principle underlying rules for service of summons. 134 Ind Cas 1202=35 M 223=61 M L J 920=1931 M W N 1069=34 M L W 496=A I R 1931 Mad 813. Under this rule a defendant is entitled to have the *ex parte* decree set aside against him if the summons was not duly served even when he has knowledge of the suit. 43 C 447=23 C L J 183=20 C W N 173=34 Ind Cas 799, see also 43 Ind Cas 632, 135 Ind Cas 110=12 P L T 911=A I R 1932 Pat 150, A I R 1930 Sind 298=24 S L R 232=128 Ind Cas 682. Defendant seeking to set aside *ex parte* decree must prove that summons

M L J 448=108 Ind

R. 58=5 P L T

Nag 356=88 Ind Cas 46. In the case of service by registered post if defendant represents to the Court that he had not been offered the postal packet he is entitled to retrial where an *ex parte* decree has been passed. A I R 1922 Bom 377=46 B 130=23 Bom L R 903=64 Ind Cas 386. In the case of substituted service a summons is duly served even though it does not come to the defendant's knowledge. A I R 1925 Lah 619=7 Lah L J 448=26 P L R 704=91 Ind Cas 272 T 1927 Mad 507=52 M I. *Ex parte* decree should provisions of Order V, r



C 549, see also A I R 1930 Lsh 943=129 Ind C15 890, A I R 1929 Lsh

A. I R 1916 Oudh 75=88 Ind Cas 481 The words "was prevented by any sufficient cause from appearing" must be liberally construed A I R 1927 Oudh 173-4 O W N 336=110 Ind Cas 632 While considering whether it is proper to set aside an *ex parte* decree no special concession in favour of criminals who were in jail is to be made A I R 1929 Oudh 35=5 O W N 1037=4 Luck 201=114 Ind Cas 319 Where there is even an element of negligence, the Court on the original side may restore the suit upon proper terms A I R 1928 Cal 772=55 C 473=32 C W N 10=106 Ind Cas 91 Press of work is sufficient cause A I R 1927 Rang 150=5 Rang 80=102 Ind Cas 379 Where minor is not properly represented decree against him is a nullity and suit cannot be restored A I R 1924 Mad 489=46 M L J 348=19 L W 233=34 M L T 94=1924 M W N 289=78 Ind Cas 76 ; but see A I R 1923 All 213= properly

<sup>\*\*</sup> A suit can be restored only when court is satisfied that defendant was prevented

Where defendant is ill, and in support of it, affidavit and medical certificates are filed as well as counter affidavits are also filed by the opposite party, held

are present but the counsel being engaged in another Court is not present and the suit is decreed *ex-parte*, such a decree cannot be set aside under this rule but the case can be restored under L R 1425=A I R 1932 Bc of guardian, such default A I R 1934 Mad 428 The Court has no power apart from the provisions of Order 9, rule 13 to set aside an *ex-parte* decree passed by itself *Ibid*

**Execution proceedings**—An application to have an *ex parte* order in execution proceedings set aside is not maintainable under Order IX rule 13. A I R 1929 All 485=121 Ind Cas 552

**Final decree**—An application to set aside a final decree, where law contemplates a final decree, passed *ex parte* is maintainable under this rule. 35 M L J 375=48 Ind Cas 71, see also 35 Ind Cas 288=8 L B R 450=9 Bur L T 245. Failure to issue notice on an application for final decree does not make decree illegal. A I R 1930 Mad 105=30 L W 551=120 Ind Cas 72

**Conditional order**—In restoring a case for re-hearing under this rule, the court must adjourn after the party has

tendered or failed to furnish security. 35 M L J 375=48 Ind Cas 71. Order of restoration conditional on payment of costs within certain time is proper order. A I R 1926 All 142=48 A 199=24 A L J 120=90 Ind Cas 243. Where there has been no default on the part of the party asking for re-hearing e.g. where he has not been duly served it is inequitable for the court to impose condition. 5 Pat L J 420=1 Pat L T 417=27 Ind Cas 300. Onerous condition should not be imposed. A I R 1924. time to pay decretal amount does *ex parte* decree. 3 L W 35=32 Ind Cas. side in *ex parte* decree no appeal lies. 1926 Bom 353=50 B 326=28 Bom L R 510. rejecting application for an order to set aside decree passed *ex parte* when that order is made because conditions which were lawfully imposed on defendants were not complied with. 28 Bom L R 1245=A I R 1927 Bom 1 (F B)=51 B 67=99 Ind Cas 384, A I R 1925 Mad 1182=88 Ind Cas 196

**Miscellaneous proceedings**—This rule applies to proceedings in connection with appointment of common manager under s 95 Bengal Tenancy Act by virtue of S 141 C P Code 93 Ind Cas 741. Provisions of r 13 of order IX apply to a decree passed under Sec II para 21 (2) 62 Ind Cas 927. For application of the rule in insolvency proceedings vide A I R 1927 Mad 897=103 Ind Cas 381, 135 Ind Cas 750=13 M L W 735=61 M L J 719=1931 M W N 924=A I R 1932 Mad 69

Cas 1042. Restoration of suit cannot be refused where defendant appears on the same day though late. A I R 1924 Bom 592=26 Bom J R 321=80 Ind Cas 237. Where an *ex parte* decree is passed against the defendant in the absence of his pleader, the latter need not file a fresh *vakalatnama* in order to apply to set aside the *ex parte* decree. A I R 1922 Bom 207=47 B 11=24 Bom L R 744=69 Ind Cas 169. During the pendency of the appeal an application to set aside the *ex parte* decree of the first court does not lie in the Appellate Court but ought to be filed in the first court. A I R 1922 Mad 33=42 M L J 12=14 L W 609=66 Ind Cas 59, 62 Ind Cas 755=41 M L J 90=44 M 731. jurisdiction after decree new court can entertain decree. A I R 1922 Mad 10=42 M L J 344=15 Ind Cas 727. A court ought not to set aside a decree taken by the defendant. 23 O C 104=57 Ind Cas 563. Application to set aside an *ex parte* decree can not be altered to one for review, to avoid limitation. 57 Ind Cas 15. The order IX, rule 13 could have been preferred at the time of the review application is no bar to a review application. order XVIII rule 1 38 M L J 224=(19-0) M W N 228=11 L W 217=55 Ind Cas 444

**Sub-section (2)**—Cause of action against all defendants not being joint and indivisible can at the instance of some of the defendants alone can set aside

*ex parte* decree as regards defendants applying only A I R 1926 Mad 256=22 L. W. 695=(1926) M W N 112=92 Ind Cas 776 Where joint decree is passed against several defendants and the individual interest of each is non ascertainable, Court is entitled to set aside entire decree A I R 1930 Cal 700=34 C W N 679=128 Ind Cas 182 *Ex parte* decree passed against absent defendant may be set aside only as against him, but not against another defendant who was present and against whom suit was dismissed by consent A I R 1927 Sind 24=104 Ind Cas 216 An *ex parte* decree cannot be set aside against judgment debtor without setting it aside against security also 40 Ind Cas 400 An *ex parte* mortgage decree should be set aside in its entirety even on application by some of the defendants 41 Ind Cas 181, see

Where decree passed

against some of the

defendants only A

Ind Cas 249=39 M

defendants are distinct

will not be benefited A I R 1925 Oudh 181=81 Ind Cas 520

Effect of restoration—When *ex parte* decree is set aside defendant is entitled

Pat 371=1923 Pat 1=2

W N 1087=27 C I J

in appeal all proceedings<sup>s</sup>

262=29 L. W. 490 Where a decree is set aside a decree holder's purchase in execution of an *ex parte* decree against judgment debtor of his property becomes *ipso facto* void 2 L. W. 1066=31 Ind Cas 80, Where an *ex parte* decree has been set aside in subsequent suit the question whether original suit revives depends on pleadings issues and actual decision in subsequent suit 132 Ind Cas 355=12 P L T 493=10 Pat 516=A I R 1931 Pat 204 (F B)

Appeal from *ex parte* decree—It is open to a defendant to prefer an appeal against the *ex parte* decree as also to make an application under Order IX rule 13 and then to come up in appeal under order 43 rule 1, clause (d) If he proceeds in

stage

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ty of

32 C W N 101=106 Ind Cas 542, but see 87 Ind Cas 222=A I R 1925 Oudh

*ex parte* decision even when other

1 Cas 14 Where order granting

against the order cannot be

A I R 1918 Oudh 40=

5 O W N 713=110 Ind Cas 702 If a defendant makes a default in appearance on an adjourned date after evidence of some defendants is recorded and the Court decides the suit on merits the defendant can appeal from the decree and can not

J 127=34 Ind Cas 855 In

reverse decree merely on the

R 1923 Oudh 117 26 O C 10

=10 O L J 36=73 Ind Cas 591 A I R 1929 Pat 609=10 P L T 589=120 Ind Cas 304, A I R 1922 Lah 439=3 Lah 357=69 Ind Cas 499 But question of service of summons can only be considered in the special proceedings under

order IX and not in appeal from *ex parte* decree A I R 1924 Rang 137=2 Bur

L J 282=2 Rang 108=79 Ind Cas 506 If however the defendant can show that

there is an error defect or irregularity in an order rejecting his application for time

which affects the decision of the case there is no reason why he will not succeed

A I 1929 Pat 609=10 P L T 589=120 Ind Cas 304 see also 56 Ind Cas 16=

1 P L T 467 Where an Appellate Court confirms an *ex parte* decree on an appeal

by the defendant, the decree of the appellate Court is not an *ex parte* decree A I

R 1922 Mad 33=14 L W 609=(1921) M W N 746=42 M L J 12=66 Ind Cas

59 Where an application to have an *ex parte* decree set aside has been dismissed,

the propriety of dismissal can be questioned in an appeal from the decree or under

s 10, 12 L. W. 507=(1920) M W N 780=29 M L T 63=38 M L J 697=60

*ex-parte*  
or res  
of the

lower Court does not merge in that of the Appellate Court and the absent defendants can even after decision of appeal apply to have the *ex-parte* order set aside provided they did not take part in the appeal 39 A. 13=14 A. L. J. 853=36 Ind. Cas. 307, see also 36 C. W. N. 747=140 Ind. Cas. 586=A. I. R. 1932 Cal. 773. In case of revision of *ex parte* decree by plaintiff, where defendant opposes the revision, the *ex-parte* decree merges in High Court decree and the trial Court cannot entertain an application under this rule A. I. R. 1934 All. 134.

**Limitation**—An application under Order IX, r. 13, must be made within one month from the decree or from the 1921 Pat. 69=1921 Pat. 100=2 P. L. to set aside an *ex parte* decree or on defendant of proving that it was presented within 30 days of his having knowledge 109 Ind. Cas. 82 (Lah.), see also 92 Ind. Cas. 295. In case of non service of summons the Court should decide whether application is within time from date when petitioner came to know of *ex parte* decree A. L. R. 1925 Lah. 577=7 Lah. L. J. 408=26 P. L. R. 600=91 Ind. Cas. 798. An *ex-parte* final decree cannot be set aside under Order IX, r. 13 on the ground that the application was Pat. 277=65 Ind. Cas. 341. Where sent to be served on him and there et aside *ex parte* decree was made on the *fili* under the circumstances, the onus idant had knowledge of decree more than R. 1924 Lah. 233=73 Ind. Cas. 43.

Section 5 of the Limitation Act does not apply to applications under Order IX, rule 13 32 Ind. Cas. 975. But Madras High Court rule extending s. 5, Limitation Act to applications under Order IX, r. 13 is *intra vires* A. I. R. 1924 Mad. 14 (F. B.)=43=(1924) M. W. N. 682=47 M. 824=nded by the Madras High Court, time A. I. R. 1922 Mad. 33=14 L. W. 909=30 M. L. T. 151 (H. C.)=1921 M. W. N. 796=42 M. L. J. 12=66 Ind. Cas. 59. Court cannot extend period prescribed by Art. 164 of the Limitation Act A. I. R. 1934 Nag. 43.

**Appeal**—Application to disallowed Orders disallow 1933 Rang. 63. Provisions limited to where the appli

A. I. R. 1929 Pat. 529=8 Pat. 533=10 P. L. T. 211=117 Ind. Cas. 317, see also 37 Ind. Cas. 835, 35 Ind. Cas. 798. Appeal against order refusing to set aside *ex parte* decree lies only where decree is appealable A. I. R. 1924 Pat. 603=(1924) Pat. 170=1 Pat. 830=6 P. L. T. 212=83 Ind. Cas. 76. Order setting aside *ex-parte* decree J. 377, see also A. I. R. 1927 R. 1926 Cal. 327=30 C. W. N.

Cas. 410. Where a successor of a small cause court not empowered to pass decree in question, refuses to set aside the *ex parte* decree passed by his predecessors, the order rejecting application is not appealable A. I. R. 1922 All. 50=20 A. L. J. 208=65 Ind. Cas. 957. No appeal lies against an order refusing to restore an application to set aside a decree dismissed for default, A. I. R. 1922 All. 337=20 A. L. J. 519=67 Ind. Cas. 320, see also 36 R. 1932 Cal. 687. Order dismissing application to set aside *ex parte* decree is non appealable L. J. 427=79 Ind. Cas. 323. No appeal lies

against an order dismissing application to set aside award with the intervention of court passed in default of defendant A. I. R. 1924 Pat. 603=3 Pat. 839=6 P. L. T. 212=83 Ind. Cas. 26. Order refusing to set aside *ex parte* decree is not appealable A. I. R. 1925 All. 267=47 A. 140=85 Ind. Cas. 470. No appeal lies against order refusing to set aside *ex parte* decree made in reference under Land Acquisition Act, such order not being an award A. I. R. 1926 Cal. 816=94 Ind. Cas. 330. Where in an application to set aside *ex parte* decree, applicant dies, the order bringing legal representatives on record is not appealable A. I. R. 1925 All. 431=23 A. L. J. 442=47 A. 74.=83 Ind. Cas. 95. Appeal from order rejecting

175=24 A L J 56=90 Ind  
 decree under Order IX, rule 13 unless it was satisfied that defendant was prevented by sufficient cause from appearing Court has power apart from Order IX r 13 to set aside *ex parte* decree made by itself A I R 1923 Lah 147=73 Ind Cas 660 No appeal lies from an order made under rule 13 138 Ind Cas 748=36 C W N.  
 ht of appeal is not matter of procedure  
 y implication for restoration of suit  
 83=A I R 1932 Nag 101 (F B)  
 and cannot be set aside save under  
 s. 152 or on review 14, Ind Cas 302=10 O W N 794=A I R 1933 Oudh 335

Revision—Order setting aside an *ex parte* decree is open to revision A I R 1921 Oudh 141=2.  
 Cas 46, *contra* A  
 J 907=64 Ind Ca  
 order is not revisable A I R 1924 Pat 816=76 Ind Cas 60 Court has inherent jurisdiction to overset former order striking out defence and passing *ex parte* decree against defendants A I R 1930 All 701. Where *ex parte* decree has been set aside and plaintiff accepts costs, the order can not be revised A I R 1926 Lah 637=96 Ind Cas 782.  
 438=96 Ind Cas 420.  
 rejected, is decree to  
 A I R 1926 Cal 344=9  
 decided accord ng to h  
 India Act A I R 1926  
 parties to revision whic  
 them all A I R 192, Cal 509=78 Ind Cas 132

Suit to set aside—Suit to set aside *ex parte* decree is barred where the question raised in suit are raised and decided by the Court passing the application (1921) Pat 3=1 P L T 735=6 Pat L J 1=3 U. P L R (Pat) 1=60 Ind Cas 124 In a suit to set aside decree as fraudulent, non service of summons may be incidentally proved as index to fraud A I R 1924 Pat 241=5 P L T 37=75 Ind Cas 343 False  
 aside *ex parte* decree  
 A I R 1927 Cal 84=

because summons was not served on a party, the remedy is in application under order IX rule 13 and not in separate suit 40 Ind Cas 2, see also 57 Ind Cas 551=22 Bom L R 798 But failure to have an *ex parte* decree set aside does not debar a party from seeking relief in a properly framed suit on the ground that the original suit was a fraudulent one and that the proceedings therein were vitiated by fraud 20 C W N 819=36 Ind Cas 389, see also A I R 1927 Rang 281=5 Rang 471=6  
 set aside *ex*  
 aside the de  
 Cas 128 A  
 not proceeded  
 Cas 264  
 Dismissal of an application to  
 bars a subsequent suit to set  
 -(1916) 2 M W N 63=63 Ind  
 decree is competent, though  
 13 10 Bur L T 10=34 Ind

14 [S 109] No decree shall be set aside on any such applications as aforesaid unless notice thereof has been served on the opposite party

N B—For local amendment in Bombay, *vide infra*

Notes—This rule is imperative Notice to affected party is essential before setting aside *ex parte* decree A I R 1923 Rang 49=11 L B R 394=1 Bur L J 200=70 Ind Cas 144, 24 M L J 482=13 M L T 344=19 Ind Cas 21, 63 Ind Cas 47 The word 'opposite party' means plaintiff obtaining *ex parte* decree against the appealing defendants A I R 1927 Cal 692=31 C W N 906=103 Ind Cas 860, see also 20 M L J 524=8 M L T 234=7 Ind Cas 66, 26 C 267=3 C W N 261, 57 Ind Cas 563 The principle of representation cannot be urged as against the definite provisions of rule 14 A I R 1934 Pat 396

Ind. Cas. 215, A. I. R. 1934 Oudh 131. If an applicant to set aside an *ex parte* decree is a defendant or respondent of the decree, he must show that he was not present at the trial and that he was not provided with notice of the trial. A. I. R. 1934 A. L. J. 835=30 Ind. Cas. 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

**Limitation.**—An application under Order IX r. 13, must be made within one month from the decree or from the knowledge of the passing of the decree. A. I. R. 1921 Pat. 69=1921 Pat. 100=2 P. L. T. 11=37 Ind. Cas. 333. Where application to set aside an *ex parte* decree presented more than 30 days after decree, onus is on defendant of proving that it was presented within 30 days of his having knowledge. 103 Ind. Cas. 82 (Lah.), see also 92 Ind. Cas. 295. In case of non service of summons the Court should decide whether application is within time from date when petitioner came to know of *ex parte* decree. A. I. R. 1925 Lah. 577=7 Lah. L. J. 408=26 P. L. R. 600=91 Ind. Cas. 793. An *ex parte* final decree cannot be set aside under Order IX r. 13. 1 time barred. A. I. R. 1922 Pat. 49=1. If defendant proved that a summons was never served, and his application to set aside the decree was presented within 30 days after the decree was passed. Held under the circumstances, the onus was upon plaintiff to show that the defendant had knowledge of decree more than 30 days before date of his application. A. I. R. 1924 Lah. 235=73 Ind. Cas. 43. Section 5 of the Limitation Act does not apply to applications under Order IX, rule 13. 32 Ind. Cas. 975. But Madras High Court rule extending s. 5, Limitation Act to applications under Order IX r. 13 is *intra vires*. A. I. R. 1924 Mad. 14 (F. B.)=43=1924 M. W. N. 682=47 M. S. 24=47. ended by the Madras High Court, time barred. A. I. R. 1922 Mad. 33=14 L. W. 609=30 M. L. T. 131 H. C.)=1921 M. W. N. 796=42 M. L. J. 12=66 Ind. Cas. 59. Court cannot extend period prescribed by Art. 164 of the Limitation Act. A. I. R. 1924 Nag. 41.

**Appeal.**—Application to set aside *ex parte* decree must either be allowed or disallowed. Orders allowing application is appealable. 144 Ind. Cas. 186=A. I. R. 1933 Rang. 63. Provisions for appeal against an order under Order IX rule 13, is not limited to where the application under Order IX rule 13 is dismissed on merits. A. I. R. 1929 Pat. 529=8 Pat. 533=10 P. L. T. 211=117 Ind. Cas. 317, see also 37 Ind. Cas. 835; 35 Ind. Cas. 763. Appeal against order refusing to set aside *ex parte* decree lies only where decree is appealable. A. I. R. 1924 Pat. 603=1924 Pat. 170=3 Pat. 879=6 P. L. T. 212=83 Ind. Cas. 26. Order setting aside *ex parte* decree is not appealable. A. I. R. 1931 All. 294=1931 A. L. J. 377, see also A. I. R. 1927 Lah. 775=26 P. L. R. 161=105 Ind. Cas. 610, A. I. R. 1926 Cal. 327=30 C. W. N. 104=91 Ind. Cas. 965; A. I. R. 1923 Lah. 425=72 Ind. Cas. 410. Where a successor of a small cause court not empowered to pass decree in question, refuses to set aside the *ex parte* decree passed by his predecessors, the order rejecting application is not appealable. A. I. R. 1922 All. 50=20 A. L. J. 208=65 Ind. Cas. 967. No appeal lies against an order refusing to restore an application to set aside a decree dismissed for default. A. I. R. 1922 All. 337=20 A. L. J. 519=67 Ind. Cas. 320, see also 35 C. W. N. 543=137 Ind. Cas. 502=A. I. R. 1921 Cal. 104. Application for restoration of application to set aside *ex parte* decree is not appealable. A. I. R. 1924 All. 602=45 A. L. J. 538=22 A. L. J. 538. Appeal against an order dismissing application to set aside *ex parte* decree is not appealable. A. I. R. 1924 Pat. 603=3 Pat. 837=6 P. L. T. 212=83 Ind. Cas. 26. Order refusing to set aside *ex parte* decree is not appealable. A. I. R. 1925 All. 267=47 A. L. J. 140=85 Ind. Cas. 470. No appeal lies against order refusing to set aside *ex parte* decree made in reference under Land Acquisition Act, such order not being an award. A. I. R. 1926 Cal. 816=94 Ind. Cas. 350. Where in an application to set aside *ex parte* decree, applicant alleges, the order bringing legal representatives on record is not appealable. A. I. R. 1925 All. 431=23 A. L. J. 442=47 A. L. J. 442=83 Ind. Cas. 95. Appeal from order rejecting

application for setting aside *ex parte* order can be treated as appeal from *ex parte* decree. A I R 1926 Cal 177=41 C I T 117=97 Ind Cas 313 In an appeal

as satisfied that defendant was prevented from Order IX r 13 to 47=73 Ind Cas 660 No 1 Cas 748=36 C W N not matter of procedure for restoration of suit 1932 Nag 101 (F B) e set aside save under s 152 or on rev ev 14, Ind Cas 302=10 O W N 794=A I R 1933 Oudh 335

Revision—Order setting aside an *ex parte* decree is open to revision A I R 1921 Oudh 141=24 O C 282=64 Ind Cas 303, A I R 1925 Nag 356=88 Ind Cas 46, *contra* A J 907=64 Ind Ca 11=19 A L rejected, order is not revisab ent juris- diction to overset former order striking out defence and passing *ex parte* decree against defendants A I R 1930 All 701. Where *ex parte* decree has been set aside and plaintiff accepts costs the order can not be revised A I R 1926 Lah 637=96 Ind Cas 782, see also A I R 1927 Lah 55=8 Lah L J 273=27 P L R 438=95 Ind Cas 470 Where application for set aside decree has been rejected as decree to no revision lies A I R 1926 Cal 344=9 oration has been decided according to la India Act A I R 1926 a 37=89 Ind Cas 863 All defendants must be made parties to revision which is applied for setting aside *ex parte* decree passed against them all A I R 1925 Cal 509=78 Ind Cas 132

Suit to set aside—Suit to set aside *ex parte* decree is barred where the question raised in suit are raised and decided by the Court passing the application (1921) Pat 3=1 P L T 735=6 Pat L J 1=3 U P L R (Pat) 1=60 Ind Cas 124 In a suit to set aside decree as fraudulent, non service of summons may be incidentally proved as index to fraud A I R 1924 Pat 241=5 P L T 37=75 Ind Cas 343 False claim and perjured evidence is not sufficient ground to set aside *ex parte* decree Fraud must be practised in relation to proceedings in Court A I R 1927 Cal 84=31 C W N 258=97 Ind Cas 279 If a decree is impeached because summons was not served on a party the remedy is an application under order IX rule 13 and not in separate suit 40 Ind. Cas 2, see also 57 Ind Cas 551=22 Bom L R 798 But failure to have an *ex parte* decree set aside does not debar a party from seeking relief in a properly framed suit on the ground that the original suit was a fraudulent one and that the proceedings therein were vitiated by fraud 20 C W N 819=36 Ind Cas 389, see also A I R 1927 Rang 281=5 Rang 471=6 Bur L J 148=101 Ind Cas 313 Dismissal of an application to set aside *ex parte* decree if confirmed on appeal bars a subsequent suit to set aside the decree 3 L W 572=20 M L T 126=(1916) 2 M W N 63=63 Ind Cas 128 A suit to set aside an *ex parte* fraudulent decree is competent though not proceeded by an application under order IX rule 13 10 Bur L T 10=34 Ind Cas 264

14 [S 109] No decree shall be set aside on any such applications as aforesaid unless notice thereof has been served on the opposite party

N B—For local amendment in Bombay *vide* *infra*

Notes—This rule is imperative Notice to affected party is essential before setting aside *ex parte* decree A I R 1923 Rang 49=11 L B R 394=1 Bur L J 200=70 Ind Cas 144, 24 M L J 482=13 M L T 344=19 Ind Cas 21, 63 Ind Cas 47 The word opposite party means plaintiff obtaining *ex parte* decree against the appealing defendants A I R 1927 Cal 692=31 C W N 906=103 Ind Cas 860 see also 20 M L J 524=8 M L T 234=7 Ind Cas. 66, 26 C. 267=3 C W N 261 57 Ind Cas 363 The principle of representation cannot be urged as against the definite provisions of rule 14 A I R 1934 Pat 396

## ORDER X

*Examination of Parties by the Court*

1 [S. 117] At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

*Scope—Statement of party in witness box cannot be* A I R 1930 for the oral

439=66 Ind Cas 222, see also statement of facts is not disputed S Lh L J 67=27 P L R 136=92 Ind Cas 1006 Admissions by a party under order X, rule 1 are conclusive against him A Cas 176=25 A L J 48, but see 10 I A . filed without special leave of the Court is of parties under order X

A I R 1922 Oudh 30=9 O L J 30=24 O C 348=64 Ind Cas 771 Plaintiff's refusal to make admissions about matters not directly involved in suit and helpful 228=116 Ind Cas 717 Where a suit of controversy further the proper order X, rule 1, but on failure of e ment as directed by the Court the r order VIII r 10 which in terms

R 1118= 122 Ind Cas 423 Where all defendants are confessing judgments joint statement is legal A I R 1934 Lah 396 A I R 1929 Bom 413=31 Bom 1

2 [S 118]. At the first hearing of the suit or at any subsequent hearing any party appearing in person or present in Oral examination of party or Court, or any person able to answer any material companion of party questions relating to the suit by whom such party or his pleader is accompanied may be examined orally by the Court, and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party

*Scope—This rule is intended to ascertain the question of controversy between the parties 2 A L J 777, 15 C 533=15 I A 119 The statement of a person examined on behalf of the party is not necessarily binding on the party A I R 1925 All 411=94 Ind Cas 1003 Power under this rule is to be used to obtain information erseding ordinary procedure at trial 134 Ir M W N 931=8 O W N 936=34 M I 550=A I R 1931 (P C) 151, see also 94 I he statement under this section cannot be treated as evidence 179 Ind Cas 301=31 P L R 913=A I R 1930 Lah 947*

3 [S 119] The substance of the examination shall be reduced to Substance of examination to writing by the Judge, and shall form part of be written the record

4. [S 120.] (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as Consequence of refusal or is referred to in rule 2, refuses or is unable to inability of pleader to answer answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day



(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit

Scope—Personal attendance of parties is required only when material questions are not answered by pleadings 21 O C 252=49 Ind Cas 269, see also 23 B 318, 5 Bom L R 637, 2 W R 161. An order passed by court when party or pleader is absent at an adjourned hearing is really one under order XVII rule 2 read with order IX r 8 though purporting to be  
945 Where in a suit for rent, defendant draw that plea if plaintiff deposed that it

discha

art cannot summon the plaintiff under order X  
r VII rule 1 24 L W 757=98 Ind Cas 723

Order IX does not apply to the special set of circumstances contemplated by order X, rule 4 A I R 1921 Mad 417=14 L W 15=(1921) M W N 390=63 Ind Cas 961. Even under order 10 rule 4 *plaintiff* can not be compellable to attend court. 1933 A L J 1384=A I R 1933 All 551. Personal appearance of plaintiff can be compelled only under order 3 rule 3 and order 10 rule 4 140 Ind Cas 716=28 N L R 146=A I R 1932 Nag 135. Where pleader or agent is not refusing or is not unable to answer material questions court cannot order personal attendance 1933 A L J 1318=A I R 1933 All 517. Under order 10 rule 4 (2) court can dismiss suit for default of appearance of party 138 Ind Cas 613=1932 A L J 76=A I R 1932 All 59, see also A I R 1933 All 922

## ORDER XI

### *Discovery and Inspection*

1 [R S C O 31, r. 1] In any suit the plaintiff or defendant by leave

Discovery by interrogatories of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer. Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose. Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness

Scope—Interrogatories cannot be delivered without the leave of the Court for the examination of the opposite parties. The words opposite parties mean parties between whom there is some right to adjust in the suit *Shaw v Smith* 15 Ch D 162. It may include co-defendants have the same interest in the

plaintiff cannot administer interrogatories 381=30 V L T (H C) 26=63 Ind (1906) 1 Ch 19 C A. The judge has  
tories *Codd v Delah* (1906) W N 57. *Maass v Gas Light* (1911) 2 K B 543, *Knapp v Harvey* (1911) 2 K B at p 728. Court will not order the defendant to particulars of his traverse of plaintiff's allegations where the onus of proof is on the plaintiff A I R 1921 Sind. 106=17 S L R 9=80 Ind Cas 958. The object of the interrogatories to find out what really is in issue [*Saunders v Jones*, 7 Ch D 435 *Ashley v Taylor* 38 L T 44 (C. A.)] and to avoid surprise at the trial *Lyon v Tweddell* 13 Ch D 375. The facts which will prove a party's case can be put in interrogatories *Hooton v Dalby* (1907) 2 where the plea is want of consideration in evidence to issue interrogatories to as 17=A I R 1933 Mad 98. So also evidence cannot be allowed 142  
Cas 484=56 C L J 440=A I R 1933 Cal 151. But interrogatories to d

THE CODE OF CIVIL PROCEDURE

504 facts directly in issue as well as facts relevant to those facts are permissible *Osyinn*  
*Lamp* (1905) 1 K B 403 (417) An interrogatory may be put in the interrogatories *Plymouth Mutual v Traders'*  
*Insurance Co.* (1906) 1 K B 403 (417) An interrogatory may be put in the interrogatories *Plymouth Mutual v Traders'*  
the facts directly in issue *Asfarrot v Ch*  
*Layton*, (1911) 2 Ch 75 (76, 83) An interrogatory may be put in the interrogatories *Plymouth Mutual v Traders'*  
legitimate use and the only legitimate  
party interrogated admissions of facts which  
to prove in order to establish his case, and if the party interrogated goes further  
and seeks by his interrogatories to get from the other party matters which it is not  
incumbent on him to prove, although such matters may indirectly assist his case, the  
interrogatories ought not to be admitted" Per *A L Smith L J* in *Kennedy v*  
*Dodson*, (1895) 1 Ch 334 (341), but see *Hooton v Dalby* (1907) 2 K B at p 21  
Order XI is applicable to proceedings in probate and a Court on submission of  
interrogatories direct an enquiry 43 C 300=23 C L J 480=43 Ind Cas 227,  
see also *Re Holloway* (1887) 12 P D 167 Order XI of the present Civil  
Procedure Code relating to discovery and inspection is the same as Order XXXI  
of the Rules of the Supreme Court 41 C 6=24 Ind Cas 765 An interrogatory  
must not be scandalous *Kemble v Hope*, 10 T L R 254

By and to what person—Discovery by way of interrogatories may be  
allowed to a plaintiff from a co plaintiff, or to a defendant from a co defendant, in  
cases in which there may be rights to be adjusted between them *Shaw v Smith*,  
50 L J Q B 174=18 Q B D 193 But discovery cannot be allowed to a defendant  
from a co-defendant with a view to show that the co defendant and not the defendant  
is liable to the plaintiff as where a defendant, sued for subsidence under the  
plaintiff's land, proposes to inspect the mines of a co-defendant in adjoining land.  
*Ibid* An infant plaintiff or defendant cannot be compelled to answer interrogatories  
*Mayor v Collins*, 59 L J Q B 199=24 Q B D 361 A guardian *ad litem* is not  
a party to the action within the meaning of this rule and therefore cannot be compelled  
to answer interrogatories 11 Q B D 251

2. [R. S. C. O. 31, r. 2]

Particular interrogatories to leave to deliver  
be submitted be submitted to  
the Court In deciding upon such application,  
the Court shall take into account any offer, which may be made by the party  
sought to be interrogated to deliver particulars, or to make admissions, or to  
produce documents relating to the matters in question, or any of them, and  
leave shall be given as to such only of the interrogatories submitted as the  
Court shall consider necessary either for disposing fairly of the suit or for  
saving costs.

Boope—Under rule 2, the Judge has not any power to settle interrogatories,  
but he can decide what should be administered The *duties* in English cases with  
regard to the more extensive powers of Courts in matters of probate, seem to imply  
that the strictest relevancy in the interrogatories may not be required but the Courts  
certainly be obliged to exclude any thing offensive or improper in the same way as  
in any other case 43 C 300=23 C L J. 480=34 Ind Cas 227 Interrogatories  
should be disallowed when they aim at discovering the nature of the opponents' evidence  
to ascertain what documents the defendant had on the particulars of  
the documents. 36 Ind Cas 883 The mere fact that the Court allows an interro-  
gatory does not amount to a decision that it must be answered The party  
interrogated is at liberty to answer it or to raise an objection under rule 6 *Pick v*  
*Ray*, (1854) 3 Ch 282 (C A) Service on pleader of the party interrogated is good  
*Re Mulcaster* 47 L J. Ch 609, *Little v Roberts*, 30 L T. 367 The proper time  
for allowing interrogatories is after the defence is put in, although the Court is  
competent to allow interrogatories at an earlier stage *Mercier v Cotton*, 1 Q B D.  
442; *In re A Debtor*, (1910) 2 K. B p 63, *Beal v Pilling*, 38 L T. 486.

3. [R. S. C. O 31, r. 3] In adjusting the costs of the suit inquiry shall

Costs of interrogatories

if it is the opinion of the tax

hibited by the  
by the  
by the  
party in fault.

4 [R S C. O. 31, r 4.] Interrogatories shall be in Form No 2 in Appendix C, with such variations as circumstances may require

5. [R S. C. O 31, r 5.] Where any party to a suit is a corporation or a body of persons, whether incorporated or not, Corporations

its own name or in the name of  
may apply for an order allowing  
or officer of such corporation or

Scope—In the case of corporation, the Court is to decide what member or officer is most likely to be competent to answer the interrogatories. *Berkeley v. Standard* (1875) 13 Ch. D 97. Ordinarily the Secretary of the Corporation is the fit person to be interrogated. *In re Alexandra Palace Co* (1890) 16 Ch D 58. The answer to the interrogatories need not be based on the personal knowledge of the member or officer named, but on information. *South West v. In re* (1890) 16 Ch D 58. Where an officer is named the leave will be granted. *In re, 30 L. J. Ch. 7—16 Ch. D.* unless the judge is satisfied that there is no officer of the company capable of making the discovery and that the member proposed to be examined has the required information. *Berkeley v Standard Investment Co*, 13 Ch D 97. Where in an action against a company an application is made under this rule for leave to deliver interrogatories to a member of the company notice of the application must be served upon the member. *Challinor v British South Africa*, (1896) 2 Q B 153.

6 [R. S. C. O 31, r 6.] Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Scope—The mere issue of interrogatories does not debar the party interrogated to take objection under this rule. *Peck v Rye* (1894) 3 Ch 282. In answer the party interrogated may state that objects to answer the particular interrogatory or interrogatories but must put in the grounds of his objection. *Church v Perry*, 36 L. T 513, *Smith v Briggs* 36 L. T 471. The Court should adjudicate an objection as to the relevancy of interrogatories. 46 Ind Cas 660.

Scandalous—An objection on the ground that the matter sought is scandalous. But nothing can be said which is not in issue. *Owen*, 8 Ch D 645 (653), *Kemble v Hope*, 8 Ch D 645 (653), the mere purpose of which is to abuse. *Christie v Christie*, 8 Ch 499, *Coyle v Cuming*, 40 Ch 455. A person is also not bound to answer an interrogatory if the answer tends to criminate him. *Lee v Read*, 5 Beav 381, *Lamb v Monster*, 10 Q B D 110.

Irrelevant—Irrelevant interrogatories need not be answered. *Parker v Wells* 18 Ch D 477 (485). "I entertain a strong opinion" said Lord Herschell in *Kerley v Dodson*, (1895) 1 Ch 334 at p 338 "that interrogatories of this description unless they are strictly relevant to the question at issue in the action, ought to be rigorously excluded." See also *Re Howel Morgan*, 39 Ch D 316. *Allhusen v Lobouchere* 3 Q B D 654 (661), 23 C 117, 16 A L J 762—46 Ind Cas 660.

Bona fide—Interrogatories may become oppressive and may be used for improper purposes. In such a case the court has discretion to disallow them on the merits of the case. *Heaton v Gidney* (1910) 1 K B at p 758. So a party may

facts directly in issue as well as facts relevant to those facts are permissible *Oswam Lamp Works v Gabriel Lamp Co* (1914) 2 Ch 170 (C A.) Facts which destroy  
*Plymouth Mutual v Traders'*  
 . . . . . may deal with any facts the  
 . . . . . existence or non existence of  
 . . . . . 17 Q B D 154 (162), *Nash v Layton*, (1911) 2 Ch 71 (76 81) *Kennedy v Dodson*, (1895) 1 Ch 334. The  
 . . . . . use of interrogatories is to obtain from the  
 . . . . . it is necessary for the party interrogated  
 . . . . . if the party interrogated goes further  
 and seeks by his interrogatories to get from the other party matters which it is not  
 incumbent on him to prove, although such matters may indirectly assist his case,  
 the, interrogatories ought not to be admitted" Per *A L Smith L J* in *Kennedy v.*  
*Dodson*, (1895) 1 Ch 334 (341), but see *Hooton v Dalby* (1907) 2 K B at p 21

Order XI is applicable to proceedings in probate and a Court on submission of  
 interrogatories direct an enquiry 43 C 300=23 C L J. 480=43 Ind Cas 227,  
 see also *Re Holloway* (1887) 12 P D 167 Order XI of the present Civil  
 Procedure Code relating to discovery and inspection is the same as Order XXXI  
 of the Rules of the Supreme Court 41 C 6=24 Ind Cas 765 An interrogatory  
 must not be scandalous. *Kemble v Hope* 10 T L R 254

. . . . . ies may be  
 . . . . . defendant, in  
 . . . . . *How v Smith*,  
 . . . . . o a defendant  
 . . . . . the defendant  
 is liable to the plaintiff, as where a defendant, sued for subsidence under the  
 . . . . .

to answer interrogatories 11 Q B D. 251.

2. [R. S. C. O. 31, r. 2] On an application for leave to deliver  
 Particular interrogatories to the particular interrogatories  
 be submitted proposed to be delivered shall be submitted to  
 the Court In deciding upon such application,  
 the Court shall take into account any offer, which may be made by the party  
 sought to be interrogated to deliver particulars, or to make admissions, or to  
 produce documents relating to the matters in question, or any of them, and  
 leave shall be given as to such only of the interrogatories submitted as the  
 Court shall consider necessary either for disposing fairly of the suit or for  
 saving costs.

Scope—Under rule 2, the Judge has not any power to settle interrogatories,  
 but he can decide what should be administered The *dicta* in English cases with  
 regard to the more extensive powers of Courts in matters of probate, seem to imply  
 that the strictest relevancy in the interrogatories may not be required, but the Courts  
 certainly be obliged to exclude anything offensive or improper in the same way as  
 in any other case 43 C 300=23 C L J. 480=34 Ind Cas 227 Interrogatories  
 should be disallowed when they aim at discovering the nature of the opponents' evi-  
 dence to ascertain what documents the defendant had on the particulars of  
 the documents 36 Ind Cas 583 The mere fact that the Court allows an interro-

. . . . . *Roberts*, 30 L T 367 The proper time  
 . . . . . defence is put in although the Court is  
 . . . . . rlier stage *Mercur v Cotton*, 1 Q B D  
 442; *In re A Debtor*, (1910) 2 K. B p 63, *Beal v Pilling*, 38 L T. 436

3. [R. S. C. O 31, r. 3] In adjusting the costs of the suit inquiry shall  
 at the instance of any party be made into the  
 Costs of interrogatories propriety of exhibiting such interrogatories, and  
 if it is the opinion of the taxing officer or of the Court, either with or without

an a . . . have been exhibited  
unre. . . costs occasioned by the  
said . . . in any event by the  
party in fault.

4 [R. S. C. O. 31, r 4] Interrogatories shall be in Form No 2 in Appendix C, with such variations as circumstances may require  
Form of interrogatories

5 [R. S. C. O. 31, r 5] Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued . . .  
Corporations

Scope—In the case of corporation, the Court is to decide what member or officer is most likely to be competent to answer the interrogatories *Berkeley v. Standard*, (1879) 13 Ch D. 97. Ordinarily the Secretary of the Corporation is the fit person to be interrogated. *In re Alexandra Palace Co* (1880) 16 Ch D 58. The answer to the interrogatories need not be based on the personal knowledge of the member of the corporation but may be based on information. *South Work Water Co v. Quick*, 3 Q B D 315 (321); *Welsbach Incandescent v. New Sunlight*, (1901) 2 Ch 1. If the Court is satisfied that a proper officer is named the leave will be granted as of course. *Alexandra Palace Co In re*, 50 L. J. Ch 7=16 Ch D. 58. An ordinary member of a company ought not to be examined on interrogatories unless the judge is satisfied that there is no officer of the company capable of making the discovery and that the member proposed to be examined has the required information. *Berkeley v. Standard Investment Co*, 13 Ch D 97. Where in an action against a company an application is made under this rule for leave to deliver interrogatories to a member of the company, notice of the application must be served upon the member. *Chillock v. British South Africa*, (1896) 2 Q B 153.

6 [R. S. C. O. 31, r 6] Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer  
Objections to interrogatories by answer

Scope—The . . . rogatories does not derbar the party interrogated. *Peel v. Ray* (1894) 3 Ch 282. In answer the objects to answer the particular interrogatory or the grounds of his objection. *Church v. Perry*, 36 . . . The Court should adjudicate an objection. 46 Ind Cas 660.

Scandalous—An objection on the ground that interrogatory or information is scandalous or irrelevant. *Fisher v. . .* A thing is scandalous, opposite party or which is . . . *Boyle v. Cuning*, 40 L. T. . . if the answer tends to . . . 10 Q B D 110.

rigorously 'excluded'. See also *Re Howel Morgan*, 39 Ch D 316, *Allhusen v. Lobouchere* 3 Q B D 654 (661), 23 C 117, 16 A L J 762=46 Ind Cas 660.

Bona fide—Interrogatories may become oppressive and may be used for improper purposes. In such a case the court has discretion to disallow them on the merits of the case. *Heaton v. Gidney* (1910) 1 K B at p 758. So a party may object to

interrogatories which are not put *bonafide* for the purpose of the suit. *Allsassen v. Lobachlers*, 3 Q. B. D. 654 (664), *Emmerton v. Brink & Co.*, (1903) 2 K. B. 523, 526.

Not sufficiently material—*vide Parker v. Wells*, 18 Ch. D. 477 (483)

**7. [R. S. C. O. 31, r. 7.]** Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

**Scope**—This rule deals with two cases, first, where interrogatories are exhibited which are not objectionable, but which, by reason of the circumstances of the case, are unreasonable, vexatious, or oppressive, or all or any of these, and secondly, where interrogatories are exhibited which are prolix, oppressive, unnecessary, or scandalous. If the judge thinks that interrogatories as a whole, or enblock, are vexatious or unreasonable, he may strike out the whole of them without sitting the matter for the purpose of saving those questions which may be reasonable and fit. And he may, if he thinks proper, allow the parties whose interrogatories have been struck out to administer interrogatories again to the opposite party. *Cawley v. Burton*, 32 W. R. 33. If the judge considers a set of interrogatories to be as a whole prolix, oppressive, or unnecessary, he has power to strike them all out, though some of them may be unobjectionable. *Oppenheim v. Saefell*, (1893) 1 Q. B. 5. Objections to answer to interrogatories must be specific. *Church v. Perry*, 36 L. T. 513. A party who applies to strike interrogatories must, unless they are altogether an abuse of the practice of the Court, specify those to which he objects. *Allsassen v. Lobachlers*, 3 Q. B. D. 654=47 L. J. Ch. 819.

**8. [R. S. C. O. 31, r. 8.]** Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

**Form of affidavit in answer**  
**Scope**—The defendant cannot refuse to answer on the ground that they have not personal knowledge of the matter interrogated. *Patt v. North Metropolitan*, 48 L. T. 732. A party to a cause is not excused from answering interrogatories relevant to the question in issue on the ground that they are as to matters which are not within such party's own knowledge, but are only within the knowledge of his agents or servants, if derived in the ordinary course of their employment, and he requires such agents or servants unless he shows that it would occasion unreasonable expense, or require him to do so, as that, either such agents or servants are not available, or the like. *Bockus v. Fisher*, 10 Q. B. D. 161. *Jacob*, 24 Ch. D. 110=53 L. J. Ch. 327.

**9. [R. S. C. O. 31 r. 9.]** An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

**10. [R. S. C. O. 31 r. 10.]** No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

**Scope**—The duty of the Court, with reference to answers to interrogatories, is regulated by rules 10, 11, and limited to considering the sufficiency or insufficiency of the answers, and whether the party interrogated has answered that which he has no excuse for not answering—and only in the case of insufficiency can it require a further answer. *Field v. Wells*, 53 L. J. 937. An embarrassing answer to interrogatories may be dealt with as insufficient. *Id.* see also *Lind v. Kennedy* 33 W. R. 44.

11. [R. S. C. O. 31, r. 11 S. 127.] Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *voir dire* examination, as the Court may direct.

Scope—The First an order of the Court with such an order a limited order dismissing motion should not to avoid giving 397=78 Ind. 1 order will be in such an order for the period exceptions for should be made proved, produced regarded as a 328=4 Lab. L. J. 385 Where objection as to prayer for discovery was not taken in grounds of appeal in lower appellate Court it can not be taken in second appeal. 37 C. W N 738=A 1 R, 1933 Cal 865

12. [R. S. C. O. 31, r. 12, S 129.] Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Scope—The words "any party" and "any other party" contemplate opposite party suit defendants Ind Cas 935= ordered on mere from non-pro- 5=A 1 R, 1931 ge has power to erty from whom icients in his possession to the discovery ntirely within the judge's discretion whether Johnson v. Smith, 36 L. T. 741. This rule is not intended entirely to alter the principles as by production of documents, but give the Court to a discretion to refuse the discovery of them when there was no reasonable prospect of its being of any use. On an application for an affidavit of documents evidence ought not to be entered into; the Court will form its conclusions from the pleadings, but any other proceedings in the action as e.g. evidence used on a former occasion, may be looked at. Downing v. Fulmouth, 57 L. J. Ch. 234

Who can be compelled to make discovery—Where the agent of a principal resident abroad brings an action in his own name, and on a contract made with him as agent the defendant is entitled to discovery to the same extent as if the principal were a party to the action, and to have the action stayed till such discovery is made Willis v. Baddeley, 61 L. J. Q. B. 769=(1892)

Q B 324 An order for discovery of documents can be made on a party who lives abroad *The Emir*, 34 L T 742 Discovery by way of production of documents may be allowed to a plaintiff from a co-plaintiff in cases in which there *Shaw v Smith*, 56 L J 1000  
 to be adjusted between them respectively *Ibid*, *Alcoy v Greenhill*, 74 L T 345  
 17 B 384, *Kennedy v* In a suit by shareholders against company for fr can be ordered to make discovery of documents B 124

allowed production from a *spin v Craddock* 2 Ch D 50, *Phillips v Phillips*, 40 is not as a general rule, uments before a statement impossible to say what the matters in question in action are *Honlock v Guerin* 4 Ex D 3 A defendant may obtain discovery of documents before a statement of defence has been delivered when such discovery is necessary for the purpose of ascertaining what damage the plaintiff has actually suffered with a view to paying money into court with the defence *Megaw v Diarmid*, 10 L R 1r 376 The court has a discretion in order ing discovery and there is no absolute rule that a defendant should not be ordered to make an affidavit of documents before the delivery of defence *Edelstone v Russel* 57 L T 927

What documents—"The rule as to discovery is the exact contrary to that of production You must set out every document you have in your possession, whether you are bound to produce them or not" *Per Jessel M R in Swanstone v* is that a defendant is bound to and to produce all documents in the plaintiff However disagreeable it may be to make the disclosure, however contrary to his personal interests, however fatal to his claim, he is compelled believes or thinks in relation to the matter *Beav* 22=13 L J Ch 425 A defendant in which he is in possession may be compelled documents of title although he may have a *British Mutual Interest v Pew* 3 C 1 D 196 So a party must make an affidavit of all documents which are not privileged or irrelevant to the matter of the action *Dickinson v Harrison* 47 L J Ch 636 Where a party to a suit is required to make an affidavit as to documents in his possession and alleges in his affidavit as a reason for not producing them that they were in the possession of himself and a third person as joint owners he is bound to state the nature of the joint ownership *Boyle v Coleman*, 39 L J Ch 763=L R 5 Ch 495

Affidavit of documents—The affidavit must sufficiently describe the documents for the purpose of identification *Bewicke v Graham*, 7 Q B D 400 The affidavit of documents required from a party under rule 15 or rule 13 is ordinarily conclusive on the question whether the documents are in his possession or power unless a counter application is made by the opponent 5 Pat L J 550=1 P L T 658=38 Ind Cas 281 *Jones v Monte Vileo* 5 Q B D 556, *Hall v Truman*, 21 Ch D 307 Order of discovery even in cases against corporate bodies can be secured without filing an affidavit by applying to Court for order of discovery against other party for documents in his possession relating to any matters or question in suit A J R 1922 All 1=44 A. 202=20 A L J 1=65 Ind Cas 984 Where an affidavit has been made in answer to an order for discovery of documents, a further order will not be granted unless there are facts or admissions showing that documents are withheld *Welsh Steam v Gai* the party applying for further discovery is as in the other party's possession. *Ibid* as to documents to be made by a defendant the defendant's answer that material documents not mentioned in his affidavit may be in his possession, even although the answer does not in express terms admit the existence of such



documents *Saall v Browne*, L R 17 Eq 402 Order for production of documents must follow an order as to affidavit of documents In abs nce of such order as to affidavit Court cannot compel defendt account books alleged to be with them / Ind. Cas 991 Where a party claims on the ground that they support his own title and do not relate to that of his opponent, this affidavit must be taken as conclusive unless the Court can see from the nature of the case or of the documents, that the party has misunderstood the effect of the documents 26 Ch D 714, see also *Bulman v Young* 49 L T 736 But the Court inspite of a party's affidavit to the contrary may order the production of the document *Att Gen v Emerson*, 10 Q B D 191 The omission of the words and never have had from an affidavit of documents is in itself a sufficient reason for ordering a further and better affidavit *Wigstaff v Anderson* 39 L T 332

in question in the action it seems to me that every document relates to the matters in question in the action" *Brett J* in *Compagnie Financiere v Peruani*, 11 Q B D 62(63)

**Documents produced.**—A document produced in compliance with an order of discovery becomes an exhibit of the party at whose instance the order for discovery is passed and not of the party who produced it A I R 1921 Lah 328=4 Lah L J 385 Where the plaintiff disputes the validity of the votes recorded in a meeting he is entitled to inspection of the inspection will cause delay which the nat the plaintiffs do not show that the inspection refusal of inspection is not wrong so as A I R 1925 Bom 103=26 Bom L R 907=84 Ind Cas 363

13 [R S C O 31, r. 13, S 129 second para] The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which if any of the documents therein mentioned he objects to produce, and it shall be in Form No 5 in Appendix C with such variations as circumstances may require

**Scope**—Where an order as to affidavit of documents was obtained against defendant who dies and his representatives have been brought on record, a fresh order as to affidavit must be obtained against them A I R 1925 Bom 386=27 Bom L R 694=89 Ind Cas 215 As regards conclusiveness of an affidavit vide the judgment of *Hamilton L J* in *Birmingham etc Co v L & N W Ry Co* (1913) 3 K B at p 839

14 [R S C O 31, r 14, S. 130] It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just

see a document. *Starker*  
L R. 283 Production of  
*Darbu shire*, (1920) A C  
the possessiwer  
privilegedered

to be produced in court *Anderson v Bank of British Columbia*  
uments  
Con ted  
R ions  
ler Ch

be produced *Mostyn v West Mostyn*, 26 Ch. D 67

on a party  
production  
which there  
is 56 L J

to be adjusted between them respectively

17 B 384, *Kennedy v Wakefield*, 39 L J  
against company for fraud of directors, the company can be ordered to make  
discovery of documents *Stokes v Grosvenor*, (1897) 2 Q B 124

**At what time**—A plaintiff will not in general be allowed production from a  
defendant until he has delivered a statement of claim *Caspin v Craddock* 2 Ch D  
410-34 L T 52, see also *Paves v Williams*, 13 Ch D 550, *Phillips v Phillips* 40  
L T 815  
entitled, is not as a general rule,  
of defence, iments before a statement  
matters, possible to say what the  
may obtain discovery of documents before a statement of defence has been delivered  
when such discovery is necessary for the purpose of ascertaining what damage the  
plaintiff has a  
defence *Meg*  
ing discovery, in order  
to make an affidavit of documents before the delivery of an order, *Edelstone v*  
*Russel* 57 L T 927

**What documents**—The rule as to discovery is the exact contrary to that of  
production. You must set out every document you have in your possession, whether  
you are bound to produce them or not. *Per Jessel M R in Swanstone v*  
*Lishman* 45 L T 360. The general rule is that a defendant is bound to  
discover all the facts within his knowledge and to produce all documents in  
his possession which are material to the case of the plaintiff. However disagreeable  
it may be to make the disclosure, however contrary to his personal interests,

*Dickinson*  
make an  
as a reason  
a third person as joint owners he is bound to state the nature of the joint  
ownership *Boon v Cowan*, 39 L J Ch 768=L R 5 Ch 495

**Affidavit of documents**—The affidavit must sufficiently describe the  
documents for the purpose of identification *Bewicke v Graham*, 7 Q B D 400.  
The affidavit of documents required from a party under rule 15 or rule 13 is  
ordinarily conclusive on the question whether the documents are in his possession  
or power unless a counter application is made by the opponent 5 Pat L J  
550=1 P L T 658=58 Ind Cas 281 *Jones v Monte Video* 5 Q B D  
536, *Hall v Truman* 23 Ch D 307. Order of discovery even in cases against  
corporate bodies can be secured without filing an affidavit by applying to  
Court for order of discovery against other party for documents in his possession  
relating to any matters or question in suit A J R 1922 All 1=44 A  
202=20 A L J 1=65 Ind Cas 984. Where an affidavit has been made in  
answer to an order for discovery of documents a further order will not be granted  
unless there are facts or admissions showing that documents are withheld  
*Welsh Steam v Gaskell*, 36 L T 352. It is not enough for the party applying for  
discovery to say that the documents are in the other party's  
possession, as to documents to be  
the defendant's answer  
may be in his possession,  
if the existence of such

documents *Snull v Browne*, L R 17 Eq 402 Order for production of documents must follow an order as to affidavit of do affidavit Court cannot compel defendant account books alleged to be with them

the and do not relate to that of his conclusive unless the Court can see from that the party has misunderstood the also *Dulman v Young* 49 L T 736 the contrary may order the production of the document *Att Gen v Emerson*, 10 Q B D 191 The omission of the words and never have had from an affidavit of documents is in itself a sufficient reason for ordering a further and better affidavit *Wigstaff v Anderson*, 39 L T 332

in question in the action it seems to me that every document relates to the matters in question in the action" *Brett J* in *Compagnie Financière v Peruvian*, 11 Q B D 62(63)

**Documents produced**—A document produced in compliance with an order of discovery becomes an exhibit of the party at whose instance the order for discovery is passed and not of the party who produced it A I R 1921 Lah 328=4 Lah L J 385 Where the plaintiff disputes the validity of the votes recorded in a meeting he is entitled to inspection of the documents concerned But when such inspection will cause delay which the nature of the case will not permit and when the plaintiffs do not show that the inspection would yield any result in their favour refusal of inspection is not wrong so as to merit reversal by the superior Court A I R 1925 Bom 105=26 Bom L R 907=84 Ind Cas 563

13 [R S C O 31, r 13, S 129 second para] The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which if any of the documents therein mentioned he objects to produce, and it shall be in Form No 5 in Appendix C with such variations as circumstances may require

**Scope**—Where an order as to affidavit of documents was obtained against defendant who dies and his representatives have been brought on record, a fresh order as to affidavit must be obtained against them A I R 1925 Bom 386=27 Bom L R 694=89 Ind Cas 215 As regards conclusiveness of an affidavit vide the judgment of *Hamilton L J* in *Birmingham etc Co v L & N W Ry Co* (1913) 3 K B at p 859

14 [R S C O 31, r 14, S 130] It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just

**Scope**—A party to a suit only can be ordered to produce a document. *Starker v Reynolds*, 22 Q B D 262 (265), *Elder v Carter* 6 T L R 283 Production of privileged documents will not be ordered *O'Rourke v Darbishire*, (1920) A C 581 The general rule is that every document which are in the possession or power of the parties and which is material to the case and is not privileged can be ordered to be produced in court *Anderson v Bank of British Columbia*, 2 Ch D 644 (656), *Jones v Great Central Ry* (1910) A by profession or legal privilege need not be between solicitor and client need not be 320 C A., *O'Shea v Wood* (1891) P 675 Instructions and briefs to counsel or staff be produced *Moslyn v West Moslyn*, 26 Ch 678, *Curtis v Beancy*, (1911)

p 181 A document which solely relates to a party's case is also privileged *Bewick v Graham* 7 Q B D 400 Documents in possession of a party on behalf of another need be produced *Fe v v Guppy*, 13 Beav 457 Production of a document may be resisted on the ground of public policy *Hennessy v Wright* (1888) 21 Q B D 599 *Asiatic Petroleum Co v Anglo Persian Oil Co Ltd*, (1916) 1 K B 822

Mere inability to particularise instances of fraud in accounts, should not be a ground for refusing application for inspection of accounts 137 Ind Cas 636=(1932) M W N 93=A I R 1932 Mad 284 No order can be made under rule 14 against a party unless he has directly or indirectly admitted the document to be in his possession or power 5 Pat L J 650=1 P L T 668=58 Ind Cas 281 An order for production of documents follows an order as to affidavit of documents under

R 233=5 P L T 43=76 Ind. Cas

duced by a party 533=80 Ind Cas 604 being produced A I R 1924 Mad 512=46 M L J 350=19 L W 355=77 Ind Cas 766 Where the order of the court is to produce a document under this rule the non compliance of the order does not warrant the striking of the defence A I R 1922 All 235=44 A 565=20 A L J 472=67 Ind Cas 73, see also 26 A L J 1376=112 Ind Cas 285 A court cannot dismiss a suit under rule 21 for non compliance with an order by the court under rule 14 for production of documents A I R 1929 All 83=115 Ind Cas 464, 1933 M W N 927=A I R 1933 Mad 870

15 [R S C O 31, r 15, S 131] Every party to a suit shall be entitled at any time to give notice to any Inspection of documents referred to in pleadings or affidavits other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader and to permit him or them to take copies thereof, and any party not complying with be at liberty to put any such document in evidence unless he shall satisfy the Court that such title he being a defendant to the suit or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and other wise as the Court shall think fit

Scope—Rules 15—18 refer only to documents mentioned in the affidavits or pleadings As regards those documents it is proper and just that the opposite party should have the same advantage as if those documents were fully set out in the pleadings or affidavits *Quilter v Heatley* 23 Ch D 42 Inspection of documents referred to in pleadings incidentally and which are not material cannot be claimed by the opposite party A I R 1923 Bom 73=46 B 866=3 in the possession or power of its non production 5 Pat 704=34 M L W 654=A I R 1931 Mad 825 see also 185 P W R 1911 The parties can take *verbatim et literatim* copies of documents of which inspection is allowed 11 Bom L R 402=2 Ind Cas 422

16 [R S C O 31 r 16] Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No 7 in Appendix C, with such variations as circumstances may require

17. [R. S. C. O. 31, r 17, S 132] The party to whom such notice is given shall within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of Bankers books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Scope.—As regards proper place of inspection of documents, *vide* 5 B 467, *Prestney v Colchester Corporation* (1883) 24 Ch D 376.

18 [R S C O 31, r 18 Ss, 133, 134] (1) Where the party served with notice under rule 15 omits to give such Order for inspection notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it make an order for inspection in such place and in such manner as it may think fit. Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents except such as are referred to in the pleadings particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought that the party applying is entitled to inspect them and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Scope.—The filing of an affidavit of documents under order XI rule 13 C P Code by one party does not preclude the other party from making a subsequent application for discovery and inspection under Order IX r 18 (2) 38 C 428. All the requirements of order XI rule 18 must be satisfied before an order under that rule can be passed. A I R 1922 All 235=20 A L J 422=44 A 565=67 Ind Cas 73. Suit cannot be dismissed under rule 21 when order under rule 18 is not obeyed. A I R 1926 Sind 27=20 S L R 309=96 Ind Cas 1003. Order of dismissal under r 21 is to be set aside if made in the absence of denial by the other party if the possession of documents sought to be inspected in affidavit afterwards found improper. A I R 1924 All 510=46 All 417=22 A L J 199=80 Ind Cas 787. Under order XI r 18 (2) order of inspection can be made not only in respect of document mentioned in the plaint and written statement and the affidavit but also in respect of other documents provided their relevancy is proved or in the former their relevancy is admitted. A I R 1931 All 221= (1931) A L J 94 130 Ind Cas 7. Fact that inspection is sought for before witness statement is filed is no ground for refusing it. 135 Ind Cas 745=55 M 421=6 M L J 704=34 M W N 654=A I R 1932 Mad 825 1932 M W N 984=A I R 1932 Mad 8=5.

19 [R S C O. 31 r 19A] (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries and such affidavit shall state whether or not there are in the original book any  
Provided that notwithstanding order inspection of the book

A I R 1927 Nag 269=10 N L J 129 Documents mentioned in the list must be produced at first hearing A I R, 1922 Pat 569=4 P L T 322=77 Ind Cas 848 Unsuspicious documents filed at a late stage should not be rejected A I R 1924 Pat 208=72 Ind Cas 397 Where zamindari papers on loose sheets are filed a year after settlement of issues they should not be admitted 136 Ind Cas 290=10 Pat 388=13 P L T 331=A I R 1931 Pat 275, see also, 133 Ind Cas 371=34 M J W 228=127 M A 11 27 per discretion in reject R 736=A I R 1931 late stage which could g vexatious A I R 1920 Nag 223=109 Ind Cas 195 Production of document can also be ordered under s 165 of the Evidence Act A I R 1923 Oudh 59=25 O C 286=70 Ind Cas 278 Inadmissibility of the document must be pleaded at the first hearing A I R 1928 Lah 428=10 Lah L J 370=109 Ind Cas 728

**2 [S 139]** No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non production thereof, and the Court receiving any such evidence shall record the reasons for so doing

**N B**—For local amendments in Oudh, Patna and Rangoon *vide infra*

**Scope**—Late production of document should be discouraged 104 Ind Cas 104=13 P L T 545=A I R 1932 Pat 332 Document not produced in time cannot be received A I R 1923 Oudh 59=25 O C 286=70 Ind Cas 278 This rule is not

1930 Pat 603=129 Ind Cas 82, see also A I R 1929 Pat 324=10 P L T 356=120 Ind Cas 291, A I R 1929 P C 99=(1929) A L J 246=49 C L J 327=33 C W N 463=56 M L J 562=29 L W 674=10 P L T 301=31 Bom L R 731=56 I A 119=56 C 1003 (P C)=114 Ind Cas 561 This rule is framed to prevent fraud by late production of suspicious documents The Court may if it is satisfied as to genuineness of document admit it A I R 1928 Rang 196=6 Rang 337=111 Ind Cas 472, see also A I R 1929 P C 99=(1929) A L J 246=49 C L J 327=33 C W N 493=56 C 1003 (P C)=114 Ind Cas 561 It is incomplete discretion of Court to admit the documents although filed late A I R 1927 Pat 117=8 P L T 255=98 Ind Cas 968 It is in the discretion of the Court to admit documents not produced in evidence in first appeal at the rehearing obtained on a review A I R 1928 Cal 416=108 Ind Cas 246 Discretion of trial Court receiving documentary evidence at late stage must not be lightly interfered with by Appellate Court A I R 1928 Pat 555=7 Pat 589=110 Ind Cas 536 Once where document produced at late stage was refused to be admitted by trial Court, neither the lower appellate Court nor the High Court would interfere with the discretion of the trial Court A I R 1933 Rang 174

**3 [S 140]** The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection

Rejection of irrelevant or inadmissible documents

**Scope**—Where documents were put on record but not admitted or endorsed under rule 4 as result of judicial determination the Court can reject them under this rule, on the ground of insufficiency of stamp 143 Ind Cas 534=34 P L R 417=A I R 1933 Lah 271, see also 16 Ind Cas 834, 1929 Mad 522

**4 [S 141] (i)** Subject to the provisions of the next following sub rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely,—

Endorsements on documents admitted in evidence

- (a) the number and title of the suit,
- (b) the name of the person producing the document,

17. [R. S. C. O 31, r. 17, S 132] The party to whom such notice is given shall within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of Bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Scope.—As to, it is proper place of inspection of documents, *vide* 5 B 467, *Prestney v. Colchester Corporation*, (1883) 24 Ch D 376.

18 [R S C O 31, r 18 Ss, 133, 134.] (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit. Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought that the party applying is entitled to inspect them and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Scope.—The filing of an affidavit of documents under order XI rule 13 C P Code by one party, does not preclude the other party from making a subsequent application for discovery and inspection under Order IX r 18 (2) 38 C 428. All the requirements of order XI rule 18 must be satisfied before an order under that rule can be passed. A I R 1922 All 235=70 A L J 422=44 A 565=67 Ind Cas 73. Suit cannot be dismissed under rule 21 when order under rule 18 is not obeyed. A I R 1926 Sind 7=20 S L R 309=96 Ind Cas 1003. Order of dismissal under r 21 is to be set aside if made in the absence of denial by the other party if the possession of documents sought to be inspected in affidavit afterwards found improper. A I R 1924 All 510=46 All 417=22 A L J 193=80 Ind Cas 787. Under order XI r 18 (2) order of inspection can be made not only in respect of document mentioned in the plaint and written statement and the affidavit but also in respect of other documents provided their relevancy is proved or in the former their relevancy is admitted. A I R 1931 All 221= (1931) A L J 94=130 Ind Cas 7. Fact that inspection is sought for before witness statement is filed is no ground for refusing it. 135 Ind Cas 745=55 M 421=6 M L J 704=34 M W N 654=A I R 1932 Mad 825, 1932 M W N 984=A I R 1932 Mad 825.

19 [R. S. C. O. 31 r 19A] (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined and such affidavit shall state whether and what erasures, interlineations or all that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

p 181 A document which solely relates to a party's case is also privileged *Bevick v Graham*, 7 Q B D 400 Documents in possession of a party on behalf of another need be produced *Lev v Guppy*, 13 Beav 457 Production of a document may be resisted on the ground of public policy *Hennessy v Wright* (1888) 21 Q B D 599 *Asiatic Petroleum Co v Anglo Persian Oil Co Ltd*, (1916) 1 K B 822

Mere inability to  
ground for refusing  
M W N 93=A I R  
party unless he has directly or indirectly admitted the document to be in his possession or power 5 Pat L J 650=1 P L T 668=58 Ind Cas 281 An order for production of documents follows an order as to affidavit of documents under order XI r 12 When that order is passed against a party he can say that so long as the opposite party has not established his title to the property in respect of which that order is sought it is not open to the court to disclose the documents A I R 1923 Pat 337=1923 Pat 143=1 Pat L R 233=5 P L T 43=76 Ind. Cas 931 The court should first determine whether the party who seeks to inspect the documents is entitled to do so and if so, whether he is entitled to the right at that stage of the proceeding The court can and must exercise discretion as to whom it is going to permit to conduct an inspection of the documents produced by a party A I R 1924 Mad 846=47 Mad 934=47 M L J 460=20 L W 533=80 Ind Cas 604 This rule contemplates further orders being passed on document being produced A I R 1924 Mad 512=46 M L J 350=19 L W 355=77 Ind Cas 766 Where the order of the court is to produce a document under this rule, the non compliance of the order does not warrant the striking of the defence A I R 1922 All 235=44 A 565=20 A L J 422=67 Ind Cas 73, see also 26 A L J 1376=112 Ind Cas 285 A court cannot dismiss a suit under rule 21 for non compliance with an order by the court under rule 14 for production of documents A I R 1929 All 83=115 Ind Cas 464 1933 M W N 927=A I R 1933 Mad 870

# 15 [R S C O 31, r 15, S 131] Every party to a suit shall be

Inspection of documents  
referred to in pleadings or  
affidavits

entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party

giving such notice, or of his pleader and to permit him or them to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit

Scope—Rules 15—18 refer only to documents mentioned in the affidavits or pleadings As regards those documents it is proper and just that the opposite party should have the same advantage as if those documents were fully set out in the pleadings or affidavits *Quilter v Heatley*, 23 Ch D 42 Inspection of documents referred to in pleadings incidentally and which are not material cannot be claimed by the opposite party A I R 1923 Bom 73=46 B 866=3 Bom L R 1255=66 Ind Cas 8 Document not in the possession or power of the person called upon to produce it is a good cause for its non production 5 Pat L J 550=1 P L T 668=58 Ind Cas 281 Since there is no distinction between documents sued upon and documents relied upon by plaintiff only after he files this written statement 24 C W N 302=56 Ind Cas 457 List of documents is to be deemed part of plaint for granting inspection 135 Ind Cas 421=61 M L J 704=34 M L W 6,4=A I R 1931 Mad 825 see also 185 P W R 1911 The parties can take *verbatim et literatim* copies of documents of which inspection is allowed 11 Bom L R 402=2 Ind Cas 422

# 16 [R. S C O. 31 r. 16] Notice to any party to produce any docu

ments referred to in his pleading or affidavits  
Notice to produce shall be in Form No 7 in Appendix C, with  
such variations as circumstances may require



17. [R. S. C. O 31, r 17; S 132] The party to whom such notice is given shall within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of Bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Scope—As regards proper place of inspection of documents, *vide* 5 B 467, *Prestney v Colchester Corporation* (1883) 24 Ch D 376.

18 [R. S. C. O 31, r 18 Ss, 133, 134] (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it make an order for inspection in such place and in such manner as it may think fit. Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought that the party applying is entitled to inspect them and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Scope—The filing of an affidavit of documents under order XI rule 13 C P Code by one party, does not preclude the other party from making a subsequent application for discovery and inspection under Order IX r 18 (2) 38 C 428. All the requirements of order XI rule 18 must be satisfied before an order under that rule can be passed. A I R 1922 All 235=20 A L J 422=44 A 565=67 Ind Cas 73. Suit cannot be dismissed under rule 21 when order under rule 18 is not obeyed. A I R 1926 Sind 27=20 S L R 309=96 Ind Cas 1003. Order of dismissal under r 21 is to be set aside if made in the absence of denial by the other party if the possession of documents sought to be inspected in affidavit afterwards found improper. A I R 1924 All 510=46 All 417=22 A L J 197=80 Ind Cas 787. Under order XI r 18 (2) order of inspection can be made not only in respect of document mentioned in the plaint and written statement and the affidavit but also in respect of other documents provided their relevancy is proved or in the former their relevancy is admitted. A I R 1931 All 221= (1931) A L J 94=130 Ind Cas 7. Fact that inspection is sought for before witness statement is filed is no ground for refusing it. 135 Ind Cas 745=55 M 421=6 M L J 704=34 M W N 654=A I R 1932 Mad 825, 1932 M W N 984=A I R 1932 Mad 825.

19 [R. S. C. O 31 r 19A] (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations. Provided that notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document, for the purpose of deciding as to the validity of the claim of privilege

(3) The Court may on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents to be specified in the application, is or are, or has or have at any time been in his possession or power, and, if not then in his possession when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at sometime had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them

20 [R S C. O 31, r 20, S 135] Where the party from whom discovery

Premature discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute, in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection order that such issue or question be determined first, and reserve the question as to the discovery or inspection

21 [R S C. O 31, r 21, S. 136] Where any party fails to comply

Non compliance with order with any order to answer interrogatories, for discovery or for discovery or inspection of documents, he shall, if a plaintiff be liable to have his suit dismissed for want of prosecution and if a defendant to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly

Scope —The Court should not exercise the powers given to it under this rule except in extreme cases 5 C 707=5 C L R 509, A W N 1897, 140. The power to dismiss plaint under this rule is optional and not obligatory *Hartley v Owex* 34 L T 752, *Kennelly v Lyell* W N (1882) 137. The powers conferred under this section should not be exercised in dismissing the plaintiff's unless the omission or neglect to comply is not culpable one on the plaintiff's part *Cardwell v Tamlinson*, 54 L J Ch 957, *Wilson v Raffalovitch* 7 Q B D 561. So also the power of striking out the defence should not be exercised lightly *Twy Croft v Gru* 191 84 P L R

ants or a wilful attempt to disregard the order of the Court, an order under s 136 of the Civil Procedure Code is appropriate 7 C L J 295. A party to a suit failing to comply with an order for production or inspection of documents can be dealt with only in the manner prescribed by Order XI, rule 21 and is not punishable under s 175 or any other section of the Penal Code 15 P W R 191 O=5 Ind Cas 842. Defendant failing to comply with order for bringing further evidence but defence under r 21 last resort A I R

1929 Lah 750=11 Lah 209=121 Ind. Cas 421, 65 Ind Cas 661. Wilful means act done deliberately and intentionally so that the mind of the party concerned is with the act. A I R 1929 Lah 750. Negligence does not amount to wilful default and in such cases an order under this rule should not be passed. A I R 1929 All 750. It is only when an order under rule 18 has been made and not complied with that the Court can dismiss a suit under rule 21. A I R 1926 Sind 272=20 S L R 309=96 Ind Cas. 1003. Order under r 21 can be passed only when there is

previous order under r 11 and is not complied with A I R 1926 All 553=24 A. L. J 589=96 Ind Cas 16 Opportunity should always be given to the defendant disobeying Court's order to show cause why his defence should not be struck out A I R 1925 Bom 386=27 Bom L. R 691=89 Ind Cas 215, see also 67 Ind Cas 73=44 A 565=A I R 1922 A 235=20 A L J 422 Suit should be dismissed under rule 21 for non compliance with order under the same rule only after the Court is satisfied that the plaintiff is avoiding fair discovery A I R 1925 Cal 65=50 C L J 397=78 Ind Cas 859 The proper remedy for the party seeking the discovery, the order respecting which has not been complied with by the other party, is to apply stay proceedings or to dismiss the suit 4 P L J 394=48 Ind Cas 711 This rule which speaks of only Interrogatories or inspection and does not apply to production A I R 1924 Mad 582=46 M L J 350=19 L W 355= (1924) M W N 340=77 Ind Cas 776 Non compliance with the order of the Court amounts to contempt for which he may be dealt with and the party continues in contempt till the order is obeyed A I R 1929 Cal 117=55 C 1110=115 Ind Cas 189

**Appeal.**—Order of dismissal of a suit under order 11 rule 21 by a Court without jurisdiction is a decree and hence appealable A I R 1927 Cal 158=98 Ind Cas 70, A. I R 1925 Rang 218=3 Ring 63=88 Ind Cas 751 An appeal lies from an order refusing to strike out defence under order XI rule 21 A I R 1930 Cal 426=31 C W N 220=126 Ind Cas 781 An appeal is competent against an order dismissing a suit under rule 21 137 Ind Cas 842=1932 M W N 301=A I R 1932 Mad 316

**Review**—An order of dismissal purporting to be made under order XI, rule 21 is a decree and hence a review lies from it A I R 1925 Rang 218=88 Ind Cas 761 Court cannot review its order under s 151 passed under XI rule 21, since such an order is appealable A I R 1927 Cal 158=98 Ind Cas 70, but see 34 Bom. L. R 714

**22 [R S C O 31, r 24]** Any party may at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, it may direct them to be put in

**Scope**—Under Order XI, rule 22, C P Code, the answer or portions of the answers obtained to interrogatories served in a case are admissible as against the party answering them though great caution should be exercised in using them as evidence 39 Ind Cas 893, *Nagh v Layton* (1911) 2 Ch 71

**23 [R S C O 31, r 29]** This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability

ORDER XII

Admissions

**1 [R S C O 32 r. 1]** Any party to a suit may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party

**Scope**—Court is not bound by the admission made by the party on a pure question of law 76 Ind Cas 255=A I R 1923 Nag 101=18 N L R 200 In construing admission therein Court ought to take into consideration the context A I R 1924 Nag 129=78 Ind Cas 542, 4 C L J 525 An admission made for the purpose of obtaining a new trial *Dawson v G C Rail Co*, 88 L J K B 1177 Leave may be given to withdraw admission on terms *Hollis v Burton* (1892) 3 Ch 226

**2 [R S C O 32, r 2, S 128]** Either party may call upon the other party to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs, and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense

**3 [R S C O 32, r 3]** A notice to admit documents shall be in Form No 9 in Appendix C, with such variations as circumstances may require

**4 [R S C O 32, r. 4]** Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing whatever the result of the suit may be unless the Court otherwise directs. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice. Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just

**5 [R S C O 32 r. 5]** A notice to admit facts shall be in Form No 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C with such variations as circumstances may require

**6 [R S C O 32 r 5]** Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order, or give such judgment, as the Court may think just

**N B**—For local amendments in Madras, Patna and Rangoon vide *infra*

**Scope**—The power to give judgment on admission is discretionary. *Mellor v Sidebottom* 5 Ch D 342, *Re Wright* (1895) 2 Ch 747, 132 Ind Cas 796=8 O W N 762=A I R 1931 Oudh 321. No waiver is implied if party does not apply under this rule. *Tildesley v Harper* 7 Ch D 493. In order to bar a judgment on an admission it must be clear and unequivocal. *Chilton v London Cor* 7 Ch D 735, *Hughes v London* 8 T L R 81, A I R 1927 Sind 25=97 Ind Cas 623, A I R 1924 Cal 1920=82 Ind Cas, 348=27 C W N 783, 51 Ind Cas 836=23 C W N 1017, 145 Ind Cas 705=34 P L R 854=A I R 1933 Lah 403. The Court is not bound to pass a judgment upon an admission. A I R 1929 Lah 569=21 Lah L J 207=116 Ind Cas 330, A I R 1924 Cal 190=82 Ind Cas 348=17 C W N 283, A I R 1924 Rang 144=1 Rang 580=77 Ind Cas 382. This rule applies to admission of facts and not purely of law. A I R 1929 Lah 569=11 Lah L J 207=116 Ind Cas 330. Plaintiff is entitled to the decree in the strength of defendant's admissions and even in his absence the suit should not be dismissed. A I R 1929 Lah 830=31 P L R 441=122 Ind Cas 465. The object of the rule is to get a speedy judgment. The rule is wide enough to afford relief not only in cases of admission made in the pleadings but also made otherwise. A I R 1926 Sind 119=20 S L R 216=92 Ind Cas 562. Under O XII rule 6, admission holds good even in respect of a point on and the party is entitled to judgment thereon to the extent of the admission at the discretion of the court. 45 C 138=22 C W N 204=28 C L J 498=44 Ind Cas 233.

Appeal—Vide 23 C W N 1017=54 Inl Cas 836,

7 [R S C O. 32, r 7] An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or acts, shall be sufficient evidence of such admissions, if evidence thereof is required,

8 [R S C O 32, r 8] Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9 [R S C O 32, r 9] If a notice to admit or produce specified documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

### ORDER XIII

#### *Production, Impounding and Return of Documents*

1 [Ss, 138, 140] (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence to be produced at first hearing or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced, provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

N B.—For local amendments in Oudh, Patna and Rangoon vide *infra*.

Scope.—This rule has been enacted with the object of preventing fraud by the late production of suspicious documents. It cannot therefore be so construed as to shut out formal evidence beyond suspicion such as certified copies of public documents

produced has been manufactured then court exercises its discretion wrongly in rejecting a document on the ground of delay. A I R 1928 Pat 537=110 Ind Cas 821, see also A I R 1928 Mad 516=51 M 472=27 L W 520=55 M L J 31=110 Ind Cas 16, A I R 1928 Pat 794=114 Ind Cas 194. This rule does not bar the court from allowing at its discretion documents produced after first hearing.

also 45 C 478=35 M L J 50=20 Bom L R 1022=45 C L J 621. In the absence of discretion to receive evidence.

Pat 517=2 P L R 1 Civ =78 Ind Cas 489. O C 286=70 Ind Cas 278. A I R 1926 Mad 156=93 Ind Cas 16. Trial court's discretion.

XIII rule 2 after the date of first hearing is final.

A I R 1927 Nag 269=10 N L J 129 Documents mentioned in the list must be produced at first hearing A I R, 1922 Pat 569=4 P L T 323=77 Ind Cas 848 Unsuspecting documents filed at a late stage should not be rejected A I R 1924 Pat 208=72 Ind Cas 397 Where zemindari papers on loose sheets are filed a year after settlement of issues they should not be admitted 136 Ind Cas 290=212 375, see also, 133 Ind Cas 371=34 31 Mad 512 Proper discretion in reject

1928 Nag 1 223=109 Ind Cas 195 Producers v. Union  
under s 165 of the Evidence Act A I R 1923 Oudh 59-25  
Cas 278 Inadmissibility of the document must be pleaded  
A I R 1928 Lah 428=10 Lah L J 370=109 Ind Cas 728

2 [S 139] No documentary evidence in the possession or power of

Effect of non production of documents any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non production thereof, and the Court receiving any such evidence shall record the reasons for so doing

N B—For local amendments in Oudh, Patna and Rangoon *vide infra*

**Scope**—Late production of document should be discouraged 104 Ind Cas 104=13 P L R 545=A I R 1932 Pat 332 Document not produced in time cannot be 13 P L R 545=A I R 1932 Pat 332 O d h 50=25 O C 286=70 Ind Cas 278 This rule is not

1930 Pat 603=129 Ind Cas 82, see also A 1 R 1929 rat 344=101 L A 337=120 Ind Cas 291 A 1 R 1929 P C 99=(1929) A L J 246=49 C L J 327=33 C W N 463=56 M L J 562=29 L W 674=10 P L T 301=31 Bom L R 731=56 I A 119=56 C 1003 (P C)-114 Ind Cas 561 This rule is framed to prevent fraud by late production of suspicious documents The Court may if it is satisfied as to genuineness of document admit it A 1 R 1928 Rang 196=6 Rang 337=111 Ind Cas 472, see also A 1 R 1929 P C 99=(1929) A L J 246=49 C L J 327=33 C W N 493 56 C 1003 (P C)=114 Ind Cas 561 It is incomplete discretion of Court to admit the documents although filed late A 1 R 1927 Pat 117=8 P L T 255=98 Ind Cas 958 It is in the discretion of the Court to admit documents not produced in evidence in first appeal review A 1 R 1928 Cal 416=108 Ind Cas 246

lower appellate Court nor the High Court would interfere with the discretion of the trial Court. A I R 1933 Rang 174

3 [S 140] The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection

**Scope**—Where documents were put on record but not admitted or endorsed under rule 4 as result of judicial determination the Court can reject them under this rule, on the ground of insufficiency of stamp 143 Ind Cas 534=34 P L R 417=A I R 1933 Lah 271, see also 16 Ind Cas 834, 1929 Mad 522

4 [S 141] (i) Subject to the provisions of the next following sub rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely —

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and  
 (d) a statement of its having been so admitted,  
 and the endorsement shall be signed or initialled by the Judge  
 (2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

N B—For local amendments in Oudh and Rangoon, vide *infra*

Scope—Judge should endorse statement with his own hand that a document is passed or admitted by the person against whom it is used and a document not so endorsed will not be read or allowed to be used in evidence 38 A 627=31 M L J 607=14 A L J 1248=19 O C 192=18 Bom L R 1037=21 C W N 130=25 C L J 363=10 Bur L T 140=43 I A 12 (P C) =36 Ind Cas 104, 43 Ind Cas 25, 79 Ind Cas 74=A I R 1924 Lah 548=5 Lah 227 The provisions of this rule must be complied with strictly Endorsement should bear name of person tendering the document in evidence and the date of such tender Documents do not *ipso facto* become evidence in the case without any formal proof merely by stamping them with date of filing A I R 1927 Lah 115=8 Lah 1=28 P L R 455=100 Ind Cas 721, see also A I R 1928 Lah 142=9 Lah 4=29 P L R 331 Documents not endorsed as admitted by trial court cannot be read or allowed to be used as evidence in the case 27 P L R 544=8 Lah L J 492=95 Ind Cas 938 Where the trial Court omits to comply with requirements of Order XIII rules 4 and 5 and it is not clear what documents are admitted in evidence and what taken into consideration to come to decision the case should be remanded for proper trial although there is no objection to the procedure in grounds of appeal A I R 1928 Lah 142=9 Lah 4=29 P L R 331=110 Ind Cas 832 It does not amount to a trial by the Judge where a third person places his initials by rubber stamp A I R 1909 Mad 522=56 M L J 633=29 L W 633=120 Ind Cas 879 A document endorsed without considering its admissibility cannot be deemed to be admitted in evidence and can be rejected in spite of such endorsement A I R 1929 Mad 522=56 M L J 633=29 L W 633=120 Ind Cas 879 Where document was produced behind the back of opponent on a day not set down for hearing the case and Court was induced to endorse requirements of Order XIII r 4 on it on that day the opponent can call for further proof of document A I R 1927 Lah 679=9 Lah L J 347=104 Ind Cas 146, see also A I R 1928 Lah 432=6 Lah 224=30 P L R 154 Where document duly proved was received and endorsed by commissioner appointed to take evidence and the Court received the same without endorsement party not

and is evidence A I R 1929  
 The fact of Judge sending for records  
 with them does not amount to  
 their admission as evidence the documents must be endorsed as prescribed by  
 Order XIII, r 4 31 P L R 250 Where documents produced by party are  
 referred to in arguments and made use of in judgments, the mere fact that they are  
 not marked as exhibits is mere irregularity A I R 1933 Sind 379 The practice  
 of putting seal on document immediately after production and thereby exhibiting  
 them is not proper 132 Ind Cas 481=13 Lah 132=32 P L R 482=A I R 1931  
 Lah 546 Where document is admitted in evidence, the admission cannot be  
 questioned at any stage of same suit on ground of insufficiency of stamp Court  
 admitting document cannot review its own order of admission A I R 1933  
 All 821

5 [S 141A] (1) Save in so far as is otherwise provided by the Bankers'

Endorsements on copies of Books Evidence Act, 1891,\* where a document  
 admitted entries in books admitted in evidence in the suit is an entry in a  
 accounts and records letter book or a shop book or other account in  
 current use, the party on whose behalf the book  
 or account is produced may furnish a copy of the entry

(2) Where such a document is an entry in a public record produced from a  
 public office or by a public officer, or an entry in a book or account belonging





(c) the date on which it was produced, and

N B—For local amendments in Oudh and Rangoon, vide *infra*

Scope—Judge should endorse statement with his own hand that a document is passed or admitted by the person against whom it is used and a document not so endorsed will not be read or allowed to be used in evidence 38 A 627=31 M L J 607=14 A L J 1248=19 O C 192=18 Bom L R 1037=21 C W N 130=25 C L J 363=10 Bur L T 140=43 I A 12 (P C) =36 Ind Cas 548=5 Lah

227 The prov should bear i Endorsement  
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formal proof merely by stamping them with date of filing A I R 1927 Lah 115=8 Lah 1=28 P L R 455=100 Ind Cas 721, see also A I R 1928 Lah 142=9 Lah 4=29 P L R 331 Documents not endorsed as admitted by trial court cannot be read or allowed to be used as evidence in the case 27 P L R 544=8 Lah L J 492=96 Ind Cas 998 Where the trial Court omits to comply with requirements of Order VIII rules 4 and 5 and it is not clear what documents are admitted in evidence and what taken into consideration to come to decision the case should be remanded for proper trial although there is no objection to the procedure in grounds of appeal A I R 1928 Lah 142=9 Lah 4=29 P L R 331=110 Ind Cas 832 It does not amount to anything by the Judge where a third person places his initials by rubber stamp A I R 1929 Mad 522=56 M L J 633=29 L W 633=120 Ind Cas 879 A document endorsed without considering its admissibility cannot be deemed to be admitted in evidence and can be rejected in spite of such endorsement A I R 1929 Mad 522=56 M L J 633=29 L W 633=120 Ind Cas 879 Where document was produced behind the back of opponent on a day not set down for hearing the case and Court was induced to endorse requirements of Order VIII, r 4 on it on that day, the opponent can call for further proof of document A I R 1927 Lah 679=9 Lah L J 347=104 Ind Cas 146, see also A I R 1928 Lah 432=6 Lah 224=30 P L R 154 Where document duly proved was received and endorsed by commissioner appointed to take evidence and the Court received the same without endorsement party not

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current use, the party on whose behalf the book

produced from a  
account belonging

A I R 1927 Nag 269=10 N L J 129 Documents mentioned in the list must be pro  
 848 4 P L T 322=77 Ind Cas  
 R 192\* should not be rejected A I  
 filed a year at el se tunc v assus v, papers on loose sheets are  
 e admitted 136 Ind Cas 290=  
 10 Pat 388=13 P L T 331=A I R 1931 Pat 275, see also, 133 Ind Cas 371=34  
 M L W 128+1031 M W N 210=A I R 1931 Mad 512 Proper discretion in reject  
 ing th 736=A I R 1931  
 Lah stage which could  
 have vexatious A I R  
 1928 Nag 223=109 Ind Cas 195 Production of documents can also be ordered  
 under s 165 of the Evidence Act A I R 1923 Oudh 59-25 O C 286=70 Ind  
 Cas 278 Inadmissibility of the document must be pleaded at the first hearing  
 A I R 1928 Lah 428=10 Lah L J 370=109 Ind Cas 728

2 [S 139] No documentary evidence in the possession or power of  
 any party which should have been but has not  
 Effect of non production of documents been produced in accordance with the require  
 ments of rule 1 shall be received at any subse  
 quent stage of the proceedings unless good cause is shown to the satisfaction  
 of the Court for the non production thereof, and the Court receiving any  
 such evidence shall record the reasons for so doing

N B—For local amendments in Oudh, Patna and Rangoon *vide infra*

104 Ind Cas 104=  
 1 in time cannot be  
 } This rule is not

1930 Pat 603=129 Ind Cas 82, see also A I R 1929 Pat 324=10 N L J 330-  
 120 Ind Cas 291 A I R 1929 P C 99=(1929) A L J 246=49 C L J 327=33  
 174=10 P L T 301=31 Bom L R  
 s 561 This rule is framed to prevent  
 The Court may if it is satisfied  
 1928 Rang 196=6 Rang 337=  
 246=49 C L J 327  
 ncomplete discretion  
 1927 Pat 117=8  
 Court to admit docu  
 aring obtained on a  
 rial Court receiving  
 with by Appellate  
 Once where docu  
 Court, neither the  
 ie discretion of the

trial Court A I R 1933 Rang 174

3 [S 140] The Court may at any stage of the suit reject any docu  
 Rejection of irrelevant or inadmissible documents ment which it considers irrelevant or other-  
 wise inadmissible, recording the grounds of  
 such rejection

Scope—Where documents were put on record but not admitted or endorsed  
 under rule 4 as result of judicial determination the Court can reject them under this  
 rule, on the ground of insufficiency of stamp 143 Ind Cas 534=34 P L R 417=  
 A I R 1933 Lah 271, see also 16 Ind Cas 834, 1929 Mad 522

4 [S 141] (1) Subject to the provisions of the next following sub rule,  
 Endorsements on documents there shall be endorsed on every document which  
 admitted in evidence has been admitted in evidence in the suit the  
 following particulars, namely —

- (a) the number and title of the suit,
- (b) the name of the person producing the document,

N B—For local amendments in Bombay, Lahore, Madras and Patna, vide *infra*  
 1 and there cannot  
 24 C L J 202=

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26 ( .. . .

10. [S. 137] (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same

(unless the Court otherwise  
 the record is material

record or of such portion thereof as the application of the original is necessary for the purposes of justice

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

N B—For local amendment in Allhabad Vide, *infra*

Scope—Order XIII, rule 10 only gives authority to Court to send for records of another case for inspection. It does not make the whole record evidence in the case. A I R 1909 Lah 78—111 Ind Cas 361. Mere summoning by Court of record containing documents relied on by party will not absolve that party from placing the document by formal admission or proof upon record of trial for which it is required as evidence. 131 Ind Cas 374=31 P L R 926=A I R 1931 Lah 119. If it is necessary to produce the original for technical proof an application

specifying the documents  
 the documents can not  
 the production of the  
 be rejected A I R  
 is 374. The provisions  
 the Court need only send  
 138 W R 1864 272,

The court should send for documents filed in another court 6 W R 79  
 decision of the  
 is intended to  
 be act of sending  
 order XIII rule  
 the case. If the

court finds in the document or record so sent for relevant evidence, or a guide to relevant evidence to be found somewhere else proceedings must be adopted, if such evidence may be properly admitted at that stage to have it brought into the trial according to the provisions of law. 18 Ind Cas 857=9 N L R 11. Where a Court summarily rejects application under this section a case may be remanded by the higher court. 43 Ind Cas 57. see also 11 C W N 112

11. [S. 145.] The provisions herein contained as to documents shall, Provisions as to documents so far as may be, apply to all other material applied to material objects objects producible as evidence

## ORDER XIV

### *Settlements of Issues and Determination of Suit on Issues of Law or on Issues agreed upon*

1 [S. 146] (1) Issues arise when a material proposition of fact or law Framing of issues is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence

to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 or Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Scope—A copy or extract from an entry in an account book, filed under rules 5 and 7, does not require to be stamped. 4 Bom L R 223=26 B 522.

6. [S. 142] Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

N. B.—For local amendments in Rangoon, Vide *infra*

7. [S. 142A] (x) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them

8. [S. 143] Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may order any document to be impounded may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit

9 [S. 144] (x) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the the suit has been disposed of.

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of.

. . . . . be returned at any time earlier than that  
 . . . . . person applying therefor delivers to the proper  
 . . . . . stituted for the original and undertakes to  
 produce the original if required to do so

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

N B—For local amendments in Bombay, Lahore, Madras and Patna, vide *infra*

Scope—Proceedings for return of documents are ministerial and there cannot arise question making compulsory the taking of evidence on oath 24 C L J 202=26 C W N 660=71 Ind Cas 666

10 [S. 131] (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit

N B—For local amendment in Allhabad Vide, *infra*

Scope—Order XIII rule 10 only gives authority to Court to send for records of another case for inspection. It does not make the whole record evidence in the case. A I R 1929 Lah 78=111 Ind Cas 361. Mere summoning by Court of record containing documents relied on by party will not absolve that party from placing the document by formal admission or proof upon record of trial for which it is required as evidence. 131 Ind Cas 374=31 P L R 926=A I R 1931 Lah 119. If it is necessary to produce the original for technical proof an application specifying the documents the documents can not be the production of the be rejected A I R as 374. The provisions the Court need only send 138 W R 1864 272 or court 6 W R 79 vide the decision of the This rule is intended to But the act of sending

for a document under section 165, Evidence Act, or for a record under order XIII rule 10 does not *ipso facto* make such document or record evidence in the case. If the court finds in the document or record so sent for relevant evidence, or a guide to relevant evidence to be found somewhere else proceedings must be adopted, if such evidence may be properly admitted at that stage to have it brought into the trial according to the provisions of law. 18 Ind Cas 857=9 N L R 11. Where a Court summarily rejects application under this section a case may be remanded by the higher court. 43 Ind Cas 57 see also 11 C W N 112

11 [S 145.] The provisions herein contained as to documents shall, Provisions as to documents so far as may be, apply to all other material applied to material objects objects producible as evidence

## ORDER XIV

### *Settlements of Issues and Determination of Suit on Issues of Law or on Issues agreed upon*

1 [S 146] (1) Issues arise when a material proposition of fact or law Framing of issues is affirmed by the one party and denied by the other

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence

to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 or Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it

**Scope**—A copy or extract from an entry in an account book, filed under rules 5 and 7, does not require to be stamped 4 Bom L R 223=26 B 522

**6 [S. 142]** Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

**N B**—For local amendments in Rangoon Vide *infra*

**7 [S 142A]** (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them

**8 [S 143]** Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit

**9 [S 144]** (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it

N B—For local amendments in Bombay, Lahore, Madras and Patna, vide *infra* and there cannot  
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 25 (

10. [S. 131] (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

N. B.—For local amendment in Allhabad Vide, *infra*

Scope—Order XIII, rule 10 only gives authority to Court to send for records of another case for inspection. It does not make the whole record evidence in the case. A I R 1929 Lah 78—111 Ind Cas 361. Mere summoning by Court of record containing documents relied on by party will not absolve that party from placing the document by formal admission or proof upon record of trial for which it is required as evidence. 131 Ind Cas 371—31 P I 11 926=A I R 1931

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## ORDER XIV

### *Settlements of Issues and Determination of Suit on Issues of Law or on Issues agreed upon*

1 [S. 146] (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue

(4) Issues are of two kinds (a) issues of fact, (b) issues of law

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence

Scope—Where issues are drafted by Counsel and merely signed by Judge knowing nothing of the case are worse than useless A I R 1930 Mad 78=57 M L J 609=30  
 issues on question not disputed in ple Ind Cas 981 Where there is no averment suits arise and there is no error in not Lah L J 188=68 Ind Cas 106, 53 Ind Cas 975, 47 Ind Cas 589 Proper issues arising from pleadings must be framed party cannot be expected to produce evidence respecting points not

All 167=77 Ind Ca  
 plaintiff himself never  
 the question between  
 1921 Sind 159=16  
 issues are framed and

174 Where the parties have adduced evidence on a question and discussed it before the Court which decides it as if there was an issue about it the decree need not be set aside in appeal merely on the ground that no such issue was framed A I R 1926 Bom 384=28 Bom L R 743=96 Ind Cas 827

2 [S 146, sixth para] Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined

N B—For local amendments in Madras vide *infra*

nd of law arise in  
 law have been  
 ay be disposed of  
 fact A plaintiff  
 is entitled to a trial of the issues of fact which he raised and the Court has no authority to refuse to try these issues if the suit is properly framed A I R 1925 Pat 674=7 P L T 82=1925 Pat 294=89 Ind Cas 814 see also A I R 1921 Pat 467=6 P L T 729=2 P L R 303=85 Ind Cas 29 Where number of issues

when those issues would anyhow be actually tried The Court can post a case for trial on preliminary issues of law even though the issue of law and fact had been settled long before A I R. 1922 Mad 321=15 M L W 667=1922 M W N 521=68 Ind Cas 167, see also A I R 1923 Bom. 249=25 Bom L R. 164=47 B 509=72 Ind Cas 265 As regards the meaning of preliminary issue, vide 72 Ind Cas 409=4 P L T 202=1 P L R 332=72 Ind Cas 409 Trial of some issues may however be postponed, although preliminary issues of fact cannot be



framed 137 Ind Cas 362=34 Bom L R 6=57 B 224=A I R 1932 Bom 128  
 As a general rule subordinate Court ought not to dismiss action on preliminary issue  
 136 Ind Cas 407=33 Bom L R 1291=A I R 1932 Bom 1 Order in which  
 issues are to be tried is to be decided by trial Court and the High Court will not  
 14 A I R 1933 All 749 Where there are  
 to consider whether case can be  
 707=A I R 1933 All 753 Where  
 hearing for trial of some of the issues  
 or order 15 rule 3 has no applica-  
 tion 145 Ind Cas 446=57 C L J 127=A I R 1933 Cal 559 Where once  
 jurisdiction is vested in a Court, it is not taken away afterwards although it is  
 found that the  
 Court which gave  
 plaint unless the  
 issue as to who  
 point is quite un-  
 not raise a question of law only and therefore this rule does not apply 124 Ind Cas  
 703=A I R 1930 Nag 189=26 N L R 103

Materials from which issues may be framed 3 [S 147] The Court may frame the issues from all or any of the following materials —

- (a) allegations made on oath by the parties or by any persons present on their behalf, or made by the pleaders of such parties,
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit,
- (c) the contents of documents produced by either party

Scope—Court should settle the issues on pleadings and after hearing the pleaders 51 Ind Cas 1007 Issues can be framed from other materials than the  
 3 U P L R (P R) 94 see also A I R 1925  
 115 first to frame necessary issue but the parties  
 25 Mad 169=78 Ind Cas 1

4 [S 148] Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process

5 [S 149] (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed

(2) The Court may, also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced

Scope—Trial Judge is competent to frame a special issue after taking evidence and hearing arguments A I R 1922 Pat 514=2 Pat 52=4 Pat L T 239=63  
 Ind Cas 385 The Court in its discretion can amend or alter an issue at any time  
 N 836=113 Ind Cas 313 see also  
 94=35 M L W 279=62 A I  
 1930 Cal 534=57 C 39=127 Ind  
 1928 Nag 179=107 Ind Cas 514 Although a court has power under or

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds (a) issues of fact, (b) issues of law

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence

**Scope**—Where issues are drafted by Counsel and merely signed by Judge knowing nothing of the case are worse than useless A I R 1930 Mad 78=57 M L J 609=30 L W 914=123 Ind Cas 15 Framing of issues on question not disputed in pleadings is not sufficient (1910) Pat 303=51 Ind Cas 981 Where there is no averment of error in not framing issues from pleadings respecting points not

All 167=77 Ind Cas 913 Courts are not bound to raise a question which plaintiff himself never put forward Where the parties appear to have known what the question between them was the defect in the form of issues is immaterial A I R 1921 Sind 159=16 S L R 207=83 Ind Cas 350 Burden of proof is fixed when issues are framed and cannot be transferred from side to side A I R 1933 Rang 174 Where the parties have adduced evidence on a question and discussed it before the Court which decides it as if there was an issue about it the decree need not be set aside in appeal merely on the ground that no such issue was framed A I R 1926 Bom 384=28 Bom L R 743=96 Ind Cas 827

2 [S 146, sixth para] Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined

**N B**—For local amendments in Madras, vide *infra*

**Scope**—This rule gives Court power, where issues of fact and of law arise in same suit to postpone settlement of issues of fact until after issues of law have been determined if Court is of opinion that case or any part of it may be disposed of on issue of law at first There is no such power to separate issues of fact A plaintiff is entitled to a trial of the issues of fact which he raised and the Court has no authority to refuse to try these issues if the suit is properly framed A I R 1925 Pat 674=7 P L T 82=1925 Pat 294=89 Ind Cas 814 see also A I R 1921 Pat 467=6 P L T 729=2 P L R 303=85 Ind Cas 20 Where number of issues is great, order is likely to cause injury, Court can post a preliminary issue of law and fact M L W 667=1922 M W N 521=68 Ind Cas 167, see also A I R 1923 Bom 249=25 Bom L R 164=47 B 509=72 Ind Cas 266 As regards the meaning of preliminary issue, vide 72 Ind Cas 409=4 P L T 202=1 P L R 337=72 Ind Cas 409 Trial of some issues may however be postponed, although preliminary issues of fact cannot be

. . . . . = A I R 1932 Bom 128  
 . . . . . action on preliminary issue  
 . . . . . 932 Bom 1 Order in which  
 . . . . . the High Court will not  
 84 = A I R 1933 All 749 Where there are  
 Court to consider whether case can be  
 A L J 707 = A I R 1933 All 753 Where  
 or first hearing for trial of some of the issues  
 his rule or order 15 rule 3 has no applica-  
 tion 145 Ind Cas 446 = 37 C L J 127 = A I R 1933 Cal 559 Where once  
 jurisdiction is vested in a Court, it is not taken away afterwards although it is  
 within the local limits of the  
 the plaintiff is alleged in the  
 11 file one The trial of an

703 = A I R 1930 Nag 189 = 26 N L R 103

Materials from which issues may be framed  
 3 [S 147] The Court may frame the issues from all or any of the following materials —

- (a) allegations made on oath by the parties or by any persons present on their behalf, or made by the pleaders of such parties,
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit,
- (c) the contents of documents produced by either party

Scope — Court should settle the issues on pleadings and after hearing the pleaders 51 Ind Cas 1007 Issues can be framed from other materials than the pleadings as contained in the plaint 3 U P L R (P R) 94, see also A I R 1925 Cal 1157 = 87 Ind Cas 575 Court has first to frame necessary issue but the parties are entitled to be heard A I R 1925 Mad 169 = 78 Ind Cas 1

4. [S 148] Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process

5 [S 149] (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed

(2) The Court may, also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced

Scope — Trial Judge is competent to frame a special issue after taking evidence and hearing arguments A I R 1922 Pat 514 = 2 Pat 52 = 4 Pat L T 239 = 63 Ind Cas 383 The Court in its discretion can amend or alter an issue at any time N 836 = 113 Ind Cas 313, see also  
 . . . . . d Cas 609, 91 Ind Cas 426 = A I  
 1930 Cal 534 = 57 C 39 = 127 Ind  
 94 = 35 M L W 279 = 62 M L J  
 te pleadings and a definite issue on  
 matters raised in the issue A I R

1928 Nag 179 = 107 Ind Cas 514 Although a court has power under ord

when those issues would anyhow be actually tried. The Court can post a case for trial on preliminary issues of law even though the issue of law and fact had been settled long before. A I R 1922 Mad 321=15 M L W 667=1922 M W N 521=63 Ind Cas 167, see also A I R 1923 Bom 249=25 Bom L R. 164=47 B 509=72 Ind Cas 266. As regards the meaning of preliminary issue, vide 72 Ind Cas 409=4 P L T 202=1 P L R 332=7 Ind Cas 409. Trial of some issues may however be postponed although preliminary issues of fact cannot be

framed 137 Ind Cas 362=34 Bom L R 6=57 B 224=A I R 1932 Bom 128  
As a general rule subordinate Court ought not to dismiss action on preliminary issue  
136 Ind Cas 497=33 Bom L R 1291=A I R 1932 Bom 1 Order in which  
issues are to be tried is to be decided by

tion 145 Ind Cas 446  
jurisdiction is vested in a  
found that the portion of  
Court which gave it jurisdiction  
plaint unless the inclusion  
issue as to whether the  
point is quite unnecessary

not raise a question of law only and therefore this rule does not apply 124 Ind Cas.  
703=A I R 1930 Nag 189=26 N L R 103

Materials from which issues  
may be framed

3 [S 147] The Court may frame the  
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- (a) allegations made on oath by the parties or by any persons present on their behalf, or made by the pleaders of such parties,
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Power to amend and strike terms as it thinks fit, and all such amendments  
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(2) The Court may, also, at any time before passing a decree, strike out  
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Scope—Trial Judge is competent to frame a special issue after taking evidence  
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1930 Cal 534=57 C 39=127 Ind  
" 94=35 M L W 279=62 M L J  
the pleadings and a definite issue on  
matters raised in the issue A I R  
1928 Nag 179=107 Ind Cas 514 Although a court has power under order XIV,

where judgment is pronounced yet, in exercising  
 new plea to be put forward and add an issue  
 10 Ind Cas 230

**6 [S 150]** Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the

negative of such issue,—

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute

the duty of settling the issues between the parties  
 This rule simply enables the parties themselves  
 issues that are to be tried but this rule does not

place the Court on a higher footing as to finality in respect of proceedings held for the trial of these issues A W N 1886 233

Court if satisfied that agreement was executed in good faith may pronounce judgment

**7 [S 151]** Where the Court is satisfied, after making such inquiry as it deems proper,—

- (a) that the agreement was duly executed by the parties,
- (b) that they have a substantial interest in the decision of such question as aforesaid, and
- (c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court,

and shall upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement and upon the judgment so pronounced, a decree shall follow

## ORDER XV.

### *Disposal of the Suit at the first hearing.*

**1 [S 152]** Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment

Parties not at issue  
 NB For local amendment in Madras vide *infra*

**2 [S 153]** Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants

**3 [S 154]** (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as heretofore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forth

with, the C  
is sufficient I  
summons h.  
of the suit

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires

Scope—Application of order XV, r 3(1) is not confined to first hearing A 1 R 1922 Mad 321=15 L W 667=(1922) M W N 521=68 Ind Cas 267 Court has A 1 R 1921 Pat 467=6 P L T court can not shut out evidence on A 1 R 1926 Lah 125=7 Lah 42 as 712 In appealable case the court's opinion on all the important points A 1 R 1930 Cal 787=53 C L J 91=38 C 474=34 C W N 1129. When application is made after date fixed for first hearing for trial of some of the issues as issues of law without taking evidence order 14, rule 2 or 145 Ind Cas 446=57 C L J 1127=A 1 R re framed and the plaintiff and defendants are sitting Judge has power under this rule to proceed the case 1 Ind Jur O S 14 It is not competent to adjourn and dispose of the case at the first hearing, when the plaintiff's pleader has appeared and objected to the adoption of such procedure 16 M 198

4 [S 155] Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues

required must be adjourned by the court for final disposal, unless it is caused to produce his evidence 7 W R 84, see also 1 N W P 147, A W N 1887, 105 The great object of the C P Code in fixing a day for hearing of a case is that the parties may be confronted together 15 W R 250 But where conditional order of adjournment for production of evidence is made in suit fixed for final disposal and the condition is not fulfilled court cannot dismiss the suit for want of prosecution If it is so dismissed, an appeal lies from the order which amounts to a decree A 1 R 1929 All 543=117 Ind Cas 105

## ORDER XVI

### *Summoning and Attendance of Witnesses*

1 [S 159] At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required, either to give evidence or to produce documents.

N B—For local amendment in Allahabad Bombay and Oudh, *vide infra*

Scope—A Court is not given discretion under this rule to refuse an application for issue of summons to witnesses 13 C P L R 152, 5 N L R 181, 132 Ind Cas 579=32 P L R 34=A 1 R 1931 Lah 135 But the Court has inherent power under s 151, to prevent abuse of its process, and refuse to issue summonses, where it is convinced that a vexatious desire to obstruct the course of justice is the governing motive of the party applying for summonses 5 N L R 181 Court must in all cases issue summonses on application by either party at any time after

institution of suit A I R 1931 Lah 135=32 P L R 34, see also A I R 1927 Lah 281=9 Lah L J 154=28 P L R 173=101 Ind Cas 541, 60 Ind Cas 656, 63 Ind Cas 736, A I R 1924 Lah 617=75 Ind Cas 866. The Court cannot refuse an application for summonses. Filing of application at a late stage is no ground for refusing it though the Court may when the case is heard refuse to adjourn the hearing A I R 1926 Cal 361=87 Ind Cas 355, see also A I R 1923 Nag 58=68 Ind Cas 272, A I R 1925 Lah 67=79 Ind Cas 143, A I R 1924 Pat 36=4 P L T 545=89 Ind Cas 1028, A I R 1925 Lah 572=26 P L R 181=86 Ind Cas 1012, A I R 1929 All 449=51 A 341=113 Ind Cas 266, A I R 1931 Lah 135=32 P L R 34, A I R 1929 Cal 459=49 C L J 546=122 Ind Cas 552, A I R 1929 Pat 622=122 Ind Cas 536, 114 Ind Cas 439, A I R 1926 Pat 545=7 P L T 775=96 Ind Cas 448.

Where the plaintiff applies for summonses to witnesses eleven days prior to the date fixed for hearing and the Court refuses to summon witnesses the dismissal is wrong A I R 1925 Bom 368. Court refuses to summon witnesses of parties, if the refusal has injuriously affected the decision of the case, the decision can be set aside in appeal A I R 1929 Pat 622=122 Ind Cas 536. Where certain witnesses are absent on the date of hearing owing to non service of summonses, upon them without fault of a party the court ought to issue fresh summonses A I R 1926 Lah 26=26 P L R 630=90 Ind Cas 1030. Non service of summons is not sufficient to constitute fraud, but the non service taken together with other Cal 1=42 C L J 280=93 Ind of summonses is made after the sal the Court is bound to issue *bona fide*, and in such a case the

Court acts in the exercise of its inherent power to prevent the abuse of its own process A I R 1924 Cal 971=39 C L J 598=84 Ind Cas 9. A witness can produce at the hearing documents which are not referred to in the summons and these documents are admissible in evidence on behalf of the party calling the witnesses A I R 1925 Cal 1149=88 Ind Cas 498.

2 [S 160] (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Where the Court is subordinate to a High Court, regard shall be had in fixing the scale of such expenses, to any rules made in that behalf.

N B—For local amendments in Allahabad Bombay, Burma, Calcutta Lahore and Patna, *vide infra*.

ordinary witnesses A I R 1922 Bom 116=46 B 89=23 Bom L R. 898=64 Ind Cas 78. Municipality or private service, part of their expenses the payment ordinary employment for the time 149=76 Ind Cas 353. A pleader d occurred in a previous suit in that no special fees could be paid to

3 [S 161] The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.



N B—For local amendments in Bombay, Calcutta, Lahore and Patna, *vide infra*

4. [S 162] (1) Where it appears to the Court or to such officer as it appoints in this behalf, that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons, or the Court may discharge the person summoned, without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party, or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid

N B—For local amendments in Calcutta, Lahore and Madras, *vide infra*

Scope—In default in payment of the expenses of a witness, Court can order the same to be levied by attachment and the sale of only the moveable property of the party obtaining the summons and the moveable property of the debtor cannot be put up to sale. A I R 1921 Cal 430 = 6 C W N 877 = 2 Ind Cas 123

5 [S 163] Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes, and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy

6 [S 164] Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same

7 [S 165] Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power

N B—For local amendments in Calcutta, *vide infra*

8 [S 166] Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant and the rules in order V as to proof of service shall apply in the case of all summonses served under this rule

N B—For local amendments in Allahabad, Calcutta, Oudh, Patna and Rangoon, *vide infra*

9 [S 167] Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow

reasonable time for preparation and for travelling to the place at which his attendance is required

Notes—For local amendment in Rangoon, vide *infra*

10 [S 168] (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to comply with summons a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court touching the service or non-service of the summons.

(2) Where the Court sees reasons to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property

Scope—The Court can issue proclamation only on being satisfied that the evidence of the witness or the production of the document is material and that he has failed without lawful excuse to attend or produce the document A 1 R 1929 All 850=(1929) A L J 1216-123 Ind Cas 97, 13 W R 416 A Court, after issue of a warrant for arrest of a witness, for failure to produce a document, has no power to order an attachment of his property 29 M L J 95=61 Ind Cas 967. In the absence of an application by a party the Court is not bound to compel attendance of a witness 57 Ind Cas 311 Issue of a proclamation or order of

precedent to the imposition of a fine

1247=48 M 941=49 M L J 438=22

Ind Cas 991 Court cannot issue warrants

XVI r 10 39 Ind Cas 592=18 P. W

R. 1917 Section 32 vests the Court with power to impose fine for failing

to comply with a summons The jurisdiction to impose fine can only be

exercised in the manner laid down by Order XVI A 1 R 1929 A 850=(1929)

A L J 1216=121 Ind Cas 97 Certain witnesses of the plaintiff who are duly

served did not appear on the day of trial issue

made until procedure in r 10 is followed where the rule applies 20 C W N.

511=33 Ind Cas 968

11. [S. 169] Where, at any time after

the attachment of his property, such person

appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the

summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a

proclamation issued under the last preceding rule, that he had

no notice of such proclamation in time to attend,

If witness appears, attachment may be withdrawn

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

**Scope**—Order XVI, rule 11 applies to a case where the person satisfied the court that he has not intentionally failed to carry out the order. Rule 12 applies to the alternative case of a person failing to satisfy the court whether he appears in order to offer an explanation or not. In either case whether the facts are those contemplated in rule 11 or rule 12 the court can only proceed after attachment of the property. 31 C L J 363=55 Ind Cas 425

**12 [S 170.]** The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10 to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any.

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

**Scope**—An order under rule 12 can only be made if proclamation has been issued or a warrant for arrest issued or an order for attachment is passed. If neither of these conditions are satisfied the Court has no jurisdiction to impose under rule 12. A I R 1919 All 850=(1929) A L J 1216=123 Ind Cas 97. Attachment of property is not a condition precedent to the imposition of fine under rule 12. A I R 1928 Lah 979=115 Ind Cas 472. Such person is the person referred to throughout the two preceding rules and cannot be fined unless and until there has been proclamation which he has disobeyed. A I R 1928 Lah 473=110 Ind Cas 853. Such person means a person to whom a summons has been issued and who fails to attend under rule 10 (1). A I R 1925 Mad 1247=48 M 941=22 L W 332=(1925) M W N 767=49 M L T 438=90 Ind Cas 991. If a person refuses to accept a summons but attends the Court on date fixed r 10 does not apply. A I R 1928 Lah 469=29 Cr L J 704=110 Ind Cas 336. Where the witness appears, but cannot produce the document, it is illegal to impose a fine upon him. 29 M L T 95=61 Ind Cas 957. Until after the attachment of property a fine cannot be imposed for

produce the document he can be fined without going through the cumbrous procedure of issuing summons, followed by proclamation and attachment of his property to make him understand court's discretion. A I R 1919 All 97=116 Ind Cas 483

**13 [New]** The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment debtor.

**14. [S 171]** Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks necessary to examine any person other than a party to the suit and not called as a witness, the Court may, of its own accord, summon as witnesses such persons as it may think fit to examine.

reasonable time for preparation and for travelling to the place at which his attendance is required

Notes—For local amendment in Rangoon vide *infra*

10 [S 168] (1) Where a person to whom a summons has been issued

*Procedure where witness fails to comply with summons* either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court touching the service or non service of the summons

(2) Where the Court sees reasons to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein, and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property

Scope—The Court can issue proclamation only on being satisfied that the evidence of the witness or the production of the document is material and that he

use the document A I R 97, 13 W R 416 A Court are to produce a document 29 M L J 95=61 Ind Cas court is not bound to compel

attendance of a witness 57 Ind Cas 311 Issue of a proclamation or order of attachment of property are not conditions precedent to the imposition of a fine on defaulting witness A I R 1925 Mad 1247=48 M 941=49 M L J 438=22 L W 332=(1925) M W N 767=90 Ind Cas 991 Court cannot issue warrants without complying with the terms of Order XVI r 10 39 Ind Cas 392=18 P W R 1917 Section 32 vests the Court with power to impose fine for failing to comply with a summons The jurisdiction to impose fine can only be exercised in the manner laid down by Order XVI A I R 1929 A 850=(1929) A L J 1216=121 Ind Cas 97 Certain witnesses of the plaintiff who are duly served did not appear on the date of hearing and after the Court offered to issue

or warrants but

that the Court witnesses 101

Ind Cas 25/=A I R 1927 Lah 424 No order under Order XVI rule 12 can be made until procedure in r 10 is followed where the rule applies 20 C W N 311=33 Ind Cas 968

If witness appears, attachment may be withdrawn

11 [S 169] Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit

**Scope**—Order XVI, rule 11 applies to a case where the person satisfied the court that he has not intentionally failed to carry out the order. Rule 12 applies to the alternative case of a person failing to satisfy the court whether he appears in order to offer an explanation or not. In either case whether the facts are those contemplated in rule 11 or rule 12 the court can only proceed after attachment of the property. 31 C L J 363=5, Ind Cas 425

**12 [S 170]** The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10 to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment

**Scope**—An order under rule 12 can only be made if proclamation has been issued or a warrant for arrest issued or an order for attachment is passed. If neither of these conditions are satisfied the Court has no jurisdiction to impose under rule 12. A I R 1919 All 850=(1919) A L J 1216=123 Ind Cas 97. Attachment of property is not condition precedent to the imposition of fine under rule 12. A I R 1913 Lah 979=115 Ind Cas 472. Such person is the person referred to throughout the two preceding rules and cannot be fined unless and until there has been proclamation which he has disobeyed. A I R 1928 Lah 473=110 Ind Cas 853. Such person means a person to whom a summons has been issued and who fails to attend under rule 10. (1) A I R 1925 Mad 1247=48 M 941=22 L W 332=(1925) M W N 767=49 M L T 438=90 Ind Cas 991. If a person refuses to accept a summons but attends the Court on date fixed for it does not apply. A I R 1928 Lah 469=29 Cr L J 704=110 Ind Cas 336. Where the witness appears but cannot produce the document, it is illegal to impose a fine upon him. 29 M L T 95=61 Ind Cas 957. Until after the attachment of property a fine cannot be imposed for non production of document in obedience to summons. 57 Ind Cas 302, but see also A I R 1928 Lah 469=29 Cr L J 704=110 Ind Cas 336. After an order for attachment of property if the person concerned fails to attend in obedience

r 12 C  
o without law  
issuing a train  
113 Ind Cas

472. Where the witness or a party is present and the court directs him by word of mouth to produce a document and there cannot be the slightest mistake as to the witness or the party having received information of such direction and fails to produce the document he can be fined without going through the cumbersome procedure of issuing summons followed by proclamation and attachment of his property to make him understand court's discretion. A I R 1929 All 97=116 Ind Cas 483

**13 [New]** The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment debtor

**14 [S 171]** Subject to the provisions of this Code as to attendance and appearance and to any law for the force, where the Court at or necessary to examine any party to the suit and not

Court of its own record  
summon as witnesses  
strangers to suit

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a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

**Boopo**—Where lawyer present at

witnesses In such a case the correct procedure is to issue a summons under rule 14 159 P. L. R. 1911; see also L. B. R. (1893 1903) 658; 2 Ind. Cas 347—5 L. B. R. 1

**16. [S 172.]** Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

**Boopo**—Where a summons was issued calling upon the chief officer of the Kanichi Municipality to cause the production of certain entries from his records, which were not specified, and where the chief officer caused a search to be made and claimed a search fee provision, under which the search fee could be claimed a summons to be issued. A witness is bound to attend when summoned by Court, but he is not bound to produce documents not duly specified. He might apply for the specification of the documents 5 S. L. R. 14.

**10. [S 173.]** (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

**Notes** Where a Court adjourns a case but omits to bind the witness to be present at the adjourned date, and the witness do not, in consequence, attend, the Court should give the parties a reasonable opportunity to summon their witness and to enforce their attendance and to grant another adjournment for the purpose. 16 Ind. Cas 986

**17. [Ss 174-175.]** The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

**Application of rules 10 to 13** are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

**18. [S. 17 & fifth para.]** Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on

British India in order to avoid having to such a contempt proceedings under Judge of the High Court is neither under s. 480 or s. 476 Cr. P. C. A. I. R.

1916 Rang 188-4 Rang 247-27 Cr. L. J. 1241

**Procedure where witness apprehended cannot give evidence or produce document** security for his appearance

such bail or security being given may release him and, in default of his giving such bail or security, may order him to be detained in the civil prison

No witness to be ordered to attend in person unless resident within certain limits **19 [S 176]** No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court house

**Scope**—This rule does not apply to a case where a party to a suit desires to give evidence of his own motion in his own favour. A I R 1922 Cal 42=35 C L J 78=68 Ind Cas 9, see also A I R 1924 Mad 541=46 M L J 131=34 M L J 314=(1924) M W N 191=78 Ind Cas 407. This rule has no application to the persons summoned under s 56 of the Presidency Towns Insolvency Act. A I R 1923 Cal 427=27 C W N 370=82 Ind Cas 76. Ordinarily in the case of a witness not under the control of the party asking for the commission, and residing beyond 200 miles a commission should issue as a matter of right unless the Court is satisfied that a party is merely abusing its authority to issue process. A I R 1923 Mad 321=44 M L J 202=17 L W 251=(1913) M W N 157=46 M 574=71 Ind Cas 550. Where a plaintiff is not residing within Court's jurisdiction nor within 200 miles from the Court house, he cannot be compelled to appear in person as defendant's witnesses but should be examined on commission. 140 Ind Cas 716=28 N L R 146=A I R 1932 Nag 135.

**20 [S 177]** Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

**Scope**—Under the Code of Civil Procedure a defendant who *bonafide* and for a substantial reason requires the evidence of the plaintiff to be taken ought not in ordinary circumstances to have a decree against him until that evidence has been given. 24 W R 72. Where a document is produced but refused to be exhibited the Court cannot dismiss the suit. 28 C L J 24=46 Ind Cas 879.

**21. [S 178]** Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned

**N B**—For local amendment in Allahabad and Calcutta vide *infra*

320=5 M L T 58=9 C L J 172=13 C W N 370=11 Bom L R 196=31 A 116=19 M L J 186 (P C), see also 5 Ind Cas 249=14 C W N 285=12 Bom L R 244.

## ORDER XVII

### *Adjournments*

**1 [S 156] (1)** The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Court may grant time and adjourn hearing

a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document

**Scope**—Where lawyer present all through he should not be examined as court witness. Pat 350=A I R 1922 Pat

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**15. [S 172]** Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place

Duty of persons summoned to give evidence or produce document as issued calling upon the chief officer of the e production of certain entries from his records the chief officer caused a search to be made and claimed a search fee Held that there was no provision, under which the search fee could be claimed from the party who caused the summons to be issued A witness is bound to produce documents duly specified when summoned by Court but he is not bound to produce documents not duly specified He might apply for the specification of the documents 5 S L R 44

**16 [S 173]** (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

**Notes**—Where a Court adjourns a case but omits to bind the witness to be present at the adjourned date, and the witness do not, in consequence attend the Court should give the parties a reasonable opportunity to summon their witness and to enforce their attendance and to grant another adjournment for the purpose 16 Ind Cas 986

**17 [Ss 174-175]** The provisions of rules 10 to 13 shall, so far as they are applicable be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse in contravention of rule 16

**Scope**—Where a witness went out of British India in order to avoid having to give evidence, the contempt is gross and for such a contempt proceedings under XVI, rule 17 C P Code are inadequate and a Judge of the High Court is neither bound nor ought in such a case to proceed under s 480 or s 476 Cr P C A I R 1926 Rang 188=4 Rang 257=27 Cr I J 1241

**18. [S 174 fifth para]** Where any person arrested under a warrant is Procedure where witness apprehended cannot give evidence or produce document If he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on



such bail or security being given may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison

19 [S 176] No one shall be ordered to attend in person to give evidence unless he resides—  
No witness to be ordered to attend in person unless resident within certain limits

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Scope—This rule does not apply to a case where a party to a suit desires to give evidence of his own motion in his own favour. A I R 1922 Cal 42=35 C I J 78=68 Ind Cas 9, see also A I R 1924 Mad 541=46 M L J 131=34 M L J 314=(1924) M W N 191=78 Ind Cas 407. This rule has no application to the persons summoned under s 36 of the Presidency Towns Insolvency Act. A I R 1923 Cal 427=27 C W N 370=82 Ind Cas 76. Ordinarily in the case of a witness not under the control of the party asking for the commission and residing beyond 200 miles a commissioner should issue as a matter of right, unless the Court is satisfied that a party is merely abusing its authority to issue process. A I R 1923 Mad 321=44 M L J 202=17 L W 251=(1913) M W N 157=46 M 574=71 Ind Cas 530. Where a plaintiff is not residing within Court's jurisdiction nor within 200 miles from the Court house he cannot be compelled to appear in person as defendant's witnesses but should be examined on commission. 140 Ind Cas 716=28 N L R 146=A I R 1932 N 135.

20 [S 177] Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Scope—Under the Code of Civil Procedure a defendant who *bonafide* and for a substantial reason requires the evidence of the plaintiff to be taken, ought not in ordinary circumstances to have a decree against him until that evidence has been given. 24 W R 72. Where a document is produced but refused to be exhibited the Court cannot dismiss the suit. 28 C L J 24=46 Ind Cas 879.

21 [S 178] Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.  
Rules as to witnesses to apply to parties summoned

N B—For local amendment in Allahabad and Calcutta vide *infra*.

Scope—It is one of the artifices of a week and somewhat paltry kind of advocacy for each litigant to cause his opponent to be summoned as a witness with a view to

320=5 M L T 58=9 C L J 172=13 C W N 370=11 Bom L R 196=31 A 116=19 M L J 186 (P C), see also 5 Ind Cas 249=14 C W N 285=12 Bom L R 244.

## ORDER XVII

### Adjournments

1 [S 156] (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.  
Court may grant time and adjourn hearing

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

Costs of adjournment  
by the adjournment.

Provided that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded

N B—For local amendments in Allahabad and Lahore vide *infra*

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the Court 24 Ind Cas  
Court should not ordinarily  
order granting or refusing  
not ought to be given in cases where  
85 Ind Cas 890 Granting of an  
Court and not in that of an Appellate  
Court and still less in that of a Court of second appeal A I R 1922 Nag 81=  
66 Ind Cas 830 Adjournment cannot be granted unless due zeal and diligence  
is shown A I R 1923 Lah 584=4 Lah 258=5 Lah L J 438=37 Ind Cas  
523, 37 Ind Cas 266 Party cannot insist on adjournment as of right due to  
non compliance with a provision of law It is within the discretion of the Court  
Court may grant an adjournment or else it may dismiss the suit A I R 1911  
Pat 1=5 Pat L J 390=1 Pat L J 666=57 Ind Cas 250 There is difference  
between the hearing of the suit and hearing of evidence 27 C L J 119=46  
not be  
case of  
parties  
at the  
adjournment of the suit A I R 1923 All 72=20 A L J 912=77 Ind Cas 91  
Liberal construction should be put upon the provisions of order XVII A I R 1924  
Nag 298=79 Ind Cas 123

Adjournment should be applied for at the earliest possible opportunity A I R  
1925 Nag 736=83 Ind Cas 257 Where non appearance of the witnesses was not  
to the  
prove

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Date of

A I R 1924 All 41=41 Ind Cas 1000  
ment on condition of paying costs, the court may strike off the defence and proceed  
*ex parte* if no costs are paid A I R 1925 All 280=47 A 538=23 A L J 212=  
86 Ind Cas 862 But sufficient time should always be given for producing the

to produce a witness for giving rebuttal evidence and to give adjournments for the pur-  
pose A I R 1926 Nag 486=96 Ind Cas 1905  
ment can be questioned in appeal from *ex parte* d  
L T 381=91 Ind Cas 167 In cases of adjourn-  
ment the costs is that it should order the pa

Case, 1929

1929 Rang 217=174 Ind Cas 880 The court is not bound to intimate the absent  
party of the  
L W 78=12  
his witnesses  
adjournment

24 L W 443=97 Ind Cas 893  
give time for a party to appear is not proper A I R 1928 Nag 165=11 N L J

78=108 Ind Cas 879 Where the court has fixed a case on a holiday it should not be taken up on the next day A I R 1929 Pat 609=10 P L T 589=120 Ind Cas 1928 Mad 786=111 Ind Cas 168 Even pauper, an order making payment of the of allowing time for amendment of the plaint is not justified A I R 1928 Rang 306=6 Rang 561=114 Ind Cas 677 Adjournment cannot be granted because a compromise was suggested but fell through. A I R 1928 Mad 401=106 Ind Cas 375 Whether a plaintiff has sufficient cause for not producing his evidence on a due date is a question of fact, depending on the discretion of the Court concerned A I R 1927 Lah 879=100 Ind Cas 301, see also A I R 1929 Lah 620=117 Ind Cas 89, A I R 1928 Cal 101=10, Ind Cas 469=33 P L R 11 355, 140 Laches in paying process fees may be or refusing process 146 Ind Cas 3 Where writ has been served but it is good ground for adjournment 140 Ind Cas 334=16 N L J 208=A I R 1933 Nag 336 Where defendant took steps to summon necessary and important witnesses but witnesses did not appear, adjournment should be given for production of such witnesses 141 Ind Cas 379=54 P L R 505=A I R 1933 Lah 176 Court has inherent power to dismiss execution application for default 143 Ind Cas 1=37 M L W 607=1933 M W N 566=64 M L J 664=56 Mad 490=A I R 1933 Mad 418 (F B)

2 [S 157]. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear on day fixed Procedure if parties fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit

N B—For local amendments in Allahabad and Oudh vide *infra*

Scope—Under rule 2 it is in the discretion of the Court to proceed in each case under Order IX and not obligatory If a plaintiff is absent and had at earlier hearing made out a definite case the suit in such cases should not be adjourned and not dismissed for default which order would be improper A I R 1929 Pat 248=120 Ind Cas 625 Rules 2 and 3 are mutually exclusive Rule 2 gives the procedure to be followed in the absence of a party or parties Rule 3 gives the procedure to be followed where the parties are present but fail to produce evidence A I R 1930 Nag 152=127 Ind Cas 351, see also A I R 1928 Pat 167=7 Pat 256=107 Ind Cas 824, A I R 1929 All 543=117 Ind Cas 105 Where the evidence is closed the Court should always try the case on merits and not dismiss it for default under rule 2 128 Ind Cas 889=A I R 1931 Bom 111=32 Bom L R 1430 Where an *ex parte* decree is passed under Order XVII, rule 2, the defendant can apply under Order IX rule 13 A I R 1930 Rang 270=8 Rang 168 125 Ind Cas 358 Where pleader appears and states that he has no instructions and no witness was summoned for the day, the proper order is passed on dismissal under rule 2 and not under rule 3 117 Ind Cas 73, A I R 1928 Rang 191=6 Rang 323=114 Ind Cas 299, see also A I R 1927 Rang 46=56 Rang 448=99 Ind Cas 717, see also 124 Ind Cas 402=Ind Rul (1930) All 498, see also 1928 M W N 162=27 L W 347=54 M L J 351=108 Ind Cas 897, 111 Ind Cas 150=A I R 1928 All 760, A I R 1926 Mad 971=51 M L J 209=1926 M W N 616=97 Ind Cas 517, A I R 1924 Bom 139=25 Bom L R 1222=82 Ind Cas 124

When on a date fixed for its own motion by the Court the defendant on whom lay the burden of proof was absent the Court decided the case on merits, it was held that the case should not have been tried on merits and the order must be held to be one under order XVII, rule 2 A I R 1929 Rang 73=6 Rang 766= appearance when he is represented by a necessary facts and if he is duly instructed But where it appeared that upto same day his client, it must be

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment

Provided that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

N B—For local amendments in Allahabad and Lahore vide *infra*:

Scope—The granting of adjournment is optional with the Court 24 Ind Cas 206, see also 10 Ind Cas 748 Discretion of the trial Court should not ordinarily be interfered with in appeal Appeal does not lie from an order granting or refusing adjournment 45 Ind Cas 893 Adjournment ought to be given in cases where 85 Ind Cas 890 Granting of an adjournment and not in that of an Appellate Court 1 appeal A I R 1922 Nag 81=82 unless due zeal and diligence is shown 4 Lah 258=5 Lah L J 438=37 Ind Cas 377 not insist on adjournment as of right due to the law It is within the discretion of the Court to grant or refuse it else it may dismiss the suit A I R 1911 Pat 1=5 Pat L J 390=1 Pat L J 666=57 Ind Cas 250 There is difference between the hearing of the suit and hearing of evidence 27 C L J 119=46 Ind Cas 246 Adjournment to allow to produce further evidence, cannot be granted after the parties had closed their evidence 36 Ind Cas 76 In case of pending suits the date of the adjourned hearing must be communicated to the parties of them as were present at the adjournment 2=20 A L J 912=77 Ind Cas 912 10 Ind Cas 1010=1011 of order XVII A I R 1924 Nag 298=79 Ind Cas 123

Adjournment should be applied for at the earliest possible opportunity A I R 1925 Nag 236=83 Ind Cas 257 Where non appearance of the witnesses was not due to the party's fault the party cannot prove his case A I R 1925 Nag 236=83 Ind Cas 257

*ex parte* if no costs are paid A I R 1925 All 280=47 A 538=23 A L J 212=86 Ind Cas 862 But sufficient time should always be given for producing the evidence off the defence and proceed

1929 Rang 215=124 Ind Cas 880 The court is not bound to intimate the absent party of the adjourned date A I R 1930 Mad 113 (S B)=58 M L J 10=31 L W 78=122 Ind Cas 449 Where on several occasions plaintiff was ready with his witnesses but the court adjourned the suit for want of time the court should grant adjournment on the plaintiff's prayer A I R 1916 Mad 944=(1926) M W N 614=24 L W 443=97 Ind Cas 895 Refusal to postpone the hearing for an hour or to give time for a party to appear is not proper A I R 1928 Nag 165=11 N L J 11

78=108 Ind Cas 879 Where the court has fixed a case on a holiday it should not be taken up on the next day A I R 1929 Pat 609=10 P L T 589=120 Ind Cas 111 before date of next hearing he Mad 786=111 Ind Cas 168 Even an order making payment of the owing time for amendment of the ang 306=6 Rang 561=114 Ind cause a compromise was suggested but fell through A I R 1928 Mad 401=106 Ind Cas 375 Whether a plaintiff has sufficient cause for not producing his evidence on a due date is a question of fact, depending on the discretion of the Court concerned A I R 1927 Lah 8,9=100 Ind Cas 301, see also A I R 1929 Lah 620=117 Ind Cas 89 A I R 1928 Cal 107=103 Ind Cas 851, 107 Ind Cas 578=A I R 1928 All 355, 140 Ind Cas 469=33 P L R 770=13 Lah 458=A I R 1932 Lah 591 Laches in paying process fees may be ground for refusing adjournment but not for refusing process 146 Ind Cas 334=A I R 1933 Nag 336=16 N L J 208 Where witness has been served but is absent as wrong date is given in process it is good ground for adjournment 146 Ind Cas 334=16 N L J 208=A I R 1933 Nag 336 Where defendant too' witnesses but witnesses did not app of such witnesses 141 Ind Cas 370 but has inherent power to dismiss L W 607=1933 M W N 566=64 M L J 664=56 Mad 490=A I R 1933 Mad 418 (F B) 37 M

2 [S 157]. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit

N B—For local amendments in Allahabad and Oudh vide *infra*

Scope—Under rule 2 it is in the discretion of the Court to proceed in each case under Order IX and not obligatory If a plaintiff is absent and had at earlier hearing made out a definite case the suit in such cases should not be adjourned and not dismissed for default which order would be improper A I R 1929 Pat 248=120 Ind Cas 625 Rules 2 and 3 are mutually exclusive Rule 2 gives the procedure to be followed in the absence of a party or parties Rule 3 gives the procedure to be followed where the parties are present but fail to produce evidence A I R 1930 Nag 152=127 Ind Cas 331, see also A I R 1928 Pat 167=7 Pat 236=107 Ind Cas 824, A I R 1929 All 543=117 Ind Cas 105 Where the evidence is closed the Court should always try the case on merits and not dismiss it for default under rule 2 128 Ind Cas 889=A I R 1931 Bom 111=32 Bom L R 1450 Where an *ex parte* decree is passed under Order XVII, rule 2, the defendant can apply under Order IX, rule 13 A I R 1930 Rang 270=8 Rang 168=125 Ind Cas 358 Where pleader appears and states that he has no instructions and no witness was summoned for the day the proper order is passed on dismissal under rule 2 and not under rule 3 117 Ind Cas 73, A I R 1928 Rang 191=6 Rang 323=114 Ind Cas 299, see also A I R 1927 Rang 46=56 Rang 448=99 Ind Cas 717, see also 124 Ind Cas 402=Ind Rul (1930) All 498 see also 1928 M W N 162=27 L W 347=54 M L J 351=108 Ind Cas 897, 111 Ind Cas 150=A I R 1928 All 760, A I R 1926 Mad 971=51 M L J 209=1926 M W N 616=97 Ind Cas 517, A I R 1924 Bom 139=25 Bom L R 1222=82 Ind Cas 124

When on a date fixed for its own motion by the Court, the defendant on whom lay the burden of proof was absent the Court decided the case on merits it was held that the case should not have been tried on merits and the order must be held to be one under order XVII rule 2 A I R 1929 Rang 73=6 Rang 766=appearance when he is represented by a necessary facts and if he is duly instructed But where it appeared that upto same v p tauer fully represented his client it must be

shown that he did or omitted to do something which negative the ordinary inference that he continued. As to represent his client, A I R 1928 Mad 831=110 Ind. Cas 377, A I R 1928 Mad 831=110 Ind. Cas 377. Where the suit was dismissed for non payment of damages for omission to get summons served, the order lies under order XVII, rule 2 and this could be re admitted by the Court. A I R 1927 All=464=100 Ind. Cas 691. For the purpose of rule 2 defendant's absence cannot be treated as plaintiff's absence even when there is similarity of interests unless he is transferred as a plaintiff. A I R 1925 Mad 227=25 L W 57=38 M L T 194=98 Ind. Cas 501. Where after the evidence is closed, time is extended for argument and the party fails to appear the Court is not bound to act under s 2 and may decide the case on merits. A I R 1924 Lah 545=5 Lah 218=78 Ind. Cas 453. There can be no dismissal of a suit after the decree is passed unless the decree is set aside on appeal, and the parties acquire rights and incur liabilities from the moment the

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has commenced  
Cas 513, see also  
596 The Court  
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tions, 1  
1 Pat I  
Cas 94

45 A 6 000 5 000 300  
but see also 73 Ind. Cas 982-A I R 1924 Mad 43=18 L W 209-(1913) M W N 802=73 Ind. Cas 98. Refusal to direct the Receiver to provide funds to defend the action which resulted in the passing of an *ex parte* decree is a sufficient for defendant's non appearance and restoration under order IX r 13 A I R 1922 Pat 585=117 Pat 88 67 Ind. Cas 837

923 Pat 330=  
J 97=70 Ind  
A L J 495=  
=1 Pat 188,

Suit is liable to be dismissed if adjournment costs are not paid as directed 90 P W R 1716=158 L L R 1716=35 Ind. Cas 534. The order dismissing the suit for non appearance of parties at an adjourned hearing is one under Order XVII rule 2 and not under rule 3 32 Ind. Cas 714. Judicial discretion should be exercised under order XVIII rule 2 before disposing of a case under order IX, r 8 and where *prima facie* case had been made out by the plaintiff 31 Ind. Cas 869. Where a suit has been dismissed owing to absence of both the pleader and the client such an order of dismissal is one under order XVII rule 2 and no appeal lies therefrom 32 Ind. Cas 766. Adjournment hearing being refused, dismissal of a suit for failure to produce evidence is a decree and not an order 45 Ind. Cas 200, see also (1917) M W N 565=33 M L J 553=39 Ind. Cas 948. An order of dismissal whether it be for want of evidence or not is an order under O IX unless the facts show that the decision was on merits 4 P L J 712=52 Ind. Cas 290. If defendant and his advocate are absent on the date fixed for appointment of commissioner, court should proceed under order XVII rule 2 and appoint commissioner and not pass an *ex parte* decree 42 Ind. Cas 537. Where parties do not appear on the day fixed for consideration of the application for amendment of issues suit cannot be dismissed but the application for amendment can be. A I R 1921 Pat 96=6 P L J 331=2 P L T 760=63 Ind. Cas 746. Where the suit has been adjourned for finding out the whereabouts of the unserved defendant and on the adjourned date, defendant appears but the plaintiff does not, the suit must under order IX, r 8 be dismissed 13 S L R 149=53 Ind. Cas 560. Where witnesses being absent, fresh adjournment was applied for but was refused and the suit was dismissed after recording defendant's evidence it was held that the dismissal was under order XVII, r 2 and not under r 3. A I R 1922 Pat 2=3 P L T 64=6 Pat L J 313=61 Ind. Cas 897



'make such order as it thinks fit' in rule 2 do not include an order under

tension of time for producing evidence is granted and where there is material on  
 dh 278=78 Ind Cas 340,  
 A I R 1934 Mad 199,  
 both parties are absent on  
 A I R 1933 Nag 370  
 at instance of party and if  
 there are materials on record 37 C W N 666=A I R 1933 Cal 412=144  
 Ind Cas 462, see also 32 Bom L R 1430=A I R 1931 Bom 111, but see  
 142 Ind Cas 86=56 C L J 12=A I R 1933 Cal 73

**Appeal and Revision**—Revision lies from a wrong decision that Order IX  
 rule 13 did not apply to a case under Order XVII, rule 2 A I R 1925 All 267=47 A

1924 P C 198=35 M L T 143=47 M L J 441=20 M L W 491=51 I A 321=  
 22 A L J 990=40 C L J 339=29 C W N 391=5 P L T 623=81 Ind Cas 741

**3 [S 158]** Where any party to a suit to whom time has been granted fails  
 to produce his evidence, or to cause the atten-  
 dance of his witnesses, or to perform any other  
 act necessary to the further progress of the suit,  
 for which time has been allowed, the Court may  
 notwithstanding such default proceed to decide the suit forthwith

*N B*—I or local amendments in Allahabad and Oudh vide *infra*

**Scope**—Rule is directed to a case where a party is definitely given time in order  
 that he may take a certain step which it is necessary for him to take if he is to  
 prosecute his case and fails to take the step A I R 1928 Cal 341=111 Ind Cas  
 430=17 C L J 467 This rule applies only when a default is subsequently made  
 by a party who himself had asked for adjournment A I R 1929 Rang 73=6 Rang  
 766=115 Ind Cas 68 A I R 1928 Rang 191 The word 'default' in the rule  
 includes any default amounting to non prosecution of the appeal, by the plaintiff  
 A I R 1931 Mad 133=(1930) M W N 1236=150 Ind Cas 657 Failure of a

which is not an act necessary to the  
 dismissal of the suit for non-  
 J 177=105 Ind Cas 30 Words  
 the court is to proceed with  
 the suit in spite of the default upon such material as are before it And if  
 such materials fail to substantiate the claim the suit will be dismissed  
 for this reason and not for default A I R 1927 Mad 109=51 M L J  
 684=2) Ind Cas 32 Forthwith means on merits as gathered from facts

labelling and not a  
 time was granted  
 3 Lab 281=69 Ind  
 order XVII rule  
 prosecution of case

the decision is not *ex parte* A I R 1922 Pat 485=1 Pat 188=69 Ind Cas 837,  
 see also A I R 1921 Pat 458=45 B 1181=23 Bom L R 511=64 Ind Cas 289,  
 41 A 663=17 A I J 849=51 Ind Cas 850 A I R 1924 Mad 43=18 L W 209=

A I R 1923 Oudh 18=9 O L J 543=72  
 suit has been instituted and only after it  
 Cas 491=A I R 1925 Mad 1045 The  
 dismissal of a suit under order XVII, rule 3 for failure to supply copies of entry in



account books in certain specific language is illegal A I R 1935 Pat 100

Ind Cas 1 Where

rule 2 applies A I R

time has been granted

A I R 1933 All 907, see also 29 N L R 326=A I R 1933 Nag 234, 143 Ind

Cas 307=1932 A L J 1100=A I R 1933 All 118

Where plaintiff was present on the day of hearing Court is not justified in dismissing the suit under order XVII r 3 on the ground that the plaintiff was absent on the day fixed for hearing for return of summons Such an order is illegal

is 289 Order dismissing a suit on default

decree and not an order from which an appeal

g 838=6 Bur L J 77=101 Ind Cas 618

as a witness as ordered is ground for the

try the suit on merits A I R 1927 Lah

r 3 of the Code does not apply to non produc

duced by plaintiff when plaint is presented

A I R 1924 Lah 608=76 Ind Cas 254 Rule 3 does not authorise summary

dismissal where party has paid the process fee and the Court and its officers

are responsible for effecting service and an adjournment caused by non atten

dance of witnesses for want of service is an adjournment in the ordinary

course and does not amount to time granted under XVII, r 3 A I R 1924 Lah

404=71 Ind Cas 862, A I R 1926 Lah 27=89 Ind Cas 857 Plaintiff alone cannot

be held responsible for failure to cause attendance of witnesses for not paying

process-fee in time where process server was negligent The stringent provisions

of order XVII r 3 should not be applied to such case A I R 1924 Lah 272=69

Ind Cas 665 Where defendant wanting stay of suit is ordered to produce copy

of certain document on late fixed and defendant fails to appear on that date

an *ex parte* decree cannot be passed where order is

IX r 8 of the C P Code under order XVII, r 3 and not under Order

IX r 8 of the C P Code A I R 1922 Pat 252=6 P L J 650=2 P L T 572—

63 Ind Cas 570 Where a pleader appears for a defendant who is absent and

says there is no instruction and a decree is passed under Order XVII, r 3 the

decree is on merits and not an *ex parte* decree A I R 1922 All 497=77

Ind Cas 527 Rehearing cannot be claimed in any case in which a

suit is decided under order XVII r 3 even if order XVII r 2 is mentioned

by mistake instead of order XVII r 3 in the judgment The remedy is

by way of appeal A I R 1925 Oudh 495=86 Ind Cas 356 There

is no justification in dismissing suit for failure to amend plaint and pay

adjournment costs, under order IX r 8 nor can the dismissal come under order

XVII r 3 where there is no judgment on merits A I R 1926 Lah 571=96 Ind

Cas 312 After having allowed five days time to the defendant to produce his

witnesses the court was not justified in passing an *ex parte* decree without waiting

for 6 or 7 days A I R 1928 Cal 251=59 C L J 543=126 Ind Cas 411 Where

order apparently passed under order XVII r 3 but really was under Order IX r 8

the lower court was competent to hear the appeal from an order refusing to restore

the suit. 27 A. L. J 391=116 Ind Cas 752 Where an application for setting

aside of an *ex parte* decree was allowed conditionally on payment of costs and on

default of payment the court decided the suit on merits, it was held that the

decision is a decree under Order XVII r 3 and not an order under order IX

r 6 A I R 1930 Oudh 351=70 W N 582=127 Ind Cas 27 Adjournment

having been refused pleader withdrew from the suit and failed even to examine

witness in attendance for which no valid reason was given, held the order of

dismissal under Order XVII, r 3 should be passed A I R 1929 All 432=

(1929) A. L. J 407=119 Ind Cas 569

Rule 2 of Order XVII applies only when one of the parties or both

parties are absent Where both parties were present but the suit was dis

missed for default the fact that a formal order was passed by the Court cannot be final of

was one under rule 3 of Order XVII

a revenue suit adjournment was

and the suit was decreed it was held that the case ought not to have been decided on merits from the evidence available and not arbitrarily 14 R D 86 Court should not be too technical in the matter of adjournment and should not refuse it for a solitary failure to produce witnesses A I R 1916 Mad 859—(1926) M W N 434=96 Ind Cas 536, see also 93 Ind Cas 1024=A I R 1926 Lah 501 Where suit is dismissed for default on failure of party to produce evidence when party is present, the dismissal must be deemed to be in order under rule 3 and an appeal is competent 95 Ind Cas 798

**Appeal**—Where a decree is wrongly passed on merits under order XVII rule 3 party aggrieved should appeal against decree itself and not treat it as *ex parte* and against order refusing to set it aside 3 L W 524=33 Ind Cas 660 Order purporting to be passed under order XVII rule 3 cannot be treated as an *ex parte* decree and hence an application to set aside would not lie but an appeal does lie therefrom A I R 1927 Lah 562=103 Ind Cas 192

## ORDER XVIII

### *Hearing of the Suit and Examination of Witnesses*

1 [S 179 Expl] The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks in which case the defendant has the right to begin

**Scope**—Where in a suit for restitution of conjugal rights by husband, the non consent, the defendant T 129 The general rule begin *Taylor on Evidence* a civil case 7 C L R 374 In a claim for mesne profits by the successful appellant against the other party who had taken possession in execution of decree of trial Court the person claiming it in the position of a plaintiff and he should begin A I R 1925 Mad 145=47 M 800=48 M L J 89=91 Ind Cas 792

2 [S 179, first para S 180 first and second paras] (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove (2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case (3) The party beginning may then reply generally on the whole case

**N B**—For local amendments in Calcutta Madras and Rangoon, vide *infra*

**Scope**—Day on which issues are framed is not meant by or included in day fixed for hearing of suit A I R 1925 All 98=82 Ind Cas 73 Party cannot introduce new pleadings without leave of Court at the time of stating the case under O XVIII, r 2 but has only the right to state his case as already put forward. A I R 1927 Lah 615=103 Ind Cas 301 Where parties were not ready on day to which case was adjourned for argument but was permitted to put in written argument and subsequently the Judge's predecessor came in and after local inspection delivered judgment *Held* parties had sufficient opportunity to argue and judgment was not vitiated A I R 1924 Lah 107=4 Lah 364

3 [S 180 third para] Where there are several issues, the burden of Evidence where several issues

answer to the evidence produced by the other party, and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply specially on the evidence so produced by the party beginning, but the party beginning will then be entitled to reply generally on the whole case

4 [S 181] The evidence of the witnesses in attendance shall be taken

Witness to be examined in orally in open Court in the presence and under the personal direction and superintendence of the Judge  
open Court

Scope—Evidence in civil cases must be recorded by Judge himself. It is extremely undesirable to allow witnesses to be examined by some one else and the procedure is only an error, defect or not affect the merits of the case or the ground for reversing the decision of the Judge.

A I R 1928 Pat 438=10 P L T 474=115 Ind Cas 237. A Court should in all cases exercise the powers, with which they are entrusted by law in the examination of witnesses if they are not properly examined. 10 W R. 280. As regards the examination of *pardishin* lady. Vide 15 C 775, 1 B L R 5.

5 [S 182] In cases which an appeal is allowed the evidence of each

How evidence shall be taken witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall if necessary, correct the same, and shall sign it.  
in appealable cases

N B—For local amendments in Rangoon vide *infra*.

Scope—Provisions of this section are not complied with where Judge dictates evidence to mere irregular Cas 833 made in writing by other person.

dence of the Judge, the Judge also must make or cause to be made a memo as provided by rr 8 and 14. A I R 1929 Cal 78=55 C 1084=113 Ind Cas 833. Parties need not be examined on oath but Court can do so if necessary. Statements of witnesses are required to be read out to him for a double reason. Any mistake by deponent or by the writer may be rectified and secondly a *locus penitential* is provided for a person who had made a false statement. Omission to read out deprives him of *locus penitential* and such omission renders conviction under S 193 I P Code, illegal altogether. 12 P R Cr 1917=18 Cr L J 607=15 P W R Cr 1917=39 Ind Cas 847, A I R 1924 Cal 705=51 C 236=25 Cr L J 1027=81 Ind. Cas 803. Rule is sufficiently complied with when read over by witness himself. depositions so read over prove themselves under s 80, Evidence Act 46 C 895=23 C W N 661=29 C L J 513=50 Ind Cas 660. Small Cause Court Judge is not bound to read over to witnesses their depositions and therefore the depositions so recorded are admissible in evidence against those witnesses in prosecution for perjury. A I R 1925 Nag 412=26 Cr L J 1350=89 Ind Cas 390. Non compliance with provisions of Order XVIII rules 5 and 6 does not render the deposition inadmissible in evidence at a subsequent trial of the deponent for

24 M L T 242=45 Ind Cas 507=19 Cr L J 603, see also 45 C 825=27 C L J 377=22 C W N 825=45 Ind Cas 258.

6 [S 183] Where the evidence is taken down in a language different

When deposition to be interpreted from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

and the suit was decreed it was held that the case ought not to have been decided on merits from the evidence available and not arbitrarily. 14 R D 86. Court should not be too technical in the matter of adjournment and should not refuse it for a solitary failure to produce witnesses. A I R 1916 Mad 859—(1926) M W N 434=96 Ind Cas 536, see also 93 Ind Cas 1074=A I R 1926 Lah 501. Where suit is dismissed for default on failure of party to produce evidence when party is present the dismissal must be deemed to be an order under rule 3 and an appeal is competent. 95 Ind Cas 798.

**Appeal**—Where a decree is wrongly passed on merits under order XVII rule 3 party aggrieved should appeal against decree itself and not treat it as *ex parte* and against order refusing to set it aside. 3 L W 524=33 Ind Cas 660. Order purporting to be passed under order XVII rule 3 cannot be treated as an *ex parte* decree and hence an application to set aside would not lie but an appeal does lie therefrom. A I R 1927 Lah 562=103 Ind Cas 192.

## ORDER XVIII

### *Hearing of the Suit and Examination of Witnesses*

1 [S 179 Expl] The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks in which case the defendant has the right to begin.

**Scope**—Where in a suit for restitution of conjugal rights by husband, the wife admitted marriage but pleaded coercion and non consent the defendant had the right to begin. 23 Ind Cas 242=7 Bur L T 129. The general rule is that the party on whom the burden of proof lies should begin. *Taylor on Evidence* § 379. Generally a plaintiff has the right to begin in a civil case. 7 C L R 274. In a claim for mesne profits by the successful appellant against the other party who had taken possession in execution of decree of trial Court the person claiming it in the position of a plaintiff and he should begin. A I R 1925 Mad 145=47 M 800=48 M L J 89=92 Ind Cas 792.

2 [S 179, first para S 180 first and second paras] (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.  
(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.  
(3) The party beginning may then reply generally on the whole case.

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**Scope**—Day on which issues are framed is not meant by or included in day fixed for hearing of suit. A I R 1925 All 98=82 Ind Cas 73. Party cannot introduce new pleadings without leave of Court at the time of stating the case under O XVIII, r 2 out has only the right to state his case as already put forward. A I R 1927 Lah 615=103 Ind Cas 501. Where parties were not ready on day to which case was adjourned for argument but was permitted to put in written argument and subsequently the Judge's predecessor came in and after local inspection delivered judgment. *Held* parties had sufficient opportunity to argue and judgment was not vitiated. A I R 1924 Lah 107=4 Lah 364.

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the other party, and, in the latter case, the one on those issues after the other party has her party may then reply specially on the pining, but the party beginning will then

4 [S. 181] The evidence of the witnesses in attendance shall be taken

Witness to be examined in  
open Court

orally in open Court in the presence and under  
the personal direction and superintendence of the  
Judge.

Scope.—Evidence in civil cases must be recorded by Judge himself. It is extremely undesirable to allow witnesses to be examined by some one else and the procedure is gravely objectionable. Yet the procedure is only an error, defect or irregularity in the procedure and does not affect the merits of the case or the jurisdiction of the Court and is a ground for reversing the decision of the Judge. A L R 1928 Pat 438=10 P L T 474=11, Ind Cas 237. A Court should in all cases exercise the powers, with which they are entrusted by law in the examination of witnesses if they are not properly examined. 10 W R. 220. As regards the examination of *paradise* in Ind. Vide 15 C 77, 1 B L R 5.

5. [S. 182] In cases which an appeal is allowed the evidence of each

How evidence shall be taken  
in appealable cases

witness shall be taken down in writing, in the  
language of the Court, by or in the presence and  
under the personal direction and superintendence

of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed shall be read over in the presence of the Judge and of the witness, and the Judge shall if necessary, correct the same, and shall sign it.

N B.—For local amendments in Rangoon, vide *infra*.

Scope.—Provisions of this section are not complied with where Judge dictates evidence to the typist.

mere irregularity and not

Cas 833. If there is only

made in writing by the Judge

other person though, in the presence and under the personal direction and superintendence of the Judge, the Judge also must make or cause to be made a memo as provided by rr 8 and 14.

A L R 1929 Cal 78=55 C 1084=113 Ind Cas 833. Parties

need not be examined on oath but Court can do so if necessary. Statements of

witnesses are required to be read out to him for a double reason. Any mistake

by deponent or by the writer may be rectified and secondly a *locus penitential* is

provided for a person who had made a false statement. Omission to read out

deprives him of *locus penitential* and such omission renders conviction under S 193

I P. Code, illegal altogether. 12 P R Cr 1917=18 Cr L J 607=15 P, W R Cr

1917=39 Ind Cas 847. A L R 1924 Cal 705=51 C, 236=25 Cr L J 1027=

complicated with when read over by

prove themselves under s 80, Evi-

L J 513=50 Ind Cas 660. Small Cause

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412=26 Cr L J 1350=89 Ind Cas

ter XVIII rules 5, and 6 does not render

the deposition inadmissible in evidence at a subsequent trial of the deponent for

perjury the provisions being different. L R

192=23 Cr L J 500=68 Ind Cas

nesses' code is

830=

d at a

ufficient compliance and deposition is

193 I P Code. Irregularity in reading

(1918) M W N 239=7 L W 435=

24 M L T 242=45 Ind Cas 507=19 Cr L J 603, see also 45 C 825=27 C L J.

377=22 C W N 825=45 Ind Cas 258

6 [S. 183] Where the evidence is taken down in a language different

from that in which it is given, and the witness,

does not understand the language in which it is

taken down, the evidence as taken down in

writing shall be interpreted to him in the language in which it is given.

When deposition to be interpreted

N B —For local amendment in the Rangoon vide *infra*

Scope—Where evidence by witness given in *urdu* and recorded by Judge in English and not interpreted to him this rule is not applicable 132 Ind Cas 270= 8 O W N 685=A I R 1931 Oudh 385

7. [New] Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8 [S 184] Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum when evidence not taken down by Judge of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record

N B —For local amendment in Rangoon, vide *infra*

9 [S 185] Where English is not the language of the Court, but all the parties to the suit who appear in person, and When evidence may be taken in English the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down

10 [S. 186] The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing

11 [S 187] Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put the Judge shall take down the question the answer, the objection and the name of the person making it together with the decision of the Court thereon.

Notes—Court may rule out as irrelevant any particular answer after it is given but cannot say beforehand that all evidence yet to be taken is going to be irrelevant and cannot refuse to record it on the ground that it believed it to be biased A. I. R. 1923 Nag 58=68 Ind Cas 272

12 [S 188] The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination

Notes—Court's power as regards demeanour, vide A I R 1922 All 107= 44 A 401=66 Ind Cas 1005

13 [S 189] In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length, but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record

Notes—Memorandum of substance of evidence and not short extract should be taken 9 C W N 418, 9 C W N 420, 30 Ind Cas 634=2 L W 803=(1915) M W N 768

14 [S. 190.] (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court

(2) Every memorandum so made shall form part of the record

N. B.—For local amendment in Rangooi, Vide *infra*

15. [S. 191] (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24

Scope—This rule provides the case of a Judge dying or leaving the Court before the conclusion of a suit and gives his successor powers to deal with the evidence as if he himself has taken it down 110 P R 1886, 17 Ind Cas 278=1912 M W N 979. But it does not empower the Judge to decide a case on evidence taken down by his predecessor without giving notice to the parties and giving them an opportunity of being heard before judgment is pronounced 110 P R 1883, see also 91 P R 1924, 39 Ind Cas 651=19 P R 1917. Where after remand a new plaintiff is substituted, a suit should be tried *de novo* 9 Ind Cas 254=9 M L T 324, see also 39 Ind Cas 651=14 P R 1917. This rule is applicable where a case has been transferred after being heard in part 25 M 595

16. [S. 192.] (1) Where a witness is about to leave the jurisdiction of the Court or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient of the day fixed for the exami-

be read over to the witness, and, if he d by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit

Notes—Vide 5 B L R O C 252

17. [S. 193.] The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit

18. [New] Court may at any stage of a suit inspect any property or thing concerning which any question may arise

N. B.—For local amendment in Allahabad vide *infra*

Notes—Finding based absolutely on local inspection should be allowed in special cases only A I R 1929 All 116=113 Ind Cas 762, see also A I R 1923 Lah 546=73 Ind Cas 616. Local inspection when foundation for judgment must be recorded 6, Ind Cas 601. Propriety of inspection, which need not be recorded is only to test correctness of evidence Judgment cannot be based on it A I R 1929 Cal 774=129 Cr Cas 518. Evidence in plot examination not to be substituted for oral Propriety of inspection is to be shown by evidence of cross examination A I R 1929 Cal 774=129 Cr Cas 518. Result of local inspection of scene in local inspection Cal 774=129 Cr Cas 518. Party calling witness must show that Court uses statements made L

witness during inspection to confirm his independent impression provided procedure is followed with party's consent 4 Pat L W 189=(1918) Pat 131=44 Ind Cas 262 Judges are entitled to make local inspection to understand evidence But they cannot base findings of facts solely upon its result 131 Ind Cas. 139=A I R 1931 Mad 331

## ORDER XIX

### Affidavits

1 [S 194.] Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable

Power to order any point to be proved by affidavit  
Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross examination, and that such witness can be produced in order shall not be made authorising the evidence of such witness to be given by affidavit

Scope—Document may be proved by *ex parte* affidavit only in special case A I R 19 6 All 161=23 A L J 961=89 Ind Cas 27 Affidavits amount to evidence only under Order XIX 1921 Mad 381=30 M L T (H C) 26=63 Ind Cas 258 Affidavit signed by Court and sworn before it need not be sealed A L R 1927 Lah 376=2 Pat L R 300=101 Ind Cas 615 Regarding signature of counsel no difference lies between affidavit and pleadings A I R 1928 Mad 175=54 M L J 65=(1927) M W N 885=27 L W 237=51 M 42=107 Ind Cas 804 There is no need of affidavits where counsel is asked to make statement relating to facts of case A I R 19 8 Mad 690=(1918) M W N 634=110 Ind Cas 837 Fact that Court admitted affidavit of plaintiff's next friend to prove pro-note and not calling him as witness is not illegal if there is no contention as to facts 142 Ind Cas 386=A I R 1913 Mad 164

2. [S 195] (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party order the attendance for cross-examination of the deponent

Power to order attendance of deponent for cross examination  
(2) Such attendance shall be in Court unless the deponent is exempted from personal appearance in Court or the Court otherwise directs

3 [S 196] (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted provided that the grounds thereof are stated

Matters to which affidavit is confined  
(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall unless the Court otherwise directs be paid by the party filing the same

N B—For local amendments in Allahabad and Rangoon vide *infra*

Scope—Matters of knowledge and information should be distinguished. A I R 1924 Pat 312=5 Pat L T 174=73 Ind Cas 771 Affidavit as to points in argument sworn by deponent without understanding language is valueless 41 Ind Cas 1 Where matters are alleged to be true to information but source of information is not disclosed Court will not take notice of such matters 35 C W N 1297=136 Ind Cas 901=A I R 1932 Cal 255 See also 22 C W N 700=46 Ind Cas. 335 Affidavit not complying with requirements of Order 19 r 3 is null declaration 144 Ind Cas 157=A I R 1933 Pat 513 Where one proposes to rely on an affidavit, the provisions of Order XIX r 3 must be strictly followed, and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief 37 C 259=6 Ind Cas 666



## ORDER XX.

*Judgment and Decree*

1 [S 198.] The Court, after the case has been heard, shall pronounce judgment when pronounced, judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders

N B—For local amendment in Madras, vide *infra*

extends to Provincial Small Cause courts  
818 In a suit for damages for failure to take  
can be passed A I R 1926 Lah 337=93  
Ind Cas 1012 Failure to make mention of oral evidence does not show that  
evidence was ignored 59 Ind Cas 963

Scope of rule 1—Commencement to write judgment before hearing whole  
evidence and arguments is irregular A I R 1933 All 196 Where judgment was  
written and signed by Judge at home, and communicated to parties by clerk in  
absence of Judge on account of illness, the case was remanded for fresh hearing  
130 Ind Cas 573=52 C L J 566=A I R 1930 Cal 164 Mere order in order  
sheet "that suit be dismissed in terms of compromise" is not disposal of suit  
A I R 1933 Pat 135 Judgment delivered not in presence of, or without notice to  
parties is not nullity 111 Ind Cas 44=28 N L R 308=A I R 1933 Nag 12  
Judgment is deemed to have been given even if not read by Judge 94 Ind Cas  
121 Decree following judgment though not validly pronounced, should  
not be interfered A I R 1925 All 293=47 A 332=23 A L J 145=86  
Ind Cas 869 Day of pronouncing judgment if not pronounced on same day  
should be notified to parties 9 Bur L J 250=38 Ind Cas 675 Judgment  
pronounced in contravention of Order XX, rules 1 to 3 is irregular  
but if waived by party it should not be reversed 46 C 979=29 C L J 438=51 Ind  
Cas 405 Judgment pronounced in absence of party without notice to them is  
not correctly pronounced A I R 1925 All 293=47 A 332=23 A L J 145=86  
Ind Cas 869 Rule of should be strictly  
adhered to A I R 1923 l . . . Notice of result of  
appeal must be given to p s not sufficient A I  
R 1921 Mad 690=41 M L J 385=14 L W. 514=(1921) M. W. N 866=65 Ind.  
Cas 82

2 [S. 199] A Judge may pronounce  
Power to pronounce judgment written but not pronounced by  
his predecessor  
a judgment written by Judge's predecessor

Judge may be delivered by successor  
, see also A I R 1931 All 90=(1930)  
J 568=46 Ind Cas 618, 80 P. R 1916=  
Ind Cas 9, 8, 1 Pat L T 77=5 P L  
Executing Court should not take notice  
R 1921 Pat. 360=1 P L T 149=5 P.  
L J 70=55 Ind Cas 890 Judgment after expiration of authority is nullity. A I  
R 1924 Rang 358=4 U B R 171=76 Ind Cas 170 Judgment by retiring Judge  
held to be validly pronounced by his successor in office 130 Ind Cas 303=1930  
A L J 1566=53 All 133=A I R 1931 All 90

3 [S 202] The judgment shall be dated and signed by the Judge in open  
Court at the time of pronouncing it, and when  
Judgment to be signed once signed, shall not afterwards be altered or  
added to save as provided by section 152 or on review.

N B—For local amendment in Madras, vide *infra*

Notes—Pronouncing judgment written and signed by predecessor is valid.  
5 Pat L J 147=1 Pat L T 77=58 Ind Cas 437 Provisional judgment is not  
operative until passing of decree 9 S L R 193=34 Ind Cas 867 Inhere-  
powers cannot be exercised against provisions of Code A I R 1925 Pat. 3

Pat 778=6 P L J 307=84 Ind C1s  
 654=82 Ind C1s 813 Court cannot  
 except for clerical or arithmetical mis  
 105=72 Ind C1s 688 Order passed ur  
 or under s 152 A I R 1924 Pat  
*ex parte* decree is judg  
 145 Ind C1s 302=10 O  
 misdescription decree is  
 debtor on record 144 Ind Cas 901=35 Bom L R 200=A I R 1933

wing to  
 dgm  
 -50

4 [S 293] (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon

Judgment of Small Cause Courts

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision

Judgments of other Court

con  
 cau  
 A I R 1930 All 832=(1930), A L J 1090=128 Ind Cas 766 The simple state  
 ment that issues are not proved and claim be dismissed is not sufficient 10 Lah  
 C J 248 But judgment, of Small Cause Courts need not involve reasons 13 O L J  
 301=97 Ind Cas 172, A I R 1925 Oudh 648=88 Ind Cas 376 Small Cause  
 Court's judgment must involve points for determination and reasons for it A I R  
 1925 Oudh 283=79 Ind 547, A I R 1923 Rang 252=2 Bur L J 108=76 Ind  
 Cas 600 Judgment of Small Cause mixing points and issues is against Order XX  
 r. 4 A I R 1925 Mad 1229=49 M L J 354=90 Ind Cas 968 Small Cause  
 Court's judgment need only comply with provisions of Order XX, r 4 A I R  
 1922 Mad 360=42 M L J 583=15 C W 642=31 M L T 174=70 Ind Cas  
 791, 48 Ind Cas 752 67 Ind Cas 85 Judgment of Small Cause Court should  
 be intelligible and contain points for decision A I R 1922 Pat 337=3 P L  
 T 122=(1921) Pat 298=64 Ind C1s 226 To show application of Judge's  
 mind judgment of Small Cause Court must involve short statement of reasons  
 for decisions 12 L W 285=59 Ind Cas 906 Small Cause Court's judgment not  
 complying with provisions of Order XX r 4 is open to revision 27 P L R 135=93  
 Ind Cas 632 Small Cause Court case must be decided as carefully as regular suits  
 Judgment must contain points for decision and decision thereon 136 Ind Cas  
 701=7 Luck 526=9 O W N 24=A I R 1932 Oudh 143, see also 142 Ind  
 Cas 844=A I R 1933 Sind 62, 55 M 671=A I R 1932 Mad 336=62 M L J  
 439=35 M L W 520=137 Ind C1s 369

Other Judgments—Judgment need not include every part of evidence relied  
 on by parties A I R 1931 All 210=130 Ind Cas 289 Judgment not involving  
 points of determination is not legal A I R 1928 All 688=110 Ind Cas 818  
 Judgment based on Judge's personal knowledge and without any evidence can be  
 reversed in revision A I R 1923 Cal 311=67 Ind Cas 302 Judgment is not  
 adequate if it reproduces arguments of counsel with short statement regarding  
 court's opinion A I R 1921 Lah 119=2 Lah 271=64 Ind Cas 929 Judgment  
 if short and its reasons unintelligible case must  
 according to law A I R 1922 Lah 122=4 Lah 1  
 and definite 37 Ind Cas 304 Matter in dis  
 various questions, Judge must bring out point  
 given 59 Ind C1s 703 Omission to state points for determination does not cause  
 failure of justice provided points are obvious 40 Ind Cas 890 Brevity of judg  
 ment and avoidance of repetition of pleadings must be borne in mind (1919)  
 M W N 356=53 Ind C1s 354 Where it appeared that the judgment of the  
 Lower Appellate Court was delivered in contravention of the provisions of the  
 law, Chief Court in second appeal set it aside and remanded the case for  
 decision on its merits 35 P L R  
 judgment material portion of the ev  
 445=35 C W N 1242=A R 193.  
 A I R 1933 Rang 174 Points for  
 not pleadings on recor 146 Ind Cas 16=A I R 1931 Nag 272

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and not from date of signing decree A 1 R 1916 Nag 349=22 N L R 60=97 Ind Cas 307 Parties are not deprived of right to appeal although decree is not drawn after judgment 66 P R 1919=52 Ind Cas 479 Date of the decree is the date on which it was ordered to be drawn and not when it was signed 32 Ind Cas 744, see also 1933 M W N 23=37 M L W 180=64 M L J 251=56 M 458=A 1 R 1933 Mad 315 Court's proceedings are presumed to be legal and correct 146 Ind Cas 310=A 1 R 1933 Oudh 466

**8 [N v]** Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate

**Scope**—Judgment written by one of two Judges of High Court is valid even if pronounced by other 34 Ind Cas, 584 In part heard case prior decision though with consent of parties can be considered against by succeeding Judge 11 Bur L T 97=47 Ind Cas 535

**9 [S 207]** Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers

**Scope**—A decree should distinctly and accurately state what property it deals with 24 W R 291 see also 19 W R 81, 25 Ind Cas 534, 23 W R 285, 22 W R 330, 74 P R 1905

**10 [S 208]** Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery can not be had

**Scope**—Under order XX, rule 10 delivery of property may not be decreed in every case A 1 R 1924 Nag 176=75 Ind Cas 833 Decree holders executing decree under order XX rule 10 must comply with provisions of order XXI, r 31 if money portion is to be executed A 1 R 1927 Cal 652=55 C 26=31 C W N 850=103 Ind Cas 740

**11 [S 210] (1)** Where and in so far as a decree is for the payment of money the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest not withstanding anything contained in the contract under which the money is payable

**(2)** After the passing of any such decree the Court may, on the application of the judgment debtor and with the consent of the decree holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit

**N B**—For Local amendments in Madras see I R in book vide *infra*

**Scope**—Passing of instalment decrees on certain conditions is not bad in law A 1 R 1927 Oudh 236=1 Luck Cas 75=101 Ind Cas 816 Order postponing payment if not made in decree is illegal 14 Ind Cas 111 If decree 113 Ind Cas 233=A 1 R 1931 Nag 152, see also 122 Ind Cas 113=A 1 R 1933 Pesh 31

court cannot direct f  
 tenants to be paid by  
 315=A I R 1932 A 43  
 factor 16 N L J 78=A I R 1933 Nag 330 Where decree has been varied  
 by consent and the court attested it, varied decree can be executed and separate  
 suit is unnecessary 144 Ind Cas 158=A I R 1933 Lah 758 Rule '11' is not  
 controlled by Imperial Bank Act Refusal to grant instalments in proper cases on  
 grounds of postponement of realization of dues by Bank over six months would  
 amount to failure of duty 16 N L J 78=A I R 1933 Nag 330 Instalment decree  
 can be passed even if estate of defendant is under court of wards A I R 1923 Lah  
 256=, Lah L J 571=73 Ind Cas 800 Instalment decree must be passed on sound  
 ground and with due discretion 71 Ind Cas 303 Payment of decretal amount  
 can be postponed on taking security with decree holder's consent even if decree is  
 appealed against A I R 1927 Mad 416=, 32 M L J 182=38 M L T 143=1927  
 M W N 202=100 Ind Cas 841

Order under rule 11 cannot be passed by executing court A I R 1921 Pat  
 340=2 P L T 80=58 Ind Cas 393 Court passing decree can alone post-  
 pone its execution 21 M L T 24=, L W 132=1917 M W N 44=32 M L  
 J 13=40 M 233 (F B) Compromise filed in execution in no way extends  
 time for execution of decree Application for issuing Order under Order  
 XX r 11 must be within time A I R 1914 Lah 342=73 Ind Cas 477  
 Application for specific performance of decree must be made within time  
 allowed by decree 31 Ind Cas 457 Order postponing execution or requiring  
 payment by instalments amounts to order of amendment of decree 34 Ind Cas 393  
 Postponement of amount may be allowed where there is possibility of set off In  
 suits relating to independent transactions payment of decretal amount cannot be  
 postponed A I R 1916 Lah 604=7 Lah 393=27 P L R 562=97 Ind Cas 769.

Decree under Order XXI rule (2) can be appealed against under s 47 A I R  
 1920 Rang 191=119 Ind Cas 751 Order of refusal to satisfy decretal sum by  
 1 L J 453=113 Ind  
 order 20 rule 11 as  
 g 54 Where there  
 is no special reasons for special indulgence, normal course should be followed A I R  
 1934 Pesh 2

## 12. [Ss 211, 212] (r) Where a suit is for the recovery of

Decree for possession and possession of immoveable property and for rent  
 mesne profits or mesne profits, the Court may pass a  
 decree—

- (a) for the possession of the property,
  - (b) for the rent or mesne profits which have accrued on the property  
 during a period prior to the institution of the suit or directing an  
 inquiry as to such rent or mesne profits,
  - (c) directing an inquiry as to rent or mesne profits from the institution  
 of the suit until—
  - (i) the delivery of possession to the decree holder
  - (ii) the relinquishment of possession by the judgment debtor with  
 notice to the decree holder through the Court, or
  - (iii) the expiration of three years from the date of the decree,
- whichever event first occurs

(2) Where an inquiry is directed under clause (b) or clause (c), a final  
 decree in respect of the rent or mesne profits shall be passed in accordance  
 with the result of such inquiry

N B = For local amendments in Madras vide infra

Scope—Mesne profits are deemed to have been allowed if they are  
 in judgment no matter decree does not mention them A I R 1929 Cal  
 C W N 614=127 Ind Cas 220 The word may in r 12 (1) indicate

and not from date of signing decree A I R 1926 Nag 349=22 N L R 60=97 Ind Cas 307 Parties are not deprived of right to appeal although decree is not drawn after judgment 66 P R 1919=52 Ind Cas 479 Date of the decree is the date on which it was ordered to be drawn and not when it was signed 32 Ind Cas 744, see also 1933 M W N 23=37 M L W 180=64 M L J 251=56 M 458=A I R 1933 Mad 315 Court's proceedings are presumed to be legal and correct 146 Ind Cas 310=A I R 1933 Oudh 466

**8 [New]** Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate

**Scope**—Judgment written by one of two Judges of High Court is valid even if pronounced by other 34 Ind Cas, 584 In part heard case prior decision though with consent of parties can be considered against by succeeding Judge 11 Bur L T 97=47 Ind Cas 555

**9. [S 207]** Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers

**Scope**—A decree should distinctly and accurately state what property it deals with 24 W R 291 see also 19 W R 81, 25 Ind Cas 534, 23 W R 285, 22 W R 330, 74 P R 1905

**10 [S 208]** Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery can not be had

**Scope**—Under order XX rule 10, delivery of property may not be decreed in every case A I R 1924 Nag 176=75 Ind Cas 833 Decree holders executing decree under order XX rule 10 must comply with provisions of order XXI, r 31 if money portion is to be executed A I R 1927 Cal 652=55 C 26=31 C W N 850=103 Ind Cas 740

**11 [S 210] (1)** Where and in so far as a decree is for the payment of money the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest not withstanding anything contained in the contract under which the money is payable

**(2)** After the passing of any such decree the Court may, on the application of the judgment debtor and with the consent of the decree holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the Judgment debtor, or the taking of security from him, or otherwise, as it thinks fit

**N B.**—For Local amendments in Madras and Rangoon vide *infra*

in conditions is not bad in law Ind Cas 816 Order postponing as part of decree 123 Ind Cas 233=A I R 1931 Rang 152, see also 142 Ind Cas 833=A I R 1933 Pesh 31

8 Ind Cas 254=54 A 521=1932 A L 315=A I R 1932 All 436 Under this section *bona fides* of debtor is dominant factor 16 N L J 78=A I R 1933 Nag 330 Where decree has been varied by consent and the court attested it, varied decree can be executed and separate suit is unnecessary 144 Ind Cas 158=A I R 1933 Lah 758 Rule 11 is controlled by Imperial Bank Act Refusal to grant instalments in proper cases grounds of postponement of realization of dues by Bank over six months was amount to failure of duty 16 N L J 78=A I R 1933 Nag 330 Instalment decree can be passed even if estate of defendant is under court of wards A I R 1923 L 256=, Lah L J 571=73 Ind Cas 800 Instalment decree must be passed on sound ground and with due discretion 71 Ind Cas 303 Payment of decretal amount can be postponed on taking security with decree holder's consent even if decree appealed against A I R 1927 Mad 416=, 2 M L J 182=38 M L T 143=19 M W N 202=100 Ind Cas 841

Order under rule 11 cannot be passed by executing court A I R 1921 P 340=2 P L T 80=, 3 Ind Cas 373 Court passing decree can alone postpone its execution 21 M L T 24=, L W 132=117 M W N 44=32 M J 13=40 M 733 (F B) Compromise filed in execution in no way extends time for execution of decree Application for issuing Order under Order XX, r 11 must be within time A I R 1914 Lah 342=72 Ind Cas 4 Application for specific performance of decree must be made within time allowed by decree 31 Ind Cas 457 Order postponing execution or requiring payment by instalments amounts to order of amendment of decree 34 Ind Cas 3 Postponement of amount may be allowed where there is possibility of set off suits relating to independent transactions payment of decretal amount cannot be postponed A I R 1916 Lah 604=7 Lah 373=27 P L R 562=97 Ind Cas 769

Decree under Order XXI, rule (2) can be appealed against under s 47 A I R 1929 Rang 191=119 Ind Cas 751 Order of refusal to satisfy decretal sum instalment is not appealable A I R 1928 Lah 931=10 Lah L J 453=113 Ind Cas 239 Appeal against order of dismissal of application under order 20 rule 11 time barred is competent 135 Ind Cas 858=A I R 1932 Rang 54 Where there is no special reasons for special indulgence, normal course should be followed A I R 1934 Pesh 2

## 12. [Ss 211, 212] (1) Where a suit is for the recovery

Decree for possession and mesne profits or possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

- (a) for the possession of the property,
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits,
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
  - (i) the delivery of possession to the decree holder
  - (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the Court, or
  - (iii) the expiration of three years from the date of the decree,

whichever event first occurs

(2) Where an inquiry is directed under clause (b) or clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry

N B = For local amendments in Madras vide *infra*

Scope—Mesne profits are deemed to have been allowed if they are in judgment no matter decree does not mention them A I R 1929 C W N 614=127 Ind Cas 220 The word may in r 12 (1) and c

and not from date of signing decree A I R 1926 Nag 349=22 N L R 60=97 Ind Cas 307 Parties are not deprived of right to appeal although decree is not drawn after judgment 66 P R 1919=52 Ind Cas 479 Date of the decree is the date on which it was ordered to be drawn and not when it was signed 32 Ind Cas 744, see also 1933 M W N 23=37 M L W 180=64 M L J 251=56 M 458=A I R 1933 Mad 315 Court's proceedings are presumed to be legal and correct 146 Ind Cas 310=A I R 1933 Oudh 466

8 [New] Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate

Procedure where Judge has vacated office before signing decree

Scope—Judgment written by one of two Judges of High Court is valid even if pronounced by other 34 Ind Cas, 584 In part heard case prior decision though with consent of parties can be considered against by succeeding Judge 11 Bur L T 97=47 Ind Cas 555

9 [§ 207] Where the subject matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers

Decree for recovery of immoveable property

Scope—A decree should distinctly and accurately state what property it deals with 24 W R 291 see also 19 W R 81, 25 Ind Cas 534, 23 W R 285, 22 W R 330, 74 P R 1905

10 [S 208] Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery can not be had

Decree for delivery of moveable property

Scope—Under order XX rule 10 delivery of property may not be decreed in every case A I R 1924 Nag 176=75 Ind Cas 833 Decree holders executing decree under order XX rule 10 must comply with provisions of order XXI, r 31 if money portion is to be executed A I R 1927 Cal 652=55 C 26=31 C W N 850=103 Ind Cas 740

11 [S 210] (1) Where and in so far as a decree is for the payment of money the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest not withstanding anything contained in the contract under which the money is payable

Decree may direct payment by instalments

(2) After the passing of any such decree the Court may, on the application of the judgment debtor and with the consent of the decree holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit

N B—For Local amendments in Madras and Rangoon vide *infra*

Scope—Passing of instalment decree on certain conditions is not bad in law A I R 1927 Oudh 236=1 Luck Cas 75=101 Ind Cas 816 Order postponing payment if incorporated in decree is appealable as part of decree 113 Ind Cas 233=A I R 1931 Rang 152, see also 142 Ind Cas 833=A I R 1933 Pesh 31



Where court passes decree for Rs 884 and orders that defendant should pay in six monthly instalments of Rs 60 each and allowing no future interests, it is not proper exercise of discretion 143 Ind Cas 44=54 All 539=A I R 1933 All 90 Revenue court cannot direct for rent in case of tenants other than permanent or fixed rate tenants to be paid by instalments 138 Ind Cas 254=54 A 521=1932 A L J 315=A I R 1932 All 436 Under this section *bona fide* of debtor is dominating factor 16 N L J 78=A I R 1933 Nag 330 Where decree has been varied by consent and the court attested it, varied decree can be executed and separate suit is unnecessary 144 Ind Cas 158=A I R 1933 Lah 758 Rule '11' is not controlled by Imperial Bank Act Refusal to grant instalments in proper cases on ank over six months would Nag 330 Instalment decree of wards A I R 1923 Lah 256=, Lah L J 571=73 Ind Cas 800 Instalment decree must be passed on sound ground and with due discretion 71 Ind Cas 303 Payment of decretal amount can be postponed on taking security with decree holder's consent even if decree is appealed against A I R 1931 Mad 416=, 2 M L J 181=38 M L T 143=1937 M W N 202=100 Ind Cas 841

Order under rule 11 cannot be passed by executing court A I R 1921 Pat 340=2 P L T 80=, 8 Ind Cas 393 Court passing decree can alone postpone its execution 21 M L T 24=, L W 132=1917 M W N 44=32 M L J 13=40 M 233 (F B) Compromise filed in execution in no way extends time for execution of decree Application for issuing Order under Order XX, r 11 must be within time A I R 1924 Lah 342=72 Ind Cas 477 Application for specific performance of decree must be made within time allowed by decree 31 Ind Cas 457 Order postponing execution or requiring payment by instalments amounts to order of amendment of decree 34 Ind Cas 393 Postponement of amount may be allowed where there is possibility of set off In suits relating to independent transactions payment of decretal amount cannot be postponed A I R 1916 Lah 604=7 Lah 393=27 P L R 563=97 Ind Cas 769

Decree under Order XXI, rule (2) can be appealed against under s 47 A I R 1929 Rang 101=110 Ind Cas 711 Order of reference of decretal sum by instalment 453=113 Ind Cas 239 o rule 11 as time barred Where there is no special award A I R 1934 Pesh 2

## 12. [Ss 211, 212] (x) Where a suit is for the recovery of

Decree for possession and possession of immoveable property and for rent  
mesne profits or mesne profits, the Court may pass a  
decree—

- (a) for the possession of the property,
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits,
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
- (i) the delivery of possession to the decree holder
- (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the Court, or
- (iii) the expiration of three years from the date of the decree, whichever event first occurs

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry

N B = For local amendments in Madras vide *infra*

Scope—Mesne profits are deemed to have been allowed if they are involved in judgment no matter decree does not mention them. A I R 1929 Cal 719=33 C W N 614=127 Ind Cas 220 The word 'may' in r 12 (1) indicates that the

Court's power is discretionary though in rule 12 (1) (1) 'may' means "shall". The rule does not bar a suit for mesne profits from the date of suit to the date of delivery of possession, though a previous decision in a suit for possession and past and future mesne profits grants only past profits and is silent about future profits. 41 M 188=22 M L T 434=33 M L J 699=(1917) M W N 847=6 L W 784. Mesne profits may be decreed even if claim for possession and statement of claim for mesne profits is made in alternative and is not distinct. 26 C L J 105. Party can apply for mesne profits only when possession is actually delivered or three years have elapsed after passing of preliminary decree. A I R 1924 Pat 781=4 Pat 57=5 P L T 626=3 P L R 32=84 Ind Cas 272. In claim for mesne profits, period of three years is to be computed from date of final decree for recovery of possession. A I R 1925 P C 113=22 L W 85=28 C W N 45=84 Ind Cas 267. Application for determining mesne profits execution is not subject to Limitation Act. A I R 1

In claims for mesne profits during pendency of possession if exceeding Munsiff's pecuniary jurisdiction latter cannot be granted by Munsiff. 31 Ind Cas 788, A I R 1924 Cal 167=38 C L J 142=76 Ind Cas 343. Where preliminary decree failed to award mesne profits due to negligence, they can be awarded in final decree. A I R 1923 Mad 43=16 L W 312=1922 M W N 562=31 M L T 180=74 Ind Cas 812. No claim for mesne profits can be decreed if person in wrongful possession does not get any profit. A I R 1923 Bom 37=72 Ind Cas 993. Three years for payment of mesne profits must be computed from date of appellate decree, plaintiff is not entitled for mesne profits obtained after offer to restore property is made. 34 C L J 415=70 Ind Cas 6, see also 43 Ind Cas 855=4 Pat L W 100=3 Pat L J 116. Dismissal of claim for mesne profits operates as *res judicata* (1921) Pat 25. 62 Ind Cas 747. Court can grant decree for mesne profits even if amount exceeds Court's pecuniary jurisdiction. 2 Pat L T 648=68 Ind Cas 903. A I R 1921 Pat 69=6 Pat L J 54=2 P L T 143=60 Ind Cas 346, 2 Pat L J 394=41 Ind Cas 231. Final decree must direct enquiry into mesne profits till delivery is actually given. Inquiry into mesne profits without notice to opposite party, decree is subject to revision. 43 Ind Cas 458. In final decree granting mesne profits Court fee must be charged for amount in dispute. A I R 1923 Mad 19=45 Mad 80=42 M L J 184=14 L W 730=30 M L T 83=69 Ind Cas 722. Additional Court fees must be paid if claim for mesne profits is made. 1 P L T 235=55 Ind Cas 24. Where order granting possession and decreeing claim for mesne profits is passed amount is to be determined by execution Court. A I R 1934 All 465, see also A I R 1934 Cal 472.

**Possession of property.** It is valid to leave question of determination of boundaries to be decided in execution. 32 Ind Cas 862. Decree for possession involves decree for mesne profits till possession is delivered. 42 A 497=18 A L J 613=61 Ind Cas 947, see also 66 Ind Cas 494=2 Lah 383, 25 C W N 369=66 Ind Cas 49. Decree for delivery of possession and award of mesne profits without order for enquiring amounts to final decree. A I R 1925 Mad 1276=22 L W 7=90 Ind Cas 789.

**Mesne profits.** Executing Court cannot determine mesne profits. A I R 1931 Pat 1=12 P L T 127. Order passed not in conformity with order XX rule 12 is not void for want of jurisdiction. It only being irregular exercise of jurisdiction still binds executing Court which must take decree as it stands. A I R 1930 Mad 30=30 L W 840=50 M L J 728=53 M 838=124 Ind Cas 290. Court may grant future mesne profits, words 'mesne profits' when unqualified include past and subsequent mesne profits. A I R 1930 Mad 30=30 L W 810=57 M L J 728=53 M 838=124 Ind Cas 290. Order to determine mesne profits in execution proceedings indicates Court's intention to grant them and decree holder can therefore claim them. A I R 1930 Mad 30=30 L W 810=57 M L J 728=53 M 838=124 Ind Cas 290. Court has discretion to make enquiry as regards future mesne profits. A I R 1931 Oudh 131=7 O W N 831=128 Ind Cas 751. Fresh suit for future mesne profits is maintainable where decree for possession does not decide the question of mesne profits. A I R 1931 Pat 1=12 P L T 127=130 Ind Cas 785. Where by execution application to ascertain mesne profits is made, court can regard it as application in suit. A I R 1930 Mad 30=30 L W 810=57 M L J 728=53 M 838=124 Ind Cas 290.

Declaratory decree does not give right to mesne profits which must be independently established. A I R 1930 Lah 72=120 Ind Cas 681. Where partition

decree is silent regarding mesne profits fresh suit lies from it. A I R 1929 Nag 298=12 N L J 131=1929 Nag 293=118 Ind Cas 869 Co-sharer is entitled to interest on mesne profits if co-tenant is kept out of possession. A I R 1929 Nag 291=12 N L J 131=118 Ind Cas 869 Mesne profits must be calculated on actual receipt. A I R 8929 P C 303=56 Ind Cas 290=34 C W N 89=58 M L J 74=31 L W 7=50 C L J 369=57 C 1=32 Bom I R 148=121 Ind Cas 525 Order for determination of mesne profits in execution proceedings though irregular is still within jurisdiction. Execution court must take it as it stands. A I R 1929 Bom 217=31 Bom L R 400=118 Ind Cas 700

Mesne profits being only by way of damages must be awarded according to justice of the case and hence trespasser may be refused charges for collecting rent. A I R 1913 Oudh 35=111 Ind Cas 760 After decree is passed application for determination of mesne profits being part of suit cannot be dismissed, time for application does not run against so long as such suit is pending. A I R 1928 Bom 236=57 B 360=50 Bom L R 509=107 Ind Cas 734 Claim under order XX, r 12 relates to wrongful possession of defendant. A I R 1928 Pat 565=7 Pat 491=9 P L I 720 Awarding a decree for compensation for cause of action not arisen is out of jurisdiction. A I R 1928 Pat 565=7 Pat 491=9 P L I 720=113 Ind Cas 577 Court must enquire into mesne profits and pass final decree when application for mesne profits is made. A I R 1928 Mad 522=(1928) M W N 222=34 M L J 663=28 L W 152=109 Ind Cas 428 Application for mesne profits not being plaint verbal application is sufficient. A I R 1926 Pat 218=(F B)=95 Ind Cas 939 Application for mesne profits in suit. A I R 1926 Cal 173, claimed even if it exceeds pecuniary limits does not bar court's jurisdiction and application for mesne profits does not amount to plaint. A I R 1925 Cal 106=42 C L J 49=89 Ind Cas 726 Application for mesne profits is not controlled by Limitation Act. A I R 1929 Pat 141=5 Pat 223=7 P L T 340=92 Ind Cas 629 Once decree for mesne profits is passed application to determine same cannot be rejected. A I R 1926 Pat 141=5 Pat 223=7 P L T 340=92 Ind Cas 629 Mesne profits are to be ascertained by Court passing decree. 130 Ind Cas 785=12 P L T 127=A I R 1931 Pat 1 Where question of mesne profits is left open while possession is decreed, suit for future mesne profits is maintainable. 130 Ind Cas 785=12 P L T 127=A I R 1931 Pat 1

Order 20, rule 12 being directory only, it does not compel plaintiff to claim future mesne profits in suit for possession. 133 Ind Cas 298=1931 A L J 673=33 A L J 951=A I R 1931 All 429 (S B) Assessment of mesne profits is proceeding in suit and not in execution plaintiff should assess mesne profits and pay Court fees. 136 Ind Cas 77=1931 A L J 413=A I R 1931 All 538 Court is given discretion to direct enquiry in respect of future mesne profits. 138 Ind Cas 751=7 O W N 831=6 Luck 243=A I R 1931 Oudh 131 Decision as to maintainability of claim for mesne profits is not case decided. 138 Ind Cas 30=9 O W N 339 A I R 1932 Oudh 271 In trespassers, nature of decree to be passed may be several for their respective amounts or may be several for their respective Cal 554 Where plaintiff was precluded from mesne profits can be allowed. 58 C L J 8=A I R 1933 Cal 354 Fresh notice for execution of decree for mesne profits within a week after disposal of execution of decree for possession is not necessary. 144 Ind Cas 832=A I R 1933 Cal 560 Apportionment of mesne profits is necessary where various sets of people are held liable for mesne profits. 144 Ind Cas 1042=58 Cal 1048=A I R 1931 Cal 788 Executing Court cannot allow interest when decree is silent as to interest. 135 Ind Cas 303=54 Mad 955=61 M L J 576=34 M L W 305=1931 M W N 576=A I R 1931 Mad 650 (F B) Person in possession is presumed to get rent according to prevailing rate. 1931 M W N 1182=38 M L W 714=A I R 1933 Mad 825 In case for mesne profits, onus of proving actual profits received is on defendant. Onus shifts to plaintiff if he claims more to prove that defendant ought to have received more. 1933 M W N 1182=38 M L W 714=A I R 1933 Mad 825 In a suit for mesne profits Court has only to see whether possession of defendant is 1933 M W N 1182=38 M L W 714=A I R 1933 Mad 825

**13. [S. 213]** (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent, and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claim against the same as they may respectively be entitled to by virtue of this Code.

**Notes**—Decree in administration suit must comply with provisions of code regarding secured and unsecured debts Under s 49, Presidency Towns Insolvency Act Crown debts must first be satisfied 45 C 653=22 C W N 793=49 Ind Cas 529 If there is no cause of action suit for amount and administration may be dismissed at preliminary stage A I R 1931 Cal 45=34 C W N 634=57 C 1358=129 Ind Cas 566 It is necessary to keep preliminary decree the same in administration suit in Rangoon High Court to avoid conflict of authorities A I R 1925 P C 261=23 L W 399=30 C W N 769=50 M L J 644=(1925) M W N 847 (P C)=91 Ind Cas 432 In the case of an administrative action unsecured creditors are entitled to interest up to the date of the preliminary decree and not up to the date of payment or any other date whereas secured creditors are entitled to interest from the proceeds of the sale of the secured property up to the date of payment 112 Ind Cas 621=A I R 929 Mad 242

**14 [S 214]** (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid and

(b) direct that on payment into Court of such purchase money together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in degree, that the claims of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property, including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect, and.

(b) if, and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions

**Scope**—Compromise decree in a pre-emption suit is not a decree under order XX, rule 14 in strict terms. 26 P. W R 1917=37 Ind Cas 806 Title to property is complete when payment is made and not when decree is passed A. I R. 1929

d Cas 604, see also A I R 1929  
A I R 1925 Lah 202=85 Ind Cas  
complying with Order XX, r 14

11 Lah 128=12 Lah L J 45=128 Ind Cas  
in favour of joint decree holders does not  
holders even if money is paid Their respo  
arises A I R 1919 All 953=51 A 938=(1929) A L J 1049=122 Ind Cas 604  
Decree must mention date of payment of pre-emption money A I R 1926 All

Court being closed but on

4 All 218=22 A L J 110  
=46 A 3-8 B 1-8 Ind Cas 1014, see also A I R 1922 All 278=77 Ind Cas  
539 Time for payment of pre-emption money may be extended A I R 1923 All  
516=45 A 4,6=74 Ind Cas 745 Pre-emption money not paid for whatever  
reasons gives judgment debtor right to reclaim property A I R 1923 Lah 250=  
81 Ind Cas 329

Even if pre-emption decree is silent as to crops decree holder is entitled to them on  
payment of decretal amount A I R 1923 Nag 327=76 Ind Cas 193 If payment of  
costs is not involved in pre-emption decree but all the same they are awarded if they  
may not be paid within allotted time A I R 1924 Oudh 104=26 O C 345=74  
Ind Cas 558 Where cost of suit was awarded to defendant in appeal, but its  
payment is not made condition precedent to execution of decree decree holder may not  
pay cost within time allowed for payment of purchase money A I R 1924 Oudh 104  
=26 O C 342=74 Ind Cas 558 When depositor satisfies the requirement pre-  
emption money may be raised by mortgage of decretal property 40 Ind Cas 35  
Rights of a pre-emptor are different from those of ordinary purchaser Under a  
pre-emption decree the right of possession of the property and the consequential  
right to mesne property accrue to the pre-emptor only from the date when he  
pays the amount of purchase price

Costs not paid before allotted time entails dismissal of claim A I R 1924 Lah  
339=73 Ind Cas 891 Failure to pay additional sum ordered to be paid by  
Appellate Court in time allowed, entails dismissal of suit 92 P L R 1918=  
48 Ind Cas 470 Payment of pre-emption money out of Court if certified by  
vendor is valid A I R 1921 All 159=19 A L J 493=63 Ind Cas 889  
Failure to deposit full amount in pre-emption decree entails dismissal of suit  
A I R 1924 Lah 384=69 Ind Cas 516 In pre-emption decree, payment  
of money in Court completes his title even though property claimed may be with  
mortgagee A I R 1923 All 507=21 A L J 417=45 A 482=73 Ind Cas 646  
Provisions of order XX rule 14 do not apply where vendee is not bound to deliver  
possession A I R 1923 All 507=45 A 482=21 A L J 417=73 Ind Cas 646

in decree for possession pre-emptor is

1924 Oudh 1=10 O L J 112=

condition entailing dismissal of suit for

dismissal of suit in pursuance of

54=2 U P L R (J C) 171=57

is sufficient even if it was not

deposited for two days through mistake of Officer of Court 123 P W R 1916=72

P L R 1917=36 Ind Cas 183 see 134 Ind Cas 201=33 P L R 91=A I R 1931

Lah 388 Plaintiff in pre-emption suit does not lose his right of pre-emption for

failure to make deposit within time allowed by decree 135 Ind Cas 695=7 Luck

when the last date for payment is

opening date 134 Ind Cas 201=33

Ind Cas 434=32 P L R 255=

in Court becomes entitled to find

from date of such payment 144 Ind Cas 695=A I R 1933 Lah 791 Appeal

from decree for pre-emption, does not extend time for paying pre-emption price in

Court 141 Ind Cas 15=A I R 1933 All 113 Court can not enlarge time fixed

for payment of pre-emption decree A I R 1934 Oudh 17

15 [S 215] Where a suit is for the dissolution of a partnership or

the taking of partnership accounts, the Court,

before passing a final decree, may pass a prelimi-

nary decree declaring the proportionate share

Decree in suit for dissolu-  
tion of partnership

of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit

**Scope**—Final decree in account suits must be based on evidence and time must be given to produce accounts 41 P L R 1918=31 P W R 1918 43 Ind Cas 718 Dissolution of partnership should be fixed from the date of not ceasing

as 727 Suit against minor

XX r 15 40 A 446 16

Receiver if the appointment

=5 Rang 99=101 Ind Cas

regards matters still undisposed of A I R 1930 Mad 528=53 M 398=59 M L J 102=32 L W 329=131 Ind Cas 160 Directions given to an official commissioner to allow credit to one of the parties in respect of partnership goods is not a decree and so no appeal lies A I R 1928 Sind 100=23 S L R 87

107 Ind Cas 214 The proceedings between the two decrees are in the nature of a continuation of the suit for the same purpose

in the preliminary

W 329=131 In

order XX, r 15

rights of several

interest under

to the preliminary decree obtained by the partners A I R 1920 Mad 641=52 M

Order

cannot be sold in execution A I R 1929 Mad 641=29 L W 823

52 M 563=57 M L J 264=116 Ind Cas 343 A preliminary decree directing the taking accounts of partnership suit does not come within the purview of r 42 of order XXI, as the expression any other matter does not cover such a decree A I R

1929 Mad 641=116 Ind Cas 343

**16 [S 215A]** In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit

Decree in suit for account between principal and agent

or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit

taken as it thinks fit

**Scope**—Rule 16 is not restricted to suits between agent and principal but applies wherever taking of accounts is involved and the Court does not want to do it itself A I R 1921 Sind 42=15 S L R 16=62 Ind Cas 537 In partnership suit also wherever one partner has contracted to render accounts decree under Order XV rule 16 can be passed 21 P W R 1919=49 Ind Cas 441 Where extent of liability is to be determined between two parties preliminary decree should be passed. 36 Ind Cas 210 Preliminary judgment need not specify all details A I R 1931 Cal 358=35 C W N 17=132 Ind Cas 195 When all accounts are in principals possession he cannot sue under Order XV rule 16 on off chance of making agents liable A I R 1929 Cal 418=49 C L J 285=120 Ind Cas 100, see also 52 C 766=A I R 1925 Cal 1069=90 Ind Cas 944 Preliminary decree is no indispensable A I R 1930 Mad 721=53 M 475=59 M L J 316=32 L W 143 Liability must be decided by Court and extent of liability is to be determined by commissioner A I R 1929 Cal 418=40 C L J 285=120 Ind Cas 100 Omission to invalidate decree passed after evidence 1 R 1928 Nag 229=109 Ind Cas 385

ved for the stage of enquiry into accounts

Creditor can sue for accounts an Agent or debtor when agent agreed to pay advance made out of the profits A I R, 1929 Lah 182=114 Ind Cas 321 A preliminary decree without direction as to the scope of the examination by commissioner is such as circumstances of the case require is bound to operate to the prejudice and harassment of the defendant A I R 1925 Cal 1069=52 C 766=90 Ind Cas 944

as circumstances of the case require is bound to operate to the prejudice and harassment of the defendant A I R 1925 Cal 1069=52 C 766=90 Ind Cas 944

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ment of the defendant A I R 1925 Cal 1069=52 C 766=90 Ind Cas 944







Preliminary judgment need not be detailed and exhaustive 133 Ind. Cas. 125-135 C. W. N. 17-A 4, R. 1931 Cal 358

17. [N<sup>o</sup>] The Court may either by the decree directing an account to be taken or by any subsequent order give special directions as to special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised

Decree in suit for partition of property or separate possession of a share therein 18 [N<sup>o</sup>] Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinates of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54

(2) if and in so far as such decree relates to any other immovable property or to moveable property, the Court may if the partition or separation cannot be conveniently made without further inquiry pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required

142=50 Ind. Cas. 370 continuation of suit shares awardable are those that can be claimed on date of final decree A I R 1921 Pat 295=2 P. L. T. 215=59 Ind. Cas. 872 Preliminary decree in partition cannot order joint possession Ind. Cas. 203 Interlocutory order embodied in against the final decree A I R 1930 Mad M. L. J. 79=33 L. W. 391=129 Ind. Cas. 63 property can be created by final decree for adjustment of equal share A I R 1933 Mad, 988=(1930) M. W. N. 641=60 M. L. J. 79=33 L. W. 391=129 Ind. Cas. 63 After preliminary decree absolute partition can be made by passing final decree for application must be made and no separate suit will lie A I R 1921 Oudh 456=60 W. N. 804=121 Ind. Cas. 287 Interest can be awarded even if preliminary decree is silent on the point A I R 1929 Bom 406=49 B. 282=27 Bom L. R. 226=94 Ind. Cas. 686 After the preliminary decree the Court was *functus officio* as far as the agricultural land was concerned and that the Court was not competent to issue an *ad interim* injunction in regard to agricultural land A I R 1925 Cal 357=71 Cal. L. J. 4=86 Ind. Cas. 244 Where in a partition suit future mesne profits were prayed for but plaintiff neglected to see that proper provision was made in decree, he cannot make such claim afterwards 138 Ind. Cas. 578=34 Bom. L. R. 447=36 Bom. 292=A I R 1932 Bom 222

19. [S 216] (1) Where the defendant has been allowed a set off against the claim of the plaintiff, the decree shall state what amount is due by the plaintiff and what amount is due by the defendant and shall be for the recovery of any sum which either party

(2) Any decree passed in a suit in which a set off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set off had been claimed

(3) The provisions of this rule shall apply whether the set off is admissible under rule 6 of Order VIII or otherwise

**Scope**—Decree in favour of defendant can be passed in case of equitable set off also A I R 1931 Cal 358=35 C W N 17=132 Ind Cas 195 Only one decree should be drawn up in a suit in which a set off is claimed and after deciding all materials in dispute 62 P R 1917=65 P W R 1917=39 Ind Cas 508 Equitable set off in suit for accounts is governed not by order 8 rule 6 but by order 20 rule 19 132 Ind Cas 195=35 C W N 17=A I R 1931 Cal 358

**20 [S 217]** Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense

N B—For local amendment in Allahabad and Burma, vide *infra*

**Scope**—Any application made to an official of Court must also be deemed to have been made to the Court A I R 1928 Lah 759=29 Cr L J 1028=112 Ind Cas 356

## ORDER XXI

### Execution of Decrees and Orders

#### Payment under Decree

**1 [S 257]** (1) All money payable under a decree shall be paid as follows, namely:—

- (a) into the Court whose duty it is to execute the decree, or
- (b) out of Court to the decree holder, or
- (c) otherwise as the Court which made the decree directs

(2) Where any payment is made under clause (a) of sub rule (1), notice of such payment shall be given to the decree holder

N B—For local amendment in Central Provinces vide *infra*

**Notes**—Payment by judgment debtor under court's direction must absolve him A I R 1929 Oudh 231=6 O W N 334=117 Ind Cas 748 Decree holder attaching decree can receive money and certify payment A I R 1930 All 659=(1930) A L J 945=129 Ind Cas 382 The principle that it is duty of judgment debtor to find out judgment creditor and pay him the amount of the judgment debt so long as the latter is within the realm relates to a judgment debt capable of being discharged by payment A I R 1927 Cal 652=31 C W N 850=55 C 26=103 Ind Cas 740. Payment to attaching creditor is no payment to decree holder under Order XXI, rule 1 (4) A I R 1925 All 123=80 Ind Cas 947 Tender of instalment in compromise decree on next opening day of court, last day being holiday is beyond time as payment could be made to decree holder direct on due date A I R 1929 All 207=51 A 527=(1929) A L J 286=115 Ind Cas 796, see also A I R 1927 Mad 1196=106 Ind Cas 502, A I R 1925 All 687=87 Ind Cas 620, J 596=21 L W 469=87 execution does not absolve

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

334=117 Ind Cas 748 over ruled) A I R 1932 P C 33 (P C)=137 Ind Cas

interest until the money is available to decree holder A I R, 1929 Nag 227=115  
 process fees for notice of  
 sale is bound to inform the  
 for sale of the property  
 out of Court in pre-emption  
 2 A L J 493=63 Ind Cas  
 889 Decree for mesne profits is money decree 4 Pat L J 336=5 Pat L W  
 191=(1918) Pat 257=48 Ind Cas 183 Payment into Court by stranger, is not  
 satisfaction of decree (1916) 1 M W N 195=34 Ind Cas 350 Deposit in Court  
 causes cessation of interest from date of notice 42 M 576=(1919) M W N 458=  
 26 M L T 295=50 Ind Cas 410 Where money is paid into Court by a  
 than the decree holder  
 to direct the decree holder  
 money out of Court to  
 decree holder as one to  
 aside A I R 1922 All  
 744 Order XXI, Rule 1,  
 d by  
 6=35  
 older  
 L J  
 nent  
 olved  
 him A I R 1924 Pat 118=2 Pat 714=76 Ind Cas 55 Decree holder includes  
 decree holders A I R 1934 Mad 350 Concurrence of other decree holders is  
 necessary to give valid discharge in case of joint decree *Ibid* Agreement is not  
 adjustment A I R 1934 Rang 190

2 [S 253] Where any money payable under a decree of any kind is  
 Payment out of Court to paid out of Court, or the decree is otherwise  
 decree holder adjusted in whole or in part to the satisfaction  
 of the decree holder, the decree holder, shall  
 certify such payment or adjustment to the Court whose duty it is to execute the  
 decree, and the Court shall record the same accordingly

(2) The judgment debtor also may inform the Court of such payment  
 or adjustment, and apply to the Court to issue a notice to the decree holder  
 to show cause, on a day to be fixed by the Court, why such payment or adjust-  
 ment should not be recorded as certified and if, after service of such notice  
 the decree holder fails to show cause why the payment or adjustment should not  
 be recorded as certified, the Court shall record the same accordingly

(3) A payment or adjustment, which has not been certified or recorded as  
 aforesaid, shall not be recognized by any Court executing the decree

N B—For local amendment in Madras, vide *infra*

Adjustment—An adjustment under order XXI, rule 2 means settlement which  
 extinguishes the decree debt A I R 1930 Mad 410=(1930) M W N 137=123  
 g as satisfaction It is some  
 in the decree itself A I R  
 26) M W N 29=91 Ind Cas.  
 36 Order XXI rule 2 relates  
 justment before the appellate

amount of the decree by reason of certain arrangements between the parties  
 adjustment of the decree A I R 1921 Pat 135=2 P L T 765=9 P L

63 Ind Cas 535 The executing Court cannot enlarge extend or modify the decree even by consent of parties subsequent to the decree unless it is in adjustment of the decree contemplated by order XXI r 2 A I R 1922 Cal 311=27 C W N 280=38 C L J 17=71 Ind Cas 378 An agreement discharging liability under the decree by substituting a new liability under the agreement may properly be held to be step adjustment of the decree A I R 1926 Oudh 385=29 O C 26=94 Ind Cas 317 Adjustment not certified can be proved by judgment debtor for proving that assignee of decree holder is *benamidar* for judgment debtor A I R 1924 Mad 189=18 L W 453=76 Ind Cas 845 When an award is filed subject to terms agreed upon between the parties and has been entered as part satisfaction of the award execution can be taken for balance of the award A I R 1921 Sind 132=16 S L R 245=79 Ind Cas 477 An adjustment need not be in writing If the parties make a final and binding agreement with regard to the decree then it amounts to an adjustment If on the other hand, the finality of the agreement or compromise is conditional on the future acts of the parties, as for instance, the execution of documents then the agreement is still the executing stage and does not come within the definition of adjustment A I R 1927 Lah 544=102 Ind Cas 753 Judgment-debtor in bar execution of a decree against him can plead a pre decree arrangement that the decree was not to be executed A I R 1926 Mad 582=48 M 513=50 M L J 364=(1926) M W N 368=24 L W 72=98 Ind Cas 428 An adjustment of decree by surety of judgment debtor with decree holder may be proved unless there is some bar to its proof A I R 1928 Lah 61=108 Ind Cas 376 When an adjustment is not certified a Court executing a particular decree

Order  
XXI from trying the  
A I R 1928 Oudh 193=  
adjusted in r 2 (1) of  
196 Cal 643=91 Ind  
property worth over Rs  
r 2 which has been recorded by the Court is exempt from registration A I R  
1927 Sind 66=97 Ind Cas 321 The Court executing a decree is  
barred from trying the question of the satisfaction or adjustment of the decree  
when such satisfaction or adjustment has not been certified to the Court under  
sub-rule (1) or (2) of the same rule 5 O W N 452=110 Ind  
Cas 244 The adjustment referred to in order XXI rule 2 is such an adjustment  
as completely or partly extinguishes the decree under execution and cannot mean  
an adjustment to give effect to the terms of which would be to create a new decree  
at variance with the decree under execution and which will again have to be  
executed A I R 1928 Cal 527=32 C W N 434=113 Ind Cas 9 Fresh  
contract otherwise legal though involving promise by judgment debtor to do  
something in future is adjustment 141 Ind Cas 429=1932 M W N 840=63  
M L J, 593=56 M L W 558=56 M 198=A R 1933 Mad 28 Compromise  
after decree with promise to be performed in future cannot operate as bar to  
execution and does not amount to adjustment 132 Ind Cas 205=A I R 1931  
Lah 505 Adjustment means alteration of liability under decree. 146 Ind Cas  
3=A I R 1933 Pat 576, see also 144 Ind Cas 721=A I R 1933 Pesh 53

Scope—Order XXI, rule 2 is not confined to money decrees only but applies  
also to a decree for partition A I R 1928 Cal 715=117 Ind Cas 833, see also  
A I R 1922 Bom 380=46 B 226=64 Ind Cas 490 The provisions of order  
XXI, rule 2 relating to adjustment of decrees apply to awards under the Indian  
Arbitration Act A I R 1927 Sind 66=97 Ind Cas 321 Where a decree is for  
payment of certain money with direction to sell mortgaged property in default the  
claim in the first instance being for money, the claim falls within the scope of order  
XXI, r 2 A I R 1930 Lah 814=126 Ind Cas 515 Section 115 of the Evidence  
Act does not override order XXI, r 2 C P Code. A I R 1925 Sind 140=18  
S L R 51=79 Ind Cas 89 Rule 2 does not limit or affect the operation of  
s. 47 and does not prevent the court from deciding any question out of the execution  
of the decree A I R 1922 L B 31=1 Bur L J 43=70 Ind Cas 859 Suit  
includes not only the stage of a suit to its termination by the decree  
of the first court but also includes its appellate stage and proceedings  
in execution of the decree made in the suit A I R 1921 Pat 107=6 Pat L J  
253=2 Pat L T 273=62 Ind Cas 608 Rule 2 covers a decree under  
which money is payable and not to all kinds of decrees A I R 1926 Mad 749=  
50 M L J 547=49 M 16=24 L W 235=9, Ind Cas 701 Order XXI, rule 2 (3)

applies only to court executing the decree A I R 1923 Bur 44=1 Bur L J 171=79 Ind Cas 278 Where the decree ordered that the decree holder would not be entitled to execute the decree if the judgment-debtor would fulfil certain conditions, and where the judgment debtor did not certify that he had fulfilled the conditions within the prescribed time on application for execution by the decree holder: Held that the judgment debtor could prove that as a matter of fact the conditions in the decree had been complied with and in such a case Order XXI, rule 2 (3) did not apply A I R 1926 Lah 641=8 Lah L J 43=27 P L R 100=93 Ind Cas 369 Where Court is moved to proceed against the surety under s 145 it is not the Court executing the decree within the express meaning of those words as used in Order XXI, rule 2 (3) A I R 1926 Sind 105=20 S L R 362=96 Ind Cas 234

Rule 2 is not applicable to the case of payments made prior to decree and the  
1930 M W  
applicable

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e providing  
of immove

able property and to adjustment with regard to such property Such an adjustment can not be recognized unless certified or recorded 43 M 476=(1929) M W N 261=27 M L T 279=56 Ind Cas 289 An executing Court has no power to enquire into the existence of a prior alleged agreement between the parties that no decree should be obtained in the suit 8 L W 203=(1918) M W N 547=46 Ind Cas 880 Section 92 of the Evidence Act does not bar the oral evidence to prove an agreement by way of adjustment of a decree 16 N L R 204=60 Ind Cas 316 Oral agreement that instalment is to be paid and which later on so paid amounts to adjustment of decree and is capable of proof A I R 1931 Sind 42=131 Ind Cas 710 To enable an executing Court to execute an adjusted decree an adjustment should be certified under Order 21 r 2 The decree holder can certify such adjustment at any time A I R 1929 Cal 687=34 C W N 213=127 Ind Cas 258 Where the judgment debtor pleads an adjustment binding on the parties, he is entitled to an opportunity to establish his allegations A I R 1927 Lah 544=102 Ind Cas 753 Executing Court cannot investigate the fact of payment in respect of the decretal amount out of Court The determination of this question is taken out of the purview of s 47 C P Code by O XXI, rule 2 (3) C P Code 135 P R 1919=58 Ind Cas 443 An agreement to give time for the satisfaction of the judgment debtor is void when not certified and sanctioned by Court for want of proper consideration A suit for damages for breach of such agreement is not maintainable 7 L W 503=(1918) M W N 292=24 M L T 16=45 Ind Cas 16 Where a compromise is entered into at the time of execution, and although compromise is not incorporated in the decree it must be considered and treated as such if the parties and the Court treat it as one 57 Ind Cas 591

An executory contract which if completed would bar the execution of a decree, cannot be pleaded as a bar to the execution The judgment debtor has no right to claim that the contract should be completed and then evoked in bar of execution

to the court, is made and is inconsistent with the decree subsequently passed and where the decree is time barred a person in whose favour a certain lease was executed as a result of the compromise cannot recover the sum of the lease money in execution 1 Lah 445=24 P L R (Lah) 117=156 P L R 190=3 Lah L J 10=57 Ind Cas 153 When a decree has been passed every time that an adjustment is arrived at between the parties a fresh decree need not be drawn up or original modified A I R 1925 Nag 47=20 N L R 122=83 Ind Cas 162 Application to record an adjustment of a decree is in the nature a summary suit A I R 1927 Sind 66=97 Ind Cas 321 An order refusing the application to record the adjustment of a decree is also a decree, and is final until set aside or varied by a court of appeal in review A I R 1927 Lah 809=26 P L R 237=105 Ind Cas 724 Where only some of the parties to the decree have joined in the compromise, it should be determined whether the compromise can be given effect to as regards some, leave

ing the decree outstanding as regards others. If this cannot be conveniently done the court will presume that the adjustment is not binding on such parties. A I R 1927 Mad 155=93 Ind Cas 693. Judgment debtor's application for recording an adjustment need not be a document separate from the objections filed by him on the ground of such adjustment. A agreement not to execute the decree, cognizance of by an executing court have to institute a separate suit, to decree. A I R 1928 Cal 527=32 C W N 434=113 Ind Cas 9. Parties can enter into oral agreement for settlement of money decree. A I R 1928 Rang 316=6 Rang 573=114 Ind Cas 682. An objection to an execution sale on the ground that decree in execution of which the sale took place was satisfied prior to the sale cannot be pleaded by the judgment debtor in a suit by the decree holder as purchaser for possession of the property sold in execution of the decree. A I R 1929 C

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visions of the law will be fully satisfied and the d  
execution. A I R 1925 Oudh  
A Court other than a Court  
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for that purpose. 12 P L R 1917=39 Ind Cas 15. An auction purchaser in execution of a money decree can apply for entering up satisfaction of a decree affecting the property which would otherwise endanger it. 9 L W 596=50 Ind Cas 931. The transferee must prove his right before he can be allowed to execute the decree and then only a question of adjustment will arise. A I R 1922 Mad 510=16 L W 758=43 M L J 761=31 M L T 463=72 Ind  
ment before decree. 129 Ind  
7 919=54 Ind Cas 184=60  
adjustment cannot be pleaded in  
Ind Cas 872=1932 M W N  
16=A I R 1933 Mad 157. Cert-  
is not step in aid of execution

1933 A L J 238=55 A 393=A I R 1933 A 364. No limitation is fixed for decree holder to certify payments. 132 Ind Cas 426=A I R 1931 All 219. Sale cannot be set aside on ground of adjustment after execution sale between decree holder and judgment debtor. 130 Ind Cas 686=33 Bom L R 450=53 C L J 187=35 C W N 381=14 N L J 28=1931 A L J 257=60 M L J 423=1931 M W N 281=8 O W N 585=58 I A 50=27 N L R 95=A I R 1931 P C 33 (P C). Duty to certify under order 21, rule 2 does not make it consideration for receipt of money due. 1933 A L J 670=A I R 1933 All 511. *Court executing decree can only enquire into alleged adjustment by judgment debtor.* It can not decline to enter, into such question when application is in time. 137 Ind. Cas 517=34 Bom L R 203=A I R 1932 Bom 202. Judgment debtor can not plead uncerified adjustment when opposing transfer under rule 16. 137 Ind Cas 28=35 M L W 538=55 Mad 720=62 M L J 562=1932 M W N 190=A I R 1932 Mad 372 (F B), see also 137 Ind Cas 720=62 M L J 562=1932 M W N 190=A I R

Where decree providing that produce of land to be adjusted towards interest order 21, rule 2. R 1933 Lih 831. Decree holder's mention of tion is sufficient certification. 129 Ind Cas 909=25 S L R 360=A I R 1931 Sind 28. Oral agreement that instalment is to be paid and which is later on so paid. R 279=A I R 1931 Sind .  
debtor or cancel  
A I R

1933  
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1933 Rang  
raised question of adjustment in another proceeding is prohibited. 132 Ind Cas 713=9 Rang 104=A I R 1931 Rang 148. Where application is made by decree holder stating full satisfaction of decree, Judge should not adjourn case for appearance of judgment debtor. 134 Ind Cas 213=A I R 1931 Rang 332. It is doubtful whether mention of payments, in execution application amounts

**Agreement.**—An ulterior agreement that a decree shall not be executed can rain execution  
 . . . . . 126 Ind Cas  
 . . . . . 21 Mad 616=  
 . . . . . 360=A I R  
 . . . . . either party  
 can not bar the execution of the decree. A I R 1927 Lah 537=103 Ind Cas 86  
 Even an oral agreement not to proceed against one of the judgment debtors beyond  
 a certain limit must be certified under this rule in order to bar an execution A I R  
 1927 Mad 911=50 M 897=26 L W 386=(1927) M W N 630=53 M L J  
 533=10, Ind Cas 248, see also 85 Ind Cas 672=20 L W 849. An inchoate  
 agreement to adjust can not bar execution A I R 1930 Lah 231=113 Ind Cas  
 238, A I R 1922 All 13=44 A 258=64 Ind Cas 990 An agreement prior or  
 arying the terms of the decree cannot be  
 673=(1930) M W N 240=125 Ind  
 of it is enforceable to the fullest extent  
 enged as being unexecrable wholly  
 or in part on account of an agreement between the parties entered into prior to  
 the decree A I R 1926 Rang 140=5 Bur L J 41=4 Rang 118=96 Ind Cas  
 773. Decree-holder's agreement with judgment-debtor's alienee pending  
 execution not to proceed against particular property not being in satisfaction or  
 adjustment of decree, Order XXI rule 2 does not bar proof of such agree-  
 ment. A I R 1923 Mad 220=16 L W 988=44 M L J 80=31 M  
 L T 423=72 Ind Cas 839. Where there has been an adjustment or satisfaction  
 as between the judgment-debtor and an assignee who has attained the status of a  
 decree holder by an order made under Order XXI, r 16 Order XXI rule 2 would be  
 clearly applicable 104 Ind Cas 4=A I R 1927 Cal 694=31 C W N 921  
 Agreement is adjustment and can be proved if certified within 90 days 145 Ind  
 Cas. 924=34 P L R 887=A I R 1933 Lah 806 Decree does not stand,  
 where parties settle payment and report to Court 135 Ind Cas 535=1931  
 M W N 1141=34 M L W. 635=62 M L J 272=55 Mad 320=A I R 1932  
 Mad 115

**Certification**—Decree holder's mention of payment in application for execu-  
 tion is sufficient certification and it is a mistake to regard the process of certificate  
 as a revival of the decree A I R 1931 Sind 28=129 Ind Cas 909, A I R 1930  
 Rang 329=8 Rang 310=127 Ind Cas 600, A I R 1930 Rang 329=127 Ind Cas  
 600, A I R 1930 All 123=124 Ind Cas 22, A I R 1928 All 629 (F B)=51 A 237  
 =26 A L J 965=112 Ind Cas 73, A I R 1921 Bom 411=45 B 91=59 Ind Cas  
 399, but see 83 Ind Cas 737=A I R 1924 All 706=46 A 635=22 A L J 581  
 =L R 5 A 318 The mere certification by the decree holder of a payment  
 to him out of Court by the judgment debtor under r 2 (1) is an applica-  
 tion within the meaning of Art 181 Limitation Act A I R 1929 P C 19  
 N 267=56 M L J 233=(1929) A L J  
 9=114 Ind Cas 581 (P C) Certification under  
 ion for the purpose of Art 182 (5) and is  
 1930 Rang 61=126 Ind Cas 540. Under  
 hether it be to a pre decree or past decree  
 1930 Mad 673=(1920) M W N 240=  
 for an adjustment to be recognised by the  
 and recorded certification alone is suffient  
 A I R 1927 Mad 155=98 Ind Cas 698 An uncertified payment cannot be  
 recognised by the executing Court Intimation in reply to the court notice for  
 execution cannot be recognised (1922) M W N 189=16 L W 290=6, Ind Cas 830.  
 Rule 2 does not contemplate an enquiry being made into the truth of the statements  
 made by the decree holder where he comes to Court to certify a payment and the  
 judgment debtor cannot question the right of the decree holder to satisfy satisfaction  
 5 O L J 482=21 O C 161=41 Ind Cas 177 \*Money realised by a usufructuary  
 mortgagee according to the terms of a decree is not money payable under the  
 decree in r 2 payments may not be certified to Court 39 W 1026=38 Ind Cas  
 675 This rule does not prohibit an executing Court from treating an admission  
 of payments in a decree holder's application for execution as an application to  
 certify such payments A I R 1921 Sind 159 (F B)=16 S L R 207=83 Ind.  
 Cas 360. Where a decree has been satisfied the decree holder shall under

If this cannot be conveniently done the s not binding on such parties A I R ment debtor's application for recording rate from the objections filed by him

on the ground of such adjustment A agreement not to execute the decree cognizance of by an executing court have to institute a separate suit, to decree A I R 1928 Cal 527=32 C W N 434-113 Ind Cas 9 Parties can enter into oral agreement for settlement of money decree A I R 1928 Rang 316=6 Rang 573=114 Ind Cas 682 An objection to an execution sale on the ground that decree in execution of which the sale took place was satisfied prior to the sale cannot be pleaded by the judgment debtor in a suit by the decree holder as purchaser for possession of the property sold in execution of the decree A I R 1929 Ind Cas 857 A Court need not be reasonable under the circumstances and certified to the Court the provisions of the law will be fully satisfied and the decree will be deemed as capable of execution A I R 1925 Oudh 364=1 O L J 156=28 O C 255=86 Ind Cas 907 A Court other than a Court executing a decree has power to recognise a certified payment or adjustment of a decree and direct a refund of the amount in a suit brought for that purpose 12 P L R 1917=39 Ind Cas 15 An auction purchaser in execution of a money decree can apply for entering up satisfaction of a decree affecting the property which would otherwise endanger it 9 L W 595=50 Ind Cas 931 The transferee must prove his right before he can be allowed to execute the decree and then only a question of adjustment will arise A I R 1922 Mad 510=16 L W 758=43 M L J 761=31 M L T 463=72 Ind Cas 861 Rule does not apply, in case of payment before decree 129 Ind Cas 818=1930 M W N 1152=32 M L W 919=54 Ind Cas 184=60 M L J 721=A I R 1931 Mad 399 Uncertified adjustment cannot be pleaded in execution even by assignee of decree holder 140 Ind Cas 872=1932 M W N 1333=37 M L W 79=64 M L J 22=56 M 316=A I R 1933 Mad 157 Certification by decree holder under Order 21 rule 2 (1) is not step in aid of execution 1933 A L J 258-55 A 393=A I R 1933 A 364 No limitation is fixed for decree holder to certify payments 152 Ind Cas 426=A I R 1931 All 219 Sale cannot be set aside on ground of adjustment after execution sale between decree holder and judgment creditor 130 Ind Cas 686=33 Bom L R 450=53 C L J 187=35 C W N 381=14 N L J 78=1931 A L J 257=60 M L J 423=1931 M W N 281=8 O W N 485=58 I A 50=27 N L R 95=A I R 1931 I C 33 (1 C) Duty to certify under order 21 rule 2 does not make it consideration for recovery of money due 1933 A L J 670=A I R 1933 All 511 Court executing decree can only enquire into alleged adjustment by judgment debtor It can not decline to enter into such question when application is in time 137 Ind Cas 517=34 Bom L R 203=A I R 1932 Bom 202 Judgment debtor can not plead uncertified adjustment when opposing transfer under rule 16 137 Ind Cas 28=35 M L W 538=55 Mad 720=62 M L J 562=1932 M W N 190=A I R 1932 Mad 372 (1 B), see also 137 Ind Cas 28=35 M L W 538=55 M 720=62 M L J 562=1932 M W N 190=A I R 1932 M 372 (1 B) Where decree providing that produce of land if realized by decree holder to be adjusted towards interest, order 21, rule 2 has no application A I R 1933 Lah 831 Decree holder's mention of payment in application for execution is sufficient certification 129 Ind Cas 909=25 S L R 360=A I R which is 2 279= judgment A I R at 634 A I R debtor 1933 A L J raised question of adjustment in another proceeding is prohibited 132 Ind. Cas 713=9 Rang 104=A I R 1931 Rang 148 Where application is made by decree holder stating full satisfaction of decree, Judge should not adjourn case for appearance of judgment-debtor 134 Ind Cas 213=A I R 1931 Rang 332 It is doubtful whether mention of payments, in execution application amounts to application under Order 21, r. 2 141 Ind Cas 745=A I R 1933 Pes 14



Agreement—An interior agreement that a decree shall not be executed can

1927 Mad 911=50 M 897=26 L W 386=(1927) M W N 630=53 M L J.  
533=105 Ind Cas 248, see also 85 Ind Cas 672=20 L W 849 An inchoate  
agreement to adjust can not bar execution A I R 1930 Lah 231=113 Ind Cas  
238, A I R 1922 All 13=44 A 258=64 Ind Cas 990 An agreement prior or  
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the decree A I R 1926 Rang 140=5 Bur L J 41=4 Rang 118=96 Ind Cas  
773. Decree-holder's agreement with judgment-debtor's absence pending  
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not bar proof of such agree-  
88=44 M L J 80=31 M  
when an adjustment or satisfaction  
has attained the status of a  
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clearly applicable 104 Ind Cas 4=A I R 1927 Cal 604=31 C W N 921  
Agreement is adjustment and can be proved if certified within 90 days 145 Ind.  
Cas. 924=34 P L R 887=A I R 1933 Lah 806 Decree does not stand,  
where parties settle payment and report to Court 135 Ind Cas 535=1931  
M W N 1141=34 M L W 635=62 M L J 272=55 Mad 320=A. I R 1932  
Mad 115

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regard the process of certificate  
3=129 Ind Cas 909, A I R 1930

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399, but see 83 Ind Cas 737=A I R 1924 All 706=46 A 635=22 A L J 581  
=L R 5 A 318 The mere certification by the decree holder of a payment  
to him out of Court by the judgment debtor under r 2 (1) is an applica-  
tion within the meaning of Art 181 Limitation Act A I R 1929 P C 19  
=3 Luck 684=56 I A 30=33 C W N 267=56 M L J 233=(1929) A L J  
33=6 O W N 29=31 Bom L R 289=114 Ind Cas 581 (P C) Certification under  
Order XXI, r, 2 (1) is not an application for the purpose of Art 182 (5) and is  
not a step-in aid of execution A I R 1930 Rang 61=126 Ind Cas 540. Under  
order XXI, rule 2, any adjustment whether it be to a pre decree or past decree  
agreement must be certified A I R 1930 Mad 673=(1920) M W N 240=  
125 Ind Cas 543 It is not necessary for an adjustment to be recognised by the  
Court it shall have been both certified and recorded certification alone is sufficient  
A I R 1927 Mad 155=98 Ind Cas 698 An uncertified payment cannot be  
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If a decree is not money payable under the  
certified to Court 39 M 1026=38 Ind Cas  
executing Court from treating an admission  
application for execution as an application to  
Sind 159 (F B)=16 S L R 207=83 Ind

Cas 360. Where a decree has been satisfied the decree holder shall under

Order XXI, rule 2 certify the payment to the Court whose duty is to execute the decree and the Court shall record the same accordingly A I R 1923 Rang 88=1 Bur L J 207=11 L B R 429=70 Ind Cas 115 There is no time fixed within which the decree holder is bound to certify a payment made out of Court, such payment could be certified at any time Execution application requiring payments to be made out of Court A I R 1921 Bom 411=45 B 91=59 Ind Cas 790 A decree holder for execution, to prove objection has been taken

either by an officer of the Court or before the issue of notice or by the judgment debtor when he appears to contest the application A I R 1928 All 629=51 A 237=26 A L J 966 (F B) Where a payment has been made within three years of the last starting point of limitation for an execution application, but is certified after the expiry of the three years, the certification makes the payment entitled to recognition as a payment made on the date when it was actually made and not as a payment on the date it was certified A I R 1925 All 802=47 A 873=23 A L J 836=89 Ind Cas 415 Even an agreement to adjust requires certification A I R 1930 Mad 429=119 Ind Cas 480 Dismissal of judgment debtor's application under rule 2 (2) does not bar the decree holder's certifying the payment under rule 2 (1) A I R 1925 Pat 822=7 P L R 753= (1926) Pat 100=89 Ind Cas 195 One of two joint holders of a decree cannot certify satisfaction of the whole decree so as to bind the other decree holder But a joint decree-holder may certify satisfaction in respect of his own interest therein A I R

Order XXI, r 2 137 Ind Cas 768=7 Luck 590=9 O W N 209=A I R 1932 Oudh 148 (F B) Uncertified payments by judgment debtor of sums falling due after adjudication cannot be recognized as against receiver 137 Ind Cas 394=35 M L W 161-A I R 1932 Mad 250 In instalment decree a decree-holder can not enter payments after controversy arises A I R 1934 All 524 Where decree is certified as fully satisfied through negligence of agent of pleader the order can not be reviewed A I R 1934 Nag 143

**Form of certification**—A mere admission by decree holder of part satisfaction a

257 made distinct from an application for execution of decree A I R 1922 Cal 30=35 C L J 71=26 C W N 529=68 Ind Cas 780 A casual reference of satisfaction of a decree in a plaint or other civil proceedings is not enough 13 S L R 130=52 Ind Cas 901 A mention of payment in execution application is certifying within rule 2 (1918) M W N 507=49 Ind Cas 141, see also 43 C 207=20 C W N 272=23 C L J 390=34 Ind Cas 606 An executing Court can take evidence for considering whether the decree holder has certified satisfaction of the decree Order XXI rule 2 (2) enables a Court to recognize a payment or adjustment which has been certified but not recorded 52 Ind Cas 764 Mere fact of certificate of payment being termed an application and being in the form of petition does not convert it into an application within the meaning of the Limitation Act 181 A I R 1929 P C 19=56 M L J 233=3 Luck 684=31 Bom 289=56 I A 30=6 O W N 29=(1929) A L J 33=33 C W N 267=114 Ind Cas 581

**Enquiry**—A Court executing a decree cannot enquire into the fact of payment or adjustment which has not been certified as required by Order XXI, rule 2 even if fraud is imputed to the decree holder A I R 1923 Cal 527=32 C W N 434=113 Ind Cas 9, see also A I R 1921 Pat 135=6 P L J 337=2 P L T 765=63 Ind Cas 535, A I R 1926 Oudh 482=13 O L J 493=93 Ind Cas 53, 32 Ind Cas 590=38 A 204=14 A L J 132 Court can inquire where alleged adjustment is disputed by the decree holder, and record the adjustment if it is

proved A I R 1929 All 79=113 Ind Cas 760, see also A I R 1928 Rang 62=5 Rang 833=110 Ind Cas 123, 17 A L J 677=41 A 443=50 Ind Cas 65, 31 M L J 207=35 Ind Cas 70 Where a decree holder admits payment of a sum of money towards satisfaction of the decree the court must recognise the fact of payment and cannot call upon the judgment debtor for proof of payment  
 out of Court when not certified can but not otherwise 58 Ind Cas 123, a decree has been satisfied an un 50 Ind Cas 331 see also 33 Ind Cas 71, 38 A 289=14 A L J 370=35 Ind Cas 234, 51 Ind Cas 567=13 S L R 71, 5 L W 644=40 Ind Cas 889, 50 Ind Cas 956=15 N L R 158, A I R 1925 Rang 349=4 Bur L J 179=92 Ind Cas 677, A I R 1924 Oudh 208=10 O L J 351=77 Ind Cas 337, 10 L W 179=54 Ind Cas 922, A I R 1922 Bom 380=46 B 226=23 Bom L R 981=64 Ind Cas 490

When it appears to the Court that the decree holder has been acting fraudulently, the Court can examine the merits of an uncertified adjustment when it is pleaded in bar to execution A I R 1926 Mad 945=24 L W 404=(1926) M W N 622=97 Ind Cas 608, see also A I R 1929 Mad 783=30 L W 526=(1929) M W N 13=119 Ind Cas 94, A I R 1924 Oudh 208=10 O L J 351=77 Ind Cas 337, A I R 1924 Mad 189=18 L W 453=76 Ind Cas 854, A I R 1923 Bom 404=23 Bom L R 474=47 B 643=75 Ind Cas 893, but see A I R 1923 Cal 342=50 C 668=76 Ind Cas 31

**Fraud as regards certification**—Executing court cannot recognise payment made of court if not certified A judgment debtor who has paid money out of court and against whom a fraudulent application is made for execution notwithstanding such payment must find his remedy in a regular suit based on the alleged fraud A I R 1926 Oudh 482=13 O L J 193=3 O W N 198=93 Ind Cas 53, see also A I R 1927 Mad 947=53 M L J 901=1927 M W N 924=105 Ind Cas 86, A I R 1925 Sind 140=79 Ind Cas 89=18 S L R 51, A I R 1921 Sind 10=15 S L R 77=63 Ind Cas 238 A I R 1923 Rang 103=11 L B R 363=1 Bur L J 226=68 Ind Cas 924, A I R 1929 Rang 269=7 Rang 310=119 Ind Cas 742, A I R 1925 Bom 309=49 B 648=27 Bom L R 403 (F B)—95 Ind Cas 687, 79 Ind Cas 125=A I R 1925 Lah 54, A I R 1923 Bom 253=25 Bom L R 247=95 Ind Cas 410, A I R 192 Cal 313=67 Ind Cas 835, 48 Ind Cas 765, but see 40 B 333=18 Bom L R 22=33 Ind Cas 232, 45 Ind Cas 222=5 O L J 92 Decreeholder's omission to certify satisfaction of the decree, does not amount to fraud A I R 1925 Oudh 225=27 O C 277=78 Ind Cas 776

**Notice**—A notice in writing of the payment of the amount due under a decree by the judgment-debtor in Court should be served on the decree holder like the summons A I R 1925 Nag 52=81 Ind Cas 1001 Where a case of a judgment-debtor for adjustment of decree was adjourned without notice to the decree holder and on the day fixed he being absent an *ex parte* decree was passed, such order is not justified 115 Ind Cas 467=A I R 1930 Lah 113=36 P L R 510

**Omission to certify**—The judgment debtor can sue the decree holder for damages for omission to certify or credit the amount received out of Court for the decree (1919) M W N 3=56 M L J 175=48 Ind Cas 810, 50 Ind Cas 584=36 M L J 376=42 M 338=9 L W 443, but see 5 Pat L J 70=1 P L T 149=55 Ind Cas 890, A I R 1923 Nag 219=6 N L J 717=77 Ind Cas 461  
 opposing him  
 not certified,  
 under sub-rule 2, so that bar under sub rule 3 cannot come into operation A I R 1930 Pat 526=9 Pat 251=11 P L T 763=126 Ind Cas 159 In the absence of a certificate of payment decree holder is entitled in law to execute his decree against the judgment debtor A I R 1926 Mad 674=49 M 325=50 M L J 584=24 L W 361=91 Ind Cas 522 Where the creditor by taking out a *darkhast* recovers the decretal amount over again the judgment debtor can by suit recover the amount paid to his creditor without its being certified A I R 1923 Bom 253=25 Bom L R 247=95 Ind Cas 410

**Mortgage decrees**—A final decree in a mortgage suit can also be adjusted under order XXI, rule 2 A I R 1923 Nag 20=68 Ind Cas 443 An uncertified ad

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When it appears to the Court that the decree holder has been acting fraudulently, the Court can examine the merits of an uncertified adjustment when it is pleaded in bar to execution A I R 1926 Mad 945=24 L W 404=(1926) M W N 622=97 Ind Cas 608, see also A I R 1929 Mad 783=30 L W 526=(1929) M W N 13=119 Ind Cas 394, A I R 1924 Oudh 208=10 O L J 351=77 Ind Cas 337, A I R 1924 Mad 189=18 L W 453=76 Ind Cas 854, A I R 1923 Bom 404=23 Bom L R 474=47 B 643=75 Ind Cas 893, but see A I R 1923 Cal 342=50 C 668=76 Ind Cas 31

#### Fraud as regards certification—Executing court can

make payment  
it of court  
standing  
and A I R  
Oudh 40=13 O L J 195=3 O W N 198=93 Ind Cas 53, see also A I R  
1917 Mad 947=53 M L J 901=1927 M W N 924=105 Ind Cas 86, A I R  
1925 Sind 140=79 Ind Cas 89=18 S L R 51 A I R 1921 Sind 10=15 S L R  
77=63 Ind Cas 238 A I  
68 Ind Cas 924, A I R  
1925 Bom 309=49 B 648=  
Cas 125=A I R 1925 Lah  
Cas 410, A I R 192 Cal  
333=18 Bom L R 22=33 Ind Cas 232, 45 Ind Cas 222=5 O L J 92 Decree  
holders omission to certify satisfaction of the decree, does not amount to fraud  
A I R 1925 Oudh 225=27 O C 277=78 Ind Cas 776

#### Notice—A notice in writing of the payment of the sum

by the judgment-debtor in Court shou  
summons A I R 1925 Nag 52=81 Ir  
debtor for adjustment of decree was  
and on the day fixed he being absent, an *ex parte* decree was passed, such order  
is not justified 115 Ind Cas 467=A I R 1930 Lah 113=36 P L R 510

**Omission to certify**—The judgment debtor can sue the decree holder  
for damages for omission to certify or credit the amount received out of Court for  
the decree (1919) M W N 3=36 M L J 175=48 Ind Cas 810, 50 Ind Cas  
584=36 M L J 376=42 M 338=9 I W 142=10 O L J 70=1 P L T  
72 Ind Cas 461  
debtor opposing him  
yet got certified,  
caution under sub-  
section A I R 1930 Pat  
526=9 Pat 251=11 P L T 763=126 Ind Cas 159 In the absence of a certificate  
of payment decree holder is entitled in law to execute his decree against the  
judgment debtor A I R 1926 Mad 674=49 M 325=50 M L J 584=24 L W  
361=91 Ind Cas 522 Where the creditor by taking out a *darkhast* recovers the  
decretal amount over again the judgment debtor can by suit recover the amount  
paid to his creditor without its being certified A I R 1923 Bom 253=25 Bom  
L R 247=95 Ind Cas. 410

**Mortgage decrees**—A final decree in a mortgage suit can also be adjusted  
under order XXI, rule 2 A I R 1923 Nag 70=68 Ind Cas 443 An uncertified

Order XXI, rule 2 certify the payment to the Court whose duty is to execute the decree and the Court shall record the same accordingly A I R 1923 Rang 88=1 Bur L J 207=11 L B R 429=70 Ind Cas 115 There is no time fixed within which the decree holder is bound to certify a payment made out of Court, such payment could be certified at any time Execution application requiring payments already made amounts to certifying A I R 1921 Bom 411=45 B 91=59 Ind

as 790 A decree-holder for execution, to prove objection has been taken

either by an officer of the Court or before the issue of notice or by the judgment debtor when he appears to contest the application A I R 1928 All 629=51 A 237=26 A L J 966 (F B) Where a payment has been made within three years of the last starting point of limitation for an execution application, but is certified after the expiry of the three years, the certification makes the payment entitled to recognition as a payment made on the date when it was actually made and not as a payment on the date it was certified A I R 1925 All 802=47 A 873=23 A L J 836=89 Ind Cas 415 Even an agreement to adjust requires certification A I R 1930 Mad 429=119 Ind Cas 480 Dismissal of judgment debtor's application under rule 2 (2) does not bar the decree holder's certifying the payment under rule 2 (1) A I R 1925 Pat 822=7 P L F 733=

rs of a decree cannot certify decree holder But a joint interest therein A I R

=51 Ind Cas 411 A decree holder need not issue a notice to the judgment debtor before certifying payment 4 Pat L J 159=1919 Pat 260=50 Ind Cas 364 Presumption of oral application does not arise on application for certification under Order 21 r 2 137 Ind Cas 768=7 Luck 590=9 O W N 209=A I R 1932 Oudh 148 (F B) Uncertified payments by judgment debtor of sums falling due after adjudication cannot be recognized as against receiver 137 Ind Cas 394=35 M L W 161=A I R 1932 Mad 250 In instalment decree a decree holder can not enter payments after controversy arises A I R 1934 All 524 Where decree is certified as fully satisfied through negligence of agent of pleader the order can not be revoked A I R 1934 Nag 143

### Form of

tion and its

257 Rule 2

made to him out of Court by the judgment debtor The application need not be distinct from an application for execution of decree A I R 1922 Cal 30=35 C L

J 71=26 (

decree in a

Cas 901

t satisfac

4 Ind Cas

payment

erence of satisfaction of a

13 S L R 130=52 Ind

certifying within rule 2

also 43 C 207=20 C W N 272=23 C

Court can take evidence for considering

satisfaction of the decree Order XXI rule

2 (2) enables a Court to recognize a payment or adjustment which has been certi-

fied but not recorded 52 Ind Cas 764 Mere fact of certificate of payment being

termed an application and being in the form of petition does not convert it into an

application within the meaning of the Limitation Act 181 A I R 1929 P C

19=56 M L J 233=3 Luck 684=31 Bom 289=56 I A 30=6 O W N 29=(1929)

A L J 33=33 C W N 267=114 Ind Cas 581

**Enquiry**—A Court executing a decree cannot enquire into the fact of payment

or adjustment which has not been certified as required by Order XXI, rule 2 even

if fraud is imputed to the decree holder A I R 1928 Cal 527=32 C W N

434=113 Ind Cas 9, see also A I R 1921 Pat 135=6 P L J 337=2 P L T

765=63 Ind Cas 535, A I R 1926 Oudh 482=13 O L J 493=93 Ind Cas 53,

32 Ind Cas 590=38 A 204=14 A L J 132 Court can inquire where alleged

adjustment is disputed by the decree holder, and record the adjustment if it is

proved A I R 1929 All 79=113 Ind Cas 760, see also A I R 1928 Rang 62=5 Rang 833=110 Ind Cas 123 17 A L J 677=41 A 443=50 Ind Cas 65, 31 M L J 207=35 Ind Cas 70 Where a decree holder admits payment of a sum of money towards satisfaction of the decree the court must recognise the fact of payment and cannot call upon the judgment debtor for proof of payment out of Court when not certified can but not otherwise 58 Ind Cas 123, a decree has been satisfied in un 50 Ind Cas 331 see also 33 Ind Cas 71, 38 A 289=14 A L J 370=35 Ind Cas 234, 51 Ind Cas 567=13 S L R 71, 5 L W 644=40 Ind Cas 889, 50 Ind Cas 956=15 N L R 158, A I R 1923 Rang 349=4 Bur L J 179=92 Ind Cas 677 A I R 1924 Oudh 208=10 O L J 351=77 Ind Cas 337, 10 L W 179=54 Ind Cas 922, A I R 1922 Bom 580=46 B 226=23 Bom L R 981=64 Ind Cas 490

When it appears to the Court that the decree holder has been acting fraudulently the Court can examine the merits of an uncertified adjustment when it is pleaded in bar to execution A I R 1926 Mad 945=24 L W 404=(1926) M W N 622=97 Ind Cas 608, see also A I R 1929 Mai 783=30 L W 526=(1929) M W N 13=119 Ind Cas 594, A I R 1924 Oudh 208=10 O L J 351=77 Ind Cas 337, A I R 1924 Mad 189=18 L W 453=76 Ind Cas 854, A I R 1923 Bom 404=23 Bom L R 474=47 B 643=75 Ind Cas 893 but see A I R 1923 Cal 342=50 C 668=76 Ind. Cas 31

**Fraud as regards certification**—Executing court cannot recognise payment made of court if not certified A judgment debtor who has paid money out of court and against whom a fraudulent application is made for execution notwithstanding such payment must find his remedy in a regular suit based on the alleged fraud A I R 1926 Oudh 482=13 O L J 193=3 O W N 198=93 Ind Cas 53, see also A I R 1927 Mad 947=53 M L J 901=1927 M W N 924=105 Ind Cas 86, A I R 1925 Sind 140=79 Ind Cas 89=18 S L R 51 A I R 1921 Sind 10=15 S L R 77=63 Ind Cas 238 A I R 1923 Rang 103=11 L B R 363=1 Bur L J 226=68 Ind Cas 924, A I R 1929 Rang 269=7 Rang 310=119 Ind Cas 742, A I R 1925 Bom 309=49 B 648=27 Bom L R 403 (F B)=95 Ind Cas 687, 79 Ind Cas 125=A I R 1925 Lah 54, A I R 1923 Bom 253=25 Bom L R 247=95 Ind Cas 410, A I R 192 Cal 313=67 Ind Cas 885, 48 Ind Cas 765, but see 40 B 333=18 Bom L R 22=33 Ind Cas 232, 45 Ind Cas 222=5 O L J 92 Decreeholder's omission to certify satisfaction of the decree does not amount to fraud A I R 1925 Oudh 225=27 O C 277=78 Ind Cas 776

**Notice**—A notice in writing of the payment made by the judgment-debtor in Court shown by the summons A I R 1925 Nag 52=81 Ind Cas 467=A I R 1930 Lah 113=36 P L R 510

**Omission to certify**—The judgment debtor can sue the decree holder for damages for omission to certify or credit the amount received out of Court for the decree (1919) M W N 3=36 M L J 175=48 Ind Cas 810, 50 Ind Cas 584=36 M L J 376=42 M 338=9 L W 443, but see 5 Pat L J 70=1 P L T 149=55 Ind. Cas 890, A I R 1923 Nag 219=6 N L R 117=7 Ind Cas 461 opposing him got certified, rule 2, so that bar under sub rule 3 cannot come into operation A I R 1930 Pat 526=9 Pat 251=11 P L T 763=126 Ind Cas 159 In the absence of a certificate of payment decree holder is entitled in law to execute his decree against the judgment-debtor A I R 1926 Mad 674=49 M 325=50 M L J 584=24 L W 361=91 Ind Cas 522 Where the creditor by taking out a *darkhast* recovers the decretal amount over again the judgment debtor can by suit recover the amount paid to his creditor without its being certified A I R 1923 Bom 253=25 L R 247=9, Ind Cas 410

**Mortgage decree**—A final decree in a mortgage suit can also be under order XXI, rule 2 A I R 1923 Nag 70=68 Ind. Cas 443 An uncerti

justment of the preliminary mortgage decree cannot be pleaded in bar to the execution of the final decree though the adjustment was made in pursuance of the arrangement entered into before the passing of the preliminary decree 37 M L J 356=54 Ind Cas 137 Even after a mortgage decree a judgment debtor can in the execution court plead to the effect that something has taken place since the passing of the decree which amounts to a partial satisfaction of the decree If such a plea be entered in the execution court can enquire into the same and continue the execution proceedings, in respect of so much only of the decree which it finds after inquiry to be still unsatisfied A I R 1924 All 297=21 A L J 818=83 Ind Cas 832, see also 5 Pat L J 672=1 P L T 416=57 Ind Cas 473

**Payment of decretal amount**—The Court is not bound to record a payment when it is not satisfied that such payment has been made A I R 1928 Rang 185=6 Rang 218=111 Ind Cas 371 Payments can be certified in the application for execution of the decree A I R 1921 Cal 643=15 C L J 566=26 C W N R 1922 Cal 200 A Court imputation Act comes into Ind Cas 318 A plea of interest may be pleaded in 38 Ind Cas 295 Where ceases to exist as a decree

capable of execution and the confirmation of sale which is a proceeding in execution should not be ordered A I R 1922 Nag 248=18 N L R 134=95 Ind Cas 331 Rule 2 (2) applies to a pending execution in the Court and not where the execution has come to an end A I R 1929 Pat 400=11 P L T 503=123 Ind Cas 798 Under rule 2 payment need not both be certified and recorded but should either be certified or recorded to enable executing Court to recognize payment made by judgment debtor A I R 1925 Mid 230=47 M L J 498=(1924) M W N 815=82 Ind Cas 388 In case of joint decree for costs, payment out of Court to some decree-holders, debars others from executing the entire decree A I R 1930 Cal 78=126 Ind Cas 124 The payment directed to be made to a third person under a decree comes within Order 21 rule 2 A I R 1923 All 271=21 A L J 97=45 A 304=71 Ind Cas 457 One member of a firm can receive payment of a decretal amount and can certify satisfaction A I R 1926 Snd 167=92 Ind Cas 387 A specific provision of the code that a plea of payment cannot be recognised when it has not been previously certified or rather not certified within the time allowed by law cannot be overriden by court's general power of considering questions between parties to a decree and evidence is not admissible to prove fact of payment A I R 1926 Oudh 620=91 Ind Cas 079 For certification deposit by judgment-debtor of decretal amount under order XXI r 89 to prevent confirmation of sale, though made after 30 days of sale can be treated as payment under order XXI, r 2 A I R 1925 Nag 17=79 Ind Cas 903

**Limitation**—No limitation is fixed for decree holder to certify payment The certification lets in evidence in proof of payment A I R 1931 All 219=132 Ind Cas 426 see also A I R 1928 All 629=51 A 237=26 A L J 966=112 Ind Cas 73 A I R 1927 Oudh 43=3 O W N 987=98 Ind Cas 1069, A I R 1927 Oudh 7=29 O C 358=3 O W N 829=1 Luck 428=98 Ind Cas 353, 13 S L R 37=52 Ind Cas 804, A I R 1934 Pat 380 23 C W N 320=50 Ind Cas 242, 38 M L J 1=1 A L J 1=1 M W N 302=41 M 251=41 Ind Cas 71 945=54 C 143=86 Ind Cas 1021 A I R Cas 600 Limitation for an application b Art 174 A I R 1930 Rang 329=8 Rang 310=127 Ind Cas 600, see also A I R 1929 All 674=115 Ind Cas 139 A I R 1934 All 209 A I R 1922 Cal 30=26 C W N 529=35 C L J 71=68 Ind Cas 780 An uncertified payment does not

of payment but of certification When a decree holder applies for execution he only invokes a payment certified before execution became time barred A I R 1928 All 55=50 A 259=25 A L J 933=107 Ind Cas 40



*Courts executing Decrees*

3. [New] Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such courts may attach and sell the entire estate or tenure

Notes—Where Court is selling immoveable property outside its jurisdiction except as provided by rule 3, the sale is a nullity 27 C W N 542=A I R 1923 Cal 619=77 Ind Cas 253 Order passed by Court under misapprehension of facts can be set aside A I R 1934 All 287 Court cannot sell property outside its jurisdiction A I R 1933 Sind 231

4 [S 223, fifth para] Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Notes—Decrees of foreign court are governed by rule 4 (1917) M W N 498=6 L W 361=36 M L J 539=40 Ind. Cas 670

## 5. [S 223,

Mode of transfer

Court shall send

which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

N. B.—For local amendments in Allahabad, Lahore, Oudh and Rangoon, vide *infra*

Scope—Where decree is sent direct to a Subordinate Judge in another District, the Subordinate Judge has no jurisdiction to execute it The decree must be sent to the District Judge 4 Pat L J 49=49 Ind Cas 374, see also A I R 1933 Lah 839 Where application for execution is not entertained by the court having jurisdiction to entertain it, nor properly transferred by that court to another court, the transferee court does not derive jurisdiction by the mere filing of application A I R 1921 Pat 152=2 Pat L T 374=6 Pat L J 304=(1921) Pat 186=62 Ind Cas 487 Where decree is transferred to another court for execution, the latter court can entertain execution application even though copy of decree has not been received 144 Ind Cas 923=38 M L W 141 A I R 1933 Mad 627, handing over decree and double court-fee

is not required A I R 1933 Sind 343

Procedure where Court desires that its own decree shall be executed by another Court

6 [S 224] The Court sending a decree for execution shall send—

(a)

(b)

has not been Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied, and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

N B—For local amendments in Allahabad Oudh, Peshwar and Rangoon, vide *infra*

Scope—Decree papers should be handed over to the judgment creditor on his applying for the same unless he is a person not fit to be treated with such paper  
 A I R 1931 All 192=(1930) A L J 1552=131 Ind Cas 244 see also A I R 1931 Pat 27=9 Pat 829=129 Ind Cas 138 46 Ind Cas 419=42 P L R 1918=93 P W R 1918=22 P R 1919, 36 Ind Cas 10=10 Bur L T 159=2 U B R 119 Decision of decreeing Court as to who is plaintiff or appellant in decreeing Court is final executing Court can not question it A I R 1930 Bom 141=31 Bom L R 1254=54 B 96=124 Ind Cas 256 An executing Court to which a decree is sent for execution can refuse to execute a decree which on the face of it, is absolutely bad and a nullity A I R 1930 Rang 337=129 Ind Cas 519 Where the decree is against a dead person the court to whom the decree is transferred can also refuse to execute decree as being nullity A I R 1934 Lah 117 Otherwise, the transferee court can not question either the validity of the decree or the jurisdiction of the court passing the decree 131 Ind Cas 244=1930 A L J 1552=53 A. 125=A I R 1931 All 52, 138 Ind Cas 376=33 P L R 725=A I R 1932 Lah 601 136 Ind Cas 353=1931 A L J 653=53 A 747=A I R 1931 M L W 358=1933 M W N 187=138=9 Pat 829=13 P L T 149=A I R 1933 Nag 211  
 necessary to transfer the decree to himself with all necessary documents A I R 1928 Rang 15=5 Rang 613=105 Ind Cas 654 Where decree is transferred to another Court for execution, the transferring Court can again transfer the decree to a third Court A I R 1928 Nag 29=23 N L R 126=101 Ind Cas 279 The decree of a Native State coming within the purview of s 44 does not cease to be a foreign judgment 40 B 551=18 Bom L R 486=36 Ind Cas 363 Where certificate is issued by the Court passing the decree and transferring it to another Court for execution, notice to execute the decree can only be issued by the Court of transfer 26 C W. N 292=63 Ind Cas 116 Where decree has been transferred, the decree holder cannot be compelled to make a second application for execution in the transferee Court A I R 1924 Pat 120=2 Pat 9=5 Pat L T 11=74 Ind Cas 753 If the Court transferring in the certificate, the judgment getting it amended Any such and an interference in revision 7 Pat L T 456=93 Ind Cas  
 tion under s 73 can be entertained by original Court A I R 1934 Lah 113

7 [S. 225] The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge requires such proof

Scope—Where decree is transferred for execution executing Court is not competent to question the validity of decree A I R 1931 All 192=(1930) A L J 1552=131 Ind Cas 244 see also A I R 1931 Pat 27=9 Pat 829=129 Ind Cas 138 46 Ind Cas 419=42 P L R 1918=93 P W R 1918=22 P R 1919, 36 Ind Cas 10=10 Bur L T 159=2 U B R 119 Decision of decreeing Court as to who is plaintiff or appellant in decreeing Court is final executing Court can not question it A I R 1930 Bom 141=31 Bom L R 1254=54 B 96=124 Ind Cas 256 An executing Court to which a decree is sent for execution can refuse to execute a decree which on the face of it, is absolutely bad and a nullity A I R 1930 Rang 337=129 Ind Cas 519 Where the decree is against a dead person the court to whom the decree is transferred can also refuse to execute decree as being nullity A I R 1934 Lah 117 Otherwise, the transferee court can not question either the validity of the decree or the jurisdiction of the court passing the decree 131 Ind Cas 244=1930 A L J 1552=53 A. 125=A I R 1931 All 52, 138 Ind Cas 376=33 P L R 725=A I R 1932 Lah 601 136 Ind Cas 353=1931 A L J 653=53 A 747=A I R 1931 M L W 358=1933 M W N 187=138=9 Pat 829=13 P L T 149=A I R 1933 Nag 211  
 can question jurisdiction of court which execution A I R 1933 All 751=17 R D is passed without jurisdiction s 487=A I R 1933 Nag 211 sferred for execution are same as Lah 652

8 [S. 226] Where such copies are so filed, the decree or order may, if the Court to which it is sent in the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction

Execution of decree or order by Court to which it is sent  
 Court of competent jurisdiction

Notes—The District Court to which a decree is transferred cannot transfer it to some other District Court for execution 21 W R 337, 3 C 512, 81 A 165 A subordinate Court of a District is entitled to execute a transferred decree by the order of the District Court 22 C 764 An order under this rule forwarding a decree for execution to a subordinate Court be signed by the latter 23 C 480, 5 Ind a decree is transmitted by a Court having it relates to a Court having no jurisdiction over it the latter Court cannot execute the same 33 M L J 750=23 M L T 24=(1918) M W N 132=43 Ind Cis 79

9 S 227] Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction

Notes—The functions of the High Court in respect of the execution of a decree of another Court are limited to effecting execution, and to the matters arising out of the proceedings in execution 6 B L R App 66 As regards the meaning of the words 'ordinary jurisdiction' vide 13 B 520 Where decree passed by Small Cause Court is transferred to High Court for execution High Court cannot make decree payable by instalment A I R 1934 Rang 197

Application for execution

10 [S 230 first para] Where the holder of a decree desires to execute it he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof

N B—For local amendment in Rangoon, vide *infra*

Scope—In case of decree transferred for execution, application is necessary to execute the decree A I R 1924 Nag 413=80 Ind Cas 59 Where decree must be made to the transferee

of the decree in the C application in the C 909=5 P L T 11=7. fresh notice is necessary 1930 A W N 100 application made by decree holder of the decretal amount is not

473-94 Ind Cas 482 execution of a decree in more Courts than one is different from the power of transferring Court to order execution after the decree is transferred for execution A I R 1927 Cal 581=31 C W N 653=102 Ind Cas 513 Applications presented after the termination of the suit are not within the rule 81 W 71=11 A 11 Cas 840 transferred having term for execution decree has in anticipatory A I R 1931 Mad 103=(1930) M W N 562=130 Ind 458 Where a decree has been affirmed in appeal the decree of the first Court affirmed by the Court of appeal should be executed 129 Ind Cas 1 R 1931 Pat 27 Where owing to misdescription the decree is in wrong name Court can in execution bring real judgment debtor on 129 Ind Cas 901=35 Bom L R 200=A I R 1933 Bom 200 In case

is transferred application for execution must be made to transferee Court and not to parent Court for execution is n enforced is prov  
1932 Bom 378  
vid of execution A I R 1934 All 463

# 11. [Ss. 256, 235] (r) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the

Oral application  
decree, order immediate execution thereof by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Save as otherwise, provided by sub-rule (r), every application for the execution of a decree shall be in writing signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely, —

- (a) the number of the suit,
  - (b) the names of the parties,
  - (c) the date of the decree,
  - (d) whether any appeal has been preferred from the decree;
  - (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree,
  - (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results,
  - (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree whether passed before or after the date of the decree sought to be executed,
  - (h) the amount of the costs (if any) awarded,
  - (i) the name of the person against whom execution of the decree is sought, and
  - (j) the mode in which the assistance of the Court is required, whether—
    - (i) by the delivery of any property specifically decreed.
    - (ii) by the attachment and sale, or by the sale without attachment, of any property,
    - (iii) by the arrest and detention in prison of any person,
    - (iv) by the appointment of a receiver,
    - (v) otherwise, as the nature of the relief granted may require,
  - (j) The Court to which an application is made under sub-rule
- (2) may require the applicant to produce a certified copy of the decree

N B.—For local amendments in Allahabad, C P Madras, and Oudh, vide *infra*

Sub section (1)—In cases of applications for execution the primary consideration must be the interest of the decree holder and where interests are likely to be jeopardised by the granting of any application for time, courts have no option but to execute the decree. The courts have power to stay execution against the person for such time as it thinks reasonable unless there is something in the case which prohibits such power. A I R 1925 Mad 42=48 M 494=20 L W 175=84 Ind Cas 134

Sub section (2)—Appellate decree whether confirming, varying or reversing the decree of the original court is the only decree capable of execution. A fresh application for execution is necessary. A I R. 1930 Bom 225=32 Bom L. R

300=127 Ind Cas 199 Where decree holder desires to execute his decree by the arrest and detention in prison of the judgment-debtor, the executing court him to accept payment in instalments  
 5 Ind Cas 61 The verification need not be more than one A I R 1924 Pat 23=2 Pat 809=4 Pat L T 513=(1923) Pat 229=1 P L R 453=74 Ind Cas 174 This rule is no bar to the maintenance of concurrent execution A I R 1923 Pat 224=2 Pat 328=4 Pat L T 99=(1923) Pat 61=71 Ind Cas 741 Defect in not mentioning the date of disposal of a previous application for execution is not material where members of execution case are given Where cross decree could not be set off it need not be mentioned A I R 1924 Cal 398=71 Ind Cas 1054 Where decree holders deliberately refrained from mentioning a previous adjustment in their application for execution application was held not in accordance with law A I R 1924 Nag 185=78 Ind Cas 291, see also A I R 1926 Nag 164=89 Ind Cas 1003 Omission to state in the application for execution names of all the persons interested in the decree, is not such a decree as would invalidate the execution proceedings A I R 1926 Cal 811=30 C W N 562=96 Ind Cas 692

Order rejecting application which is not accompanied by process fee, is mistaken Proper course is to order the decree holder to file process fee within reasonable time A I R 1930 Oudh 65=6 O W N 1064=124 Ind Cas 415 Where a decree holder disappears but his death cannot be legally presumed his pleader can under rule 11 (2) file an application for execution A I R 1925 Pat 369=4 Pat 378=6 P L T 547=3 Pat L R 43=86 Ind Cas 358 Where pleader signed and verified the execution application being under the impression that decree holder was still a minor while he was in reality a minor his action was held *bona fide* and his application was held valid A I R 1930 Lah 603 Where an application for execution, though not signed and verified by the decree holder but signed and verified by the pleader in the original suit it is a valid application A I R 1929 Bom 196=(1929) Bom 450=31 Bom L R 355=117 Ind Cas 526

#### Application for execution

655 Except no decree holder

1929 Mad 20=114 Ind Cas 849 Any method suggested for the satisfaction of decree not actually prohibited by law A I R 1928 Lah 7=111 Ind Cas 111 interest on the sum has been waived decree should be dismissed A I R 1928 Cal 111 defects as regards the names of execution invalid A I R 1930 M

A I R 1927 Cal 111 the right to execute refused to allow the pleader A I R 1927 Cal 111

1927 Lah 153=28 P L R 86=97 Ind Cas 291 It is not reasonable to compel debtors to pay their debts by means which will deprive them of their livelihood, if there is available an alternative method which will be reasonably fair to the creditor A I R 1925 Rang 33=3 Bur L J 97=82 Ind Cas 827 Where application was filed on the last day, and time was given to the applicant for supplying the defects without fixing any date the application was held to be valid T, 350=90 Ind Cas 761 WI Rules of practice but filed required by the rule and the granting the relief prayed T, 129=107 Ind Cas 298 WI holder's son without power the power of attorney was presented a month before the application for execution would have been time barred, the application for execution was held to be a proper application A I R 1929 Lah 478=113 Ind Cas 781

Whether an omission is or is not material will depend on the facts of particular case Omission to specify all the previous applications with the

*vakalatnama* is not required A I R 1925 Pat 692=7 P L 1 220=1925 Cal 234=5  
 even holder who signed the decree should be verified in the presence of Court made by a person other than the decree holder it should be satisfied that the person acquainted with the facts of the case  
 A I R 1924 Cal 811=28 C W N 687=80 Ind Cas 313 Where application for execution was rejected wrongly as not being in accordance with law, but the decree holder acquiesced in it, the application can be of no avail to state limitation for further execution proceedings A I R 1923 Nag 236=8 N L J 91=92  
 Ind Cas 473

An application for execution containing formal defects is an application in accordance with law 40 M 949=21 M L F 257=5 L W 648=32 M L J 621=38 Ind Cas 136, see also A I R 1922 Sind 29=15 S L R 156=65 Ind Cas 14 Where application for execution is not in tabular form it should not be rejected A I R 1921 Lah 37=1 L B R 163 Application for execution must comply with the requirements of the rules The court must either reject the application or allow it to be amended 2 Lah L J 104=31 P W R 1920=55 Ind Cas 16, see also 4 N L J 207=A I R 1921 Nag 90 Defective application is not a step in aid of execution 65 Ind Cas 120, see also A I R 1922 Sind 29=15 S L R 156=65  
 a subsequent application to amend the 28 Ind Cas 111 Rule 11 (2) makes no 1  
 2 U P L R Lah 95=115 P L R 115  
 Court can allow the amendment of the addition of other properties to the list of 1  
 R 1923 Pat 221=4 P L 99=71 Ind Cas 741 Where mortgage decree is against some of the owners of the equity of redemption, decree cannot be executed against them 47 Ind Cas 907 Decree holder has a right to withdraw even after issue of sale proclamation A I R 1922 Pat 525=1 Pat 232=3 Pat L T 445=65 Ind Cas 127

Where application is defective if no order is passed by court, it should be deemed to be pending A I R 1934 All 481 (F B) Where application for execution has not mentioned mortgage decree obtained by attachment of decree obtained by judgment debtor the omission is not fatal Where in mortgage decree proper application for execution need not be in 58 Ind Cas 111  
 In application for execution, of court cannot be granted 134 Ind Cas 1182=25 S L R 528=A I R 1932 Sind 160 Such application is however is in accordance with law if made *bona fide* Ibid Burden of proof that the application is not barred and is in accordance with law is on applicant 134 Ind Cas 1182=25 S L R 528=A I R 1931 Sind 160, see also 1933 M W N 979=A I R 1933 Mad 872 Application for transfer of decree to court not having jurisdiction is not step in aid of execution 142 Ind Cas 155=11 Pat 785=13 P L T 498=A I R 1932 Pat 309 In execution application, omission to state form of notice wanted does not make application one not in accordance with law 142 Ind Cas 433=A I R 1933 Rang 87 In accordance with law means fulfilling requirements of law 142 Ind Cas 489=27 S L R 109=A I R 1933 Sind 78 Showing date of decree wrongly does not affect validity of application 134 Ind Cas 1182=25 S L R 528=A I R 1931 Sind 160 When portion of decretal amount is deposited in court, decree holder cannot take out execution for full P L T 591=A I R 1933 Pat 89 it does not save limitation 131 I where applicant is entitled to rateable L R 1405=A I R 1932 Bom 622 decree under execution and so 573=A I R 1932 All 273 (F in accordance with law been under rule 66 (3) 137 Ind Cas 201=(1932) A L J 578=A I R 1932 All 484 Where in a mortgage decree if the decree holder is asking for sale of only one item

of property execution may be refused if the Court thinks this is improper 129  
 Ind Cas 708=53 A 391=(1931) A L J 108=A I R 1932 All 85 Order passed  
 on time barred application is not nullity 138 Ind Cas 583=54 A 573=1932 A.  
 L J 365=A I R 1932 All 373 (I B) Where an application is made by the  
 decree holder against judgment debtor for delivery of possession and there arises a  
 dispute between the former and the transferee of the judgment debtor for mutation  
 of na s maintainable 144  
 Ind subsequent settle  
 ment extinguish the right  
 of au A I R 1932 Lah  
 231 three years of his  
 attain 135 Ind Cas 207=  
 32 P L R 290=A I R 1921 Lah. 600

**Sub section (3)**—Copy of the whole decree is not necessary for the purpose of  
 executing a decree Copy of the relevant portion of the decree is sufficient A I R  
 1930 Cal 804=57 C 996=119 Ind Cas 780 An order for a copy of the decree is  
 wholly needless when the court in which an application is made is the very court  
 which made the decree especially in a case when the cost of procuring a copy is  
 prohibitive A I R 1930 Cal 804=57 C 996=129 Ind Cas 780 see also 11  
 C L J 243, 15 C L J 89=16 C W N 736

**12 [S 236]** Where an application is made for the attachment of any  
 moveable property belonging to a judgment  
 debtor but not in his possession the decree holder  
 Application for attachment of moveable property not in judgment debtor's possession shall annex to the application an inventory of the  
 property to be attached containing a reasonably  
 accurate description of the same

**Scope**—Where a decree is passed against the estate of the deceased in the hands  
 of the judgment debtors the decree falls under s 52 and order XXI rule 12 does  
 not apply and as such inventory need not be attached to an application for execution  
 to constitute it a step in aid of execution A I R 1927 Bom 52=28 Bom L R  
 1322=98 Ind Cas 941 Where third party is possessing some moveables belonging  
 to himself and some to the judgment debtor inventory is necessary before an attach-  
 ment can be ordered A I R 1930 Bom 65 31 Bom L R 1291=122 Ind Cas  
 856 An application without an inventory is not in accordance with law within the  
 meaning of Art 182 of the Limitation Act 37 A 527=13 A L J 706=29 Ind Cas  
 479, see also (1894) A W N 54, (1896) A W N 47 As regards meaning of  
 accurate description Vide 9 Ind Cas 729=2 M W N 133=9 M L T 319

**13 [S 237.]** Where an application is made for the attachment  
 of any immoveable property belonging to  
 Application for attachment of immoveable property to a judgment debtor, it shall contain at the  
 contain certain particulars foot—

- (a) a description of such property sufficient to identify the same and,  
 in case such property can be identified by boundaries or numbers  
 in a record of settlement or survey, a specification of such  
 boundaries or numbers, and
- (b) a specification of the judgment debtor's share or interest in such  
 property to the best of the belief of the applicant, and so far as  
 he has been able to ascertain the same

**N B**—For local amendment in Rangoon, *vide infra*

**Scope**—Decree holder has his choice to proceed with any property he likes  
 77 The description should  
 8 W R 411, 1 B 601,  
 us required by rule 13 is not  
 1 R 1931 Bom 128=32

Bom L R 1368=119 Ind Cas 159 As regards the effect of decree holder's  
 gross negligence in describing that whole field belonged to his judgment-debtor,  
 vide 134 Ind Cas 269=17 N L R 318=14 N L J 20=A I R 1931 Nag 116.  
 Execution creditor should specify the share or interest of the judgment debtor A  
 I R 1927 Mad 311=52 M L J 68=99 Ind Cas 838 Where the application





of property, execution may be refused if the Court thinks this is improper 129  
 Ind Cas 708=53 A 391=(1931) A L J 108=A I R 1932 All 85 Order passed  
 on time barred application is not nullity 133 Ind Cas 583=54 A 575=1932 A.  
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 decree holder against judgment debtor for delivery of possession and there arises a  
 dispute between the former and the transferee of the judgment deb or for mutation  
 of name a second application against him under this rule is maintainable 144  
 Ind. Cas 70=1933 A L J 113=55 A 235 After sale, subsequent settle-  
 ment between decree holder and judgment debtor does not extinguish the right  
 of auction purchas I R 1932 Lah

231 If minor ratify

three years of his

attaining majority,

35 Ind Cas 207=

32 P L R 290=A I R 1921 Lah 600

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**N B.**—For local amendment in Rangoon, *vide infra*

**Scope.**—Decree holder has his choice to proceed with any property he likes  
 122 A L J 113=129 Ind Cas 782 The description should

Vide 134 Ind Cas 269=27 N L R 318=14 A L J 40=15  
 Execution creditor should specify the share or interest of the judgment d  
 I R 1927 Mad 311=52 M L J 68=99 Ind Cas 838 Where the

is not in compliance with Order XXI, rule 13 Court has an option under Order XXI, r. 17 either to reject the application or to allow the defect to be remedied within a fixed time A I R 1926 Mad 260=49 M L J 679=(1925) M W N 917=92 Ind Cas 107, see also 34 Ind Cas 9,5=65 P L R 1916=202 P W R 1916, 35 Ind Cas 368

**14 [S 238]** Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors

Power to require certified extract from Collector's register in certain cases

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venue paying estate the judgment-  
ed in the rule 11 W R 17, An  
time for enabling him to supply the  
execution 57 B 317=17 Ind Cas

969=14 Bom L R 1204 Preliminary attachment is not necessary in an application for sale in execution of a decree passed for sale of mortgaged property 5 O L J 414=47 Ind Cas 639

**15 [S 231]** (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased

Application for execution by joint decree holder

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execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application

**Scope**—One decree determining rights of several parties is a joint decree 139 Ind Cas 397=A I R 1932 Pat 261=11 Pat 445=13 P L T 719 Joint decree-holder executing a decree to which he and others are entitled executes the decree *prima facie* for the benefit of all unless there is a direction by the Court or in the decree itself which permits execution for the benefit of the executing creditor alone Any amount received by the executing creditor whether in Court or outside the Court during the pendency of the execution application must excuse for the benefit of all the joint decree holders A I R 1908 Mad 800=112 Ind Cas 410 Court has power to pass proper orders to protect the interest of all the decree holders, where some only out of many joint decree holders apply for execution A I R 1926 Cal 811=30 C W N 56=95 Ind Cas 692 Where no objection has been raised by other decree holders in the executing Court, objection cannot be raised in appeal A I R 1906 Mad 1193=24 L W 711=97 Ind Cas 375 Although portion of a decree can be legally transferred decree must be executed as a whole and not piecemeal 15 P R 1917=39 Ind Cas 654, see also A I R 1926 C 160=97 Ind Cas 896, 4 Pat L J 575 I R 1928 Cal 759=33 C W N 192=115 I 130 Ind Cas 403=A I R 1931 Lah 5, T 416 =58 Ind Cas 212 This rule allows o behalf of all joint decree holders Judgment debtor cannot object that steps have not been taken to safeguard the interest of the other decree holders when they themselves have made no complaint 54 Ind Cas 974 If the executing decree holder is not duly prosecuting the execution of a decree, the part transferee of a decree should be allowed to execute it A I R 1921 Mad 597=44 Mad 919=41 M L J 316 =14 L W 287=1921 M W N 649=69 Ind Cas 337 In case of joint decree, or the death of one decree holder surviving decree holders are entitled to execute the decree for their own benefit and for the benefit of legal representatives 43 Ind

Cas 1008 Where decree is passed in favour of the plaintiff and of certain *proformi* defendants who are co sharers with the plaintiff Court can allow execution of the decree at the instance of the *proformi* defendants provided safeguards for the rights of the plaintiff 44 Ind Cas 445 Assignee of one of several decree holders can execute a decree under this rule 49 Ind Cas 141-(1915) M W N 507 Partition decree is not a joint decree A I R 1912 M L J 436=16 L W 292=(1922) M W N 513=43 M L T 379=31 M L T 311=71 Ind Cas 295 It is not competent to one of several joint decree-holders to grant full discharge of the decree out of Court or to certify to the Court complete satisfaction of the decree without the concurrence of all the decree holders A I R 1913 All 494=46 A 401=L R 4 A 516=21 A L J 308=74 Ind Cas 687, A I R 1929 Lah 462=119 Ind Cas 426, but see A I R 1927 Pat 329=8 P L I 708=103 Ind Cas 7. Court is entitled to examine the pleadings and inform itself as to precise position of the decree holders and can award proportionate share to them A I R 1923 All 491=21 A L J 308=4, A 401=74 Ind Cas 687 Court need not enquire as to who the other decree holders are before making an order under Order XVI, rule 15 A I R 1925 Pat 591=7 P L I 25=89 Ind Cas 811 Where several persons are holding mortgage decrees jointly and property is sold and purchased by one of them in execution purchase is for the benefit of all and they are entitled to respective shares in the property A I R 1924 All 813=78 Ind Cas 814 Where requirements of rule 15 is not complied with by inadvertence or otherwise defects can be remedied by the court A I R 1930 All 188=(1930) A L J 474=122 Ind Cas 179 One of the several decree holders can execute a decree on behalf of all It is not necessary to state that the execution has been sought for the benefit of all The court may impose conditions, if necessary in the form of provisions of security

All 953=(1929) A L J 1049=51 A 978=122 Ind Cas 604 A decree in favour of a firm where the names of the partners are not disclosed, is not a joint decree A I R 1928 Sind 37=105 Ind Cas 892, but see A I R 1934 Mad 330 Assignee of a part of decree is not entitled to execute decree A I R 1934 Bom 59 This rule does not apply where joint decree has been satisfied in part before application for execution A I R 1934 Cal 495 On report of only one of joint decree holder's satisfaction of the whole decree cannot be entered A I R 1934 Mad 330 Where the final court's decree is joint this rule applies and the nature of the lower court's decree is immaterial 139 Ind Cas 397=14 P L T 719=11 Pat 445=A I R 1932 Pat 261 One of the surviving decree-holders who were members of the joint family can apply under this section for execution of it R 1932 Pat by one of several that application is a fraud, court can disallow execution 140 Ind Cas 872-1932 M W N 1333=37 M L W 79=64 M L J 22=56 M 316=A I R 1933 Mad 157 Where the decree is in the name of a firm and the partnership has been dissolved, Cas 376=A I R 1931 the decree does not

33 Lah 432

Order under rule 15 is not appealable A I R 1924 Mad 518=70 Ind Cas 329

16. [S. 232] Where a decree or, if a decree has been passed jointly

Application for execution by transferee of decree of any decree holder in the decree is transferred by as

law, the transferee may apply for passed it, and the decree may be to the same conditions as if the ap

Provided that, where the decree transferred by assignment, notice

is not in compliance with Order XXI, rule 13, Court has an option under Order XXI r 17 either to reject the application or to allow the defect to be remedied within a fixed time A I R 1926 Mad 260=49 M L J 699=(1925) M W N 917=92 Ind Cas 109, see also 34 Ind Cas 955=65 P L R 1916=202 P W R 1916, 35 Ind Cas 368

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Scope—In the case of attachment of Revenue paying estate the judgment-

rule 11 W R 175 An

nabling him to supply the

37 B 317=17 Ind Cas

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decree for their own benefit and for the benefit of legal representatives 43 Ind



transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

N B—For local amendments in C P Lahore Peshwar and Rangoon, vide *infra*

of decretal rights original decree holder can  
 decree is substituted A I R 1934 Pesh 40  
 take place of assignment of decree A I R  
 e made only to  
 court passing the decree A I R led to execution  
 if conditions are satisfied A I R subject to order  
 21, rule 16 A I R 1934 Mad 64 by assignee is  
 presented in wrong Court, defect is one of procedure and the judgment debtor  
 acquiescing by not raising objection cannot challenge legality of proceeding  
 A I R 1928 Lah 648 Notice to assignor decree holder is necessary only when  
 assignee applies for execution for first time A I R 1934 Rang 101, see also 131  
 Ind Cas 171

Assignment must be in writing Mere record of assignment is not enough  
 A I R 1934 Lah 328 Assignee of part of decree is not entitled to execute  
 the decree A I R 1934 Bom 59 Judgment debtor cannot plead payment not  
 recorded in answer to application by transferee under rule 16 A I R 1934  
 All 445

B AIR 1921 L  
 of ce by operation  
 passing decree  
 , see also A I R 1930  
 572 This rule does not  
 the decree stands he is  
 al transfer of the same

A I R 1931 Lah 116—31 P L R 981 Only assignee of a decree can execute  
 even though he is a *benamidar* A I R 1930 Sind 1=119 Ind Cas 542, see  
 also A I R 1929 All 793=122 Ind Cas 687, A I R 1931 Oudh 69=7 O W N  
 1203=130 Ind Cas 343 A I R 1927 Lah 101=8 Lah 35=10 Lah L J 133=  
 28 P L R 239=100 Ind Cas 545 1918 M W N 226=7 L W 201=43 Ind Cas  
 801, but see 40 M 296=2 U P L R Lah 42=54 Ind Cas 944, 35 Ind Cas 359=  
 12 Ind Cas 657 *Benamidar* assignee, for one of the judgment debtors must prove  
 his title before he can execute decree 4 L W 534=35 Ind Cas 624 Executing Court  
 is comp tent to substitute name of *benamidar* assignee 10 L B R 280=13 Bur  
 L T 173=62 Ind Cas 299

Purchaser of suit property is not assignee of decree and rule 16 does not apply  
 A I R 1922 All 98=66 Ind Cas 878, see also A I R 1922 Pat 563=3 Pat  
 L T 625=69 Ind Cas 959 Part transfer of decree is valid under rule 16 A I R  
 1921 Mid 599=44 M 919=41 M L J 316=14 L W 287=1921 M W N 649=  
 69 Ind Cas 337 Purchasers of property after decree are not decree holder's  
 representatives unless the r names are substituted A I R 1924 Bom 426=26  
 Bom L R 833=80 Ind Cas 249 Purchaser of suit property pending suit is not  
 assignee of decree and this rule does not apply A I R 1924 Cal 661=51 C

If transfer is recognised,  
 necessary 33 Ind Cas 71  
 decree to decree holder  
 transferor, if the transferee does not apply for execution 18 M L T 494=29  
 M L J 693=2 L W 1122=31 Ind Cas 542 Purchaser under mere contract of  
 sale does not get title to decree by operation of law 43 C 990=43 I A 108=14  
 A L J 527=20 C W N 866=(1916) 1 M W N 403=18 Bom L R 509=24  
 C L J 67=20 M L T 23=31 M L J 218 (P C)=34 Ind Cas 69 Non-  
 recognition of assignee does not prevent good title passing to his transferee  
 33 Ind Cas 558

Decree holder can apply for execution so long as transfer of decree is not  
 recognised by Court 3 L W 521=34 Ind Cas 791 No application under the

rule can be made to execute a preliminary decree and if sale is premature, though final decree and sale are also prayed for 32 Ind Cis 981 Rule 16 does not give power to assignee or any individual decree holder's rights to apply for execution 15 P R 1917=39 Ind Cas 654 Assignee of a mortgaged decree can execute it by getting the mortgaged property sold 27 C L J 110=41 Ind Cas 267 Purchase of decree by pleader for the judgment debtors although in 22 C W N g mortgage 2 Lth L of property

obtained by mortgagor 23 C W N 853=57 Ind Cas 874 Transfer of decree must be of whole decree and not portion A I R 1922 All 101=66 Ind Cas 679, 43 M L J 761=16 L W 738=31 M L T 463=71 Ind Cas 334, but see A I R 1921 Pat 180=2 P L T 619=6 Pat I J 358=62 Ind Cas 30 Real owner can execute decree obtained by trustee on trust being declared invalid, he is deemed as assignee from ex trust A I R 1924 Pat 343=4 P L T 751=2 Pat I R 27=0 Ind Cas 657 Judgment debtor and decree holder can question decree holder's title A I R 1925 Pat 449=4 Pat 120=86 Ind Cas 564

Real owner of assignment cannot execute decree Person in whose name assignment is made can alone execute A I R 1925 Mad 701=48 M 553=48 M L J 419=21 L W 545=88 Ind Cas 407 Assignment cannot be effected by release A I R 1917 Pat 170=8 Pat L J 163=101 Ind Cas 616 Legal representative must apply for execution and not for substitution only even though predecessor's execution application is pending A I R 1927 All 163=49 A 509=75 A L J 249=104 Ind Cas 116 Assignment in anticipation of decree is valid A I R 1927 Nag 403=106 Ind Cas 54 Assignment is enforceable from date of assignment and not from date of substitution of names A I R 1928 Sml 71=103 Ind Cas 54 In case of a transfer the deed of transfer must be looked at for determining if the decree is transferred 128 Ind Cas 584 Legal representatives brought on record can continue execution application made by the deceased A I R 1930 Sind 282=123 Ind Cas 303

Real owner can execute decree obtained in name of *benamidar* after latter's death A I R 1928 Cal 835=114 Ind Cas 495 A partial transfer of decree is valid and can be executed by assignee A I R 1918 Mad 713=27 L W 544=109 Ind Cas 872, A I R 1928 Lah 70=107 Ind Cas 603 The transfer of a money decree is in no way affected on account of the attachment of the decree A I R 1929 Pat 15=7 Pat 726=9 P L T 822=113 Ind Cas 673 Assignment if not bogus is not invalid for want of consideration A I R 1928 Mad 458=109 Ind Cas 617 Recognition of assignment of decree by Court gives fresh starting point of limitation A I R 1929 Mad 252=29 L W 203=(1929) M. W. N 78=56 M L J 555=52 M 590=118 Ind Cas 775

Assignment is enforceable even without substitution of names Assignee can object to attachment after assignment A I R 1928 Rang 25=6 Bur I J 21=136 Ind Cas 85 Rule 16 applies only to substitute along with execution A I R 1928 All 299=50 A 621=26 A I J 417=109 Ind Cas 412, see also A I R 1928 Oudh 30=3 Luck. 126=4 O W N 1025=105 Ind Cas 611 Assignment of attached decree is subject to rights of attachment creditor A I R 1927 Mad 1025=(1927) M W N 608=105 Ind Cas 606 Assignee has to apply for substitution of his name under rule 16 only once and not every time to arrest execution A I R 1927 Cal 694=31 C W N 921=104 Ind Cas 4 W 14 after death of parties to a transfer of decree, heir of real and *benamidar* are entitled to execute decree Court is competent to decide the question A I R 1927 Cal 903=26 L W 308=39 M L T 176=1927 M W N 639=53 M I J 111=15 Ind Cas 405 but see A I R 1927 Mad 240=98 Ind Cas 257

Rule 16 does not prevent an agreement between the parties to the judgment debtors to execute decree against real and *benamidar* advanced A I R 1927 Mad 372=52 M L J 55=71 M 111=111 Ind Cas 111 Assignee to benefits pending execution arise when the assignee is the holder of execution A I R 1927 Kan 53=4 Pat 42=111 Ind Cas 309 Purchaser of property in liquidation of the estate of the assignee decree holder A I R 1927 Mad 24=111 Ind Cas 240=98 Ind Cas 257 Fractional interest by mortgagor of the property sold 26 Ind Cas 267=48 A

432=24 A L J 430=92 Ind Cas 376 The expression "a decree for payment of money against several persons" signifies a personal decree A I R 1926 Mad 1141=51 M L J 114=08 Ind Cas 26 Rule 16 is not applicable to the case of transfer A I R 1926 Mad 1129=24 L W 392=97 decree holder does not become a transferee of the decree as within rule 16 A I R 1926 Pat 320=5 Pat 511=7 P L T 793=96 Ind Cas 446 Rule 16 is not exhaustive of the mode of transfer A I R 1926 Mad 381=50 M L J 79=92 Ind Cas 1021 Mortgage decree is not a money decree for the purpose of second proviso to rule 16 A I R 1926 Mad 623=49 M 508=23 L W 515=1926 M W N 224=51 M L J 139=93 Ind Cas 58, see also 47 M 948=47 M L J 434=20 L W 465=1924 M W N 747=35 M L T 81=82 Ind Cas 948

Pre-emption decree can be executed by pre to another A I R 1924 Lah 615=75 Ind under decree by ostensible decree holder in assignment within the rule 1933 A L J 24 operation of law means transfer on death Ind Cas 792=35 Bom L R 795=57 Bom 513=A I R 1933 Bom 367, see also 137 Ind Cas 50=54A 448=1932 A L J 250=A I R 1932 All 704 Heir can continue same *dar khast* provided he obtains order under rule 16 134 Ind Cas 720=33 Bom L R 818=A I R 1931 Bom 423 Where decree is in favour of several persons of decree by one of them passes only interest of assignor decree 891=A I R 1933 Lah 473

writing—Assignment of a decree need not be in writing of Property Act though for purposes of execution O XXI, r 16 to be in writing A I R 1926 Mad 478=27 L W 538=54 M Ind Cas 563

It must be given both to assignor and the judgment-debtor; it must be said to have acquiesced when the appeal is barred on execution application made without notice 118 P L R 1917=39 Ind Cas 952, see also A I R 1917 Ind Cas 250 Notice under s 158 (2) B T Act dispense with notice under the rule (1921) Pat 1=1 57 Ind Cas 230 Failure of notice vitiates all 143=2 Lah 230=3 Lah L J 434=91 P L R of notice of assignment to debtor payment 1924 Pat 118=2 Pat 754=76 Ind Cas 55 validity of proceedings knowledge of proceedings of A I R 1924 Pat 576=3 Pat 596=5 Pat 117 notice under Order XXI rule 16 does not give fresh period 1925 Cal 23=39 C L J 590=28 C W N 963=84 Ind Cas notice to subsequent mortgagee judgment-debtor vitiates the proceedings A I R 1929 All 437=117 Ind Cas 614, see also All 627=(1930) A L J 266=5 A 858=129 Ind Cas 445 Notice defective or invalid execution saves limitation A I R 1933 Pat 638

[s. 245] (1) On receiving an application for, the execution of a decree as provided by rule 11, sub-rule (2) the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with. If not been complied with, the Court may reject the application and there or within a period fixed by it.

Where

it shall be

presented to

(3) Every application shall be

the Judge

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was

of sub-rule  
in accordance with law

initialled by



made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree

N B—For local amendments in Allahabad, C P, Lahore Oudh and Rangoon vide *infra*

Scope—Court can call upon decree holder to specify approximate value of land to be attached A I R 19 9 Nag 50, 116 Ind Cas 65 After application is registered no amendment is possible But application to file fresh list of properties is not amendment A I R 19 4 Pat 20=2 Pat 787=74 Ind Cas 144, 71 Ind Cas 741=3 Pat 3 S=4 P L T 97 Words on receiving an application for execution of a decree in rule 17 do not preclude Court from allowing amendment at a later stage so that the party does not suffer for Courts in stake A I R 1924 Mad 567=43 M L J 31=18 L W 7, 9=33 M L T 12, 76 Ind Cas 750 It is not Court's duty to see that the entry of interest is correct A I R 1922 Pat. 402=1 Pat 149=67 Ind Cas 200 Supplemental list of properties

Application 44 Ind Cas 563=2 C the rule the Court is not bound to reject d but only that which was not amended in material 17 N L R 179=4 N L J 71=63 Ind Cas 67 see also A I R 19 2 All 446=10 N L J 580=68 Ind Cas 175, A I R 1928 Mad 440=27 L W 475=112 Ind Cas 56 Defects such as omission to give dates of previous execution petition costs or date and place of verification or to file copy of decree are rev A I R 1928 Mad 440=27 L W 475=112 Ind Cas 6 see also 32 L W R 19 9=47 Ind Cas 982 Parties should not suffer by Courts failure to check the correctness of execution application Amendment is retrospective in operation A I R 19 2 Mad 4=39 M L T 37=24 M L J 134=27 L W 7 6 07 I I Cas 303 see also A I R 1930 Oudh 63, 6 O W N 1064=3 Luk 458=124 Ind Cas 44, 35 Ind Cas 876=31 M L J 561=4 L W 103 Validity of amendment cannot be challenged by judgment debtor at later stage of e

440=27 L W 475=11

A I R 1934 Nag 117

nor verified by the dec

15=34 M L W 546=61 M L J 516 Where execution application is filed with a time but illegally returned for correction it can be considered as the same application when refiled 144 Ind Cas 288=10 O W N 721=A I R 1933 Oudh 288, see also 138 Ind Cas 91=11 Pat 546=13 P L T 318=A I R 1932 Pat 222 Court can allow amendment of application for e before proceeding end 139 Ind Cas 840=11 Pat 508=A I R 1932 P

18 [S 246] (1) Where applications are made for the execution in case of cross execution of cross decrees its for decrees the payment of two sums d be between the same parties an tion at the same time by such Court then—

(a) if the two sums are equal satisfaction shall be th decrees, and

(b) if the two sums are unequal execution may be take e holder of the decree for the larger sum and for remains after deducting the smaller sum and satisfaction smaller sum shall be entered on the decree for th as well as satisfaction on the decree for the smaller

(2) This rule shall of one of the decrees a

original assignor as in re

(3) This rule shall be deemed to apply unless—

(a) the decree holder in one of the suits in which the decree made is the judgment debtor in the other and each the same character in both suits, and

432=24 A L J 430=92 Ind Cas 376 The expression 'a decree for payment of money against several persons' signifies a personal decree A I R 1926 Mad 1141=51 M L J 443=98 Ind Cas 26 Rule 16 is not applicable to the case of transfer of preliminary decree in partition suit A I R 1926 Mad 1129=24 L W 392=97 Ind Cas 754 Decree holder of the decree holder does not become a transferee of the decree holder by operation of law within rule 16 A I R 1926 Pat 320=5 Pat 511=7 P L T 793=96 Ind Cas 446 Rule 16 is not exhaustive of the mode of transfer A I R 1926 Mad 381=50 M L J 79=92 Ind Cas 1021 Mortgage decree is not a money decree for the purpose of second proviso to rule 16 A I R 1926 Mad 623=49 M 508=23 L W 515=1926 M W N 224=51 M L J 139=93 Ind Cas 58, see also 47 M 948=47 M L J 434=20 L W 465=1924 M W N 747=35 M L T 81=82 Ind Cas 948

Pre-emption decree can be executed by pre-emptor even after selling the property to another A I R 1924 Lah 615=75 Ind Cas 844 Relinquishment of rights under decree by ostensible decree holder in favour of actual decree holder is an assignment within the rule 1933 A L J 248=A I R 1933 All 188 Transfer by operation of law means transfer on death or by devolution or by succession 145 Ind Cas 792=35 Bom 133 Bom 367, see also 137 Ind Cas 50=54A 32 All 704 Heir can continue same *dar khast* 134 Ind Cas 720=33 Bom L R 818=A in favour of several persons, assignment of decree by one of them passes only interest of assignor decree-holder 145 Ind Cas 891=A I R 1933 Lah 473

**Assignment in writing**—Assignment of a decree need not be in writing under the Transfer of Property Act though for purposes of execution O XXI, r 16 requires the transfer to be in writing A I R 1926 Mad 478=27 L W 538=54 M L J 663=51 M 681=102 Ind Cas 563

**Notice—**  
debtor, and;  
against the

sary notice 75 P W R 1917=118 P L R 1917=39 Ind Cas 952, see also A I R 1921 Pat 76=(1921) Pat 1=57 Ind Cas 250 Notice under s 158(2) B T Act  
ice under the rule (1921) Pat 1=1  
230 Failure of notice vitiates all  
230=3 Lah L J 434=91 P L R  
of assignment to debtor payment  
118=2 Pat 754=76 Ind Cas 55  
ceedings knowledge of proceedings of  
Pat 576=3 Pat 596=5 Pat I F  
rule 16 does not give fresh period  
90=28 C W N 963=84 Ind Cas  
gauge judgment-debtor vitiates the  
437=117 Ind Cas 614, see also

A I R 1930 All 627=(1930) A L J 266=5 A 858=129 Ind Cas 445 Notice issued on defective or invalid execution saves limitation A I R 1933 Pat 658

**17 [s. 245] (1)** On receiving an application for, the execution of a decree as provided by rule 11, sub-rule (2) the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented

(3) Every amendment made under this rule shall be signed or initialed by the Judge

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was

made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application.

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

N B.—For local amendments in Allahabad, C P., Lahore Oudh and Rangoon, vide *infra*.

Scope.—Court can call upon decree holder to specify approximate value of land to be attached A I R 1929 Nag 305=116 Ind Cas 65 After application is registered no amendment is possible But application to file fresh list of properties is not amendment A I R 1914 Pat 20=2 Pat 787=74 Ind Cas 144, 71 Ind Cas 741=3 Pat 378=4 P L T 99 Words on receiving an application for execution of a decree in rule 17 do not preclude Court from allowing amendment at a later stage so that the party does not suffer for Court's mistake A I R 1924 Mad 367=45 M L J 651=18 L W 759=33 M L T 125=76 Ind Cas 750 It is not Court's duty to see that the entry of interest is correct A I R 1922 Pat 402=1 Pat 149=69 Ind Cas 200 Supplemental list of properties filed later on is part of the original application 44 Ind Cas 563=22 C W . . . the rule the Court is not bound to reject

an d but only that which was not amended in material 17 N L R 179=4 N L J 71=63 Ind Cas 97 see also A I R 1922 All 446=20 A L J 580=68 Ind Cas 175, A I R 1928 Mad 440=27 L W 475=112 Ind Cas 36 Defects such as omission to give dates of previous execution petition costs or date and place of verification, or to file copy of decree are trivial A I R 1928 Mad 440=27 L W 475=112 Ind Cas 36 see also 32 P W R 1919=49 Ind Cas 982 Parties should not suffer by Court's failure to check in the Amendment is retrospective in operation A I M L J 154=27 L W 76=107 Ind Cas 303 6 O W N 1064=5 Luck 458=124 Ind Cas 561=4 L W 103 Validity of amendment debtor at later

440=27 L W , neither signed  
A I R 1934 N 135 Ind Cas  
nor verified by  
15=34 M L W 546=61 M L J 516 Where execution application is filed within time but illegally returned for correction, it can be considered as the same application when refiled 144 Ind Cas 288=10 O W N 721=A I R 1933 Oudh 288, see also 138 Ind Cas 91=11 Pat 546=13 P I R 318=A I R 1932 Pat 222 Court can allow amendment of application for execution before proceedings end 139 Ind Cas 840=11 Pat 508=A I R 1932 Pat 376

18. [S 248] (1) Where applications are made to a Court for the execution of cross decrees or separate suits for the payment of two or more sums of money payable by or between the same parties, and capable of execution at the same time by such Court, then—

(a) if the two sums are equal, satisfaction shall be entered upon both decrees, and  
(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall apply to decrees assigned by the original assignor as in rule 17.

(3) This rule shall be deemed to apply unless—  
(a) the decree holder in one of the suits in which the decrees have been made is the judgment debtor in the other and each party is of the same character in both suits, and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross decree in relation to a decree passed against him singly in favour of one or more of such persons

### Illustrations

(a) A holds a decree against B for Rs 1,000 B holds a decree against A for the payment of Rs 1,000 in case A fails to deliver certain goods at a future day B cannot treat his decree as a cross decree under this rule

(b) A and B, co plaintiffs obtain a decree for Rs 1,000 against C, and C obtains a decree for Rs 1,000 against B C cannot treat his decree as a cross decree under this rule

(c) A obtains a decree against B for Rs 1,000 C who is a trustee for B, obtains a decree on behalf of B against A for Rs 1,000 B cannot treat C's decree as a cross decree under this rule

(d) A, B, C D and E are jointly and severally liable for Rs 1,000 under a decree obtained by F A obtains a decree for Rs 100 against F singly and applies for execution to the Court in which the joint-decree is being executed F may treat his joint decree as a cross decree under this rule

**Scope**—Principles of proceeding under the rule is the same as under Order VIII

Barred debt cannot be set off against a decree holder to decrees for execution before the same Court A I R 1930 Lah 508=126 Ind Cas 516 Mortgage decree for sale under which debt is recoverable only out of the property is not ordinary decree for sale in enforcement of mortgage cannot be set off against personal decree A I R 1930 Rang 68=7 Rang 50=120 Ind Cas 699, see also 15 A L J 327=39 Ind Cas 560, 38 A 669=14 A L J 776=36 Ind Cas 948 Defendant cannot set off his preliminary decree for sale, the amount not being ascertained until accounts are taken A I R 1931 Cal 23=57 C 855=129 Ind Cas 420 Pre-emption decree holder is entitled to deduct costs awarded to him from deposit made by him A I R 1922 Lah 142=2 Lah 294=4 Lah L J 354=23 I L R 1922=6, Ind Cas 0 Decree in proceeding under s 144 is capable of set off under the rule A I R 1925 Cal 102 28 C W N 988=84 Ind Cas 747 Attaching decree holders are assignees as contemplated by Order XXI rule 18(2) *Ibid* Decree for costs awarded to a person by Appellate Court if smaller than amount due from him under lower Court's decree cannot be executed until the latter amount is paid 46 C 168=27 C L J 392=45 Ind Cas 241 Decree in favour of partners individually can be set off against decree against firm having same individual as all the partners A I R 1927 Bom 255=29 Bom L J 4 Decree can still execute his decree A I R 1934 Cal 140 Right of set off before same Court for execution 145 Ind Cas 767=A I R 1933 Mad 215 Decree to be adjusted by set-off should be capable of execution at time of adjustment A I R 1933 Lah 372 A set off cannot be allowed against the transferee of a decree 138 Ind Cas 285=33 P L R 671=A I R 1932 Lah 537 If personal remedy is barred this rule ceases to apply 143 Ind Cas 542=14 P L T 189=A I R 1933 Pat 210

19 [S 247] Where application is made

Execution in case of cross claims under same decree to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree, and,

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree

**Scope**—Two parties referred to in the rule are the parties to suit and do not refer to (1923) M 638= set off 101 be R 1930 A I d into to put action is properly within the rule though the decree merely declares rights of parties without directing any act to be done Amount of costs and mesne profits until nt of deposit ordered by pre-emption decree Deducting of smaller sum under order e compelled by Court under s 151 by ordering refund of the excess 24 C W N 465=56 Ind Cas 783

20 [W 8] The provisions contained in rules 18 and 19 shall apply Cross-decrees and cross to decrees for sale in enforcement of a mortgage claims in mortgage suits or charge

**Scope**—In order to ascertain whether decrees are cross decrees or not, the substance of the decree must be looked into and not the form 143 Ind Cas 542= 14 P L T 189= A I R 1933 Pat 210 (2) For principle of set off it is not necessary that both decrees must be mortgage decrees *Ibid* In mortgage decree, this rule applies if personal remedy is legally available It is not necessary that personal liability should exist under the decree *Ibid*, see also 140 Ind Cas 378=36 M L W 644=1932 M W N 1187=63 M L J 722=56 M 339= A I R 1933 Mad 63 Right of set off is not lost merely because Court is asked to notify encumbrance of decree 143 Ind Cas 542=14 P L T 189= A I R 1933 Pat 210 Court has ample discretion under the rule and where it is properly exercised High Court will not interfere 132 Ind Cas 507=33 Bom L R 370= A I R 1931 Bom 247

21 [S 230 second para] The Court may in its discretion refuse execution at the same time against the person and Simultaneous execution property of the judgment debtor

**Scope**—Court can refuse simultaneous execution against person and property but cannot refuse execution against person by insisting first proceeding against property A I R 1929 Lah 86=110 Ind Cas 185, A I R 1934 Nag 140 Discretion under the rule also applies in case of attachment before judgment A I R 1924 Rang 381=2 Rang 362=3 Bur L J 159=84 Ind Cas 270

Notice to show cause against 22. [S 248] (1) Where an application execution in certain cases for execution is made—

(a) more than one year after the date of the decree, or

(b) against the legal representative of a party to the decree, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him

(2) Nothing in the foregoing sub rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice

N B—For local amendments in Allahabad, Bombay C P, Lahore Madras Oudh, Peshwar and Rangoon vide *infra*



Application to set aside sale for want of notice under rule 22 is governed by Art 181, Limitation Act A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 Issue of notice under the rule gives fresh start for limitation even though application be not according to law A I R 1927 Lah 106=9 Lah L J 76=28 P L R 93=100 Ind Cas 475, see also 34 Ind Cas 283=19 O C 17 Order 22 does not apply to transferee of decree A I R 1934 Pat 211 Judgment debtor on the notice A I R 1934 Pat 211 Judgment debtor although minor is treated as minor, there A I R 1934 Pat 211 Judgment debtor can show that the provision of the rule has not been complied with even where order sheet states issue of notice and set legal representative all the while was need be issued 143 Ind Cas 297=1 to issue notice to legal representative and void *Idem*; see also 144 Ind Cas 14=A I R 1933 Pesh 41, 133 Ind Cas 670=35 C W N 220=53 C L 146=A I R 1931 Cal 555, A I R 1932 Cal 581=54 C L J R 1933 Mad 224, A I R 1932 Pat. 199=138 =11 Pat 241 Person challenging correctness of Burden of proving non service is on the judgment debtor 36 C W N 242=A I R 1932 Cal 627=140 Ind Cas 732, see also 138 Ind Cas 99=13 P L T 323=11. Sub-rule (2) is not mandatory and omission to

he set aside in its W N 220=53 C L J 46=58 C 825=A I R 1931 Cal 555

23 [S 249] (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit

Sub-section (2)—Vide 5 B L R App 65=14 W R 155 5 Ind Cas 546, 8 A. 301

### *Process for execution.*

24 [Ss. 250, 251] (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

N B—For local amendments in Allahabad, Bombay, C P Rangoon and Sind, Vide *infra*

Resistance of bid warrant is no offence 1 Pat L J 550=36 Ind Cas 871 It is mandatory to seal with seal of Court warrant of attachment Non compliance renders warrant illegal 3 Pat L J 636=49 Ind Cas 171 Execution of warrant after date of its return is act out of jurisdiction A I R. 1924 Nag 68=19 N L R 183=25 Cr L J 772

**Scope**—Rule 22 being mandatory reasons for not issuing notice must be stated (1917) M W N 498=6 L W 361=33 M L J 539=40 Ind Cas 670, see also 44 C 934=21 C W N 776=24 C L J 523=38 Ind Cas 493 Notice must be issued by Court executing the decree and not by Court transferring it 43 C 903=20 C W N 889=23 C L J 645=36 Ind Cas 602 (F B), 26 C W N 292=63 Ind Cas 116 Notice not complying with rule 22 is not binding on judgment debtor 32 Ind Cas 744 To give jurisdiction to effect sale in execution notice must be served A I R 1921 Cal 476=35 C L J 9=64 Ind Cas 25, see also 25 C W N 972=64 Ind Cas 476, A I R 1921 Mad 523=14 L W 638=63 Ind Cas 903, 3 U P L R (Pat) 33=2 P L T 401=6 L J 319=61 Ind Cas 823, 74 Ind Cas 202=(1919) Pat 386, *contra* 5 O L J 521=48 Ind Cas (39), 27 C L J 130=22 C W N 390=41

being given to the judgment-debtor actually appearing 29=35 C W N 9=131 Ind Cas 702 Provision is mandatory only when application is being first taken out A I R 1929 Mad 275=30 L W 995=117 Ind Cas 703, *contra* 87 Ind Cas 531=6 P L T 290=5 Pat 1 Notice to adult legal representative on record where others are minors is sufficient under the rule A I R 1929 Mad 275=30 L W 995=117 Ind Cas 703, see also A I R 1929 Mad 275=30 L W 995=117 Ind Cas 703 If Judge records no reasons for not issuing process by overlooking provisions of rule 22 omission to issue notice renders proceedings void for want of =7 Rang 110=117 Ind Cas 245, see 3=119 Ind Cas 43 Valid notice must come and oppose application A I R 1928 Mad 1052=116 Ind Cas 363

Omission to issue notice under sub rule (1) renders subsequent proceedings void and sub rule (2) does not cure defect A I R 1928 Cal 60=55 C 96=46 C L J 579, A I R 1926 Cal 539=91 Ind Cas 711, 102 Ind Cas 239=25 A L J 507=49 A 830=A I R 1928 All 74, A I R 1924 Mad 431=47 M 288=49 M L J 104=34 M L T 37=80 Ind Cas 92, but see 74 Ind Cas 202=(1919) Pat 386, A I R 1924 Oudh 120=26 O C 288=73 Ind Cas 241, A I R 1922 Mad 93=45 M 875=(1912) M W N 173=42 M L J 422=70 Ind Cas 611 Where proceedings are continuation of previous execution notice is not essential A I R 1928 Cal 241 Order deciding question of service or non service of notice under rule 22 is one under s 47 and second appeal lies A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 see also 91 Ind Cas 711=A I R 1926 Cal 539 Notice under r 22 for judgment debtor to show cause against execution and also to give him opportunity to satisfy the decree and so failure to serve notice on one of the judgment-debtors ceasing to have interest in the property does not vitiate execution proceedings in view of Art 187 of the Limitation Act A I R 1926 Cal 86=88 Ind Cas 1039 Sale after judgment debtors death without bringing on record representatives is a nullity A I R 1926 Mad 138=22 L W 828=50 M L J 652=92 Ind Cas 308, but see 32 C W N 418=115 Ind Cas 520, A I R 1924 Mad 130=18 L W 577=45 M L J 413=47 M 63=75 Ind Cas 46 Notice under rule 22 is not needed where judgment debtor has been given opportunity to show cause against sale being had 188 P L R 1920=5 Lah L J 67=55 Ind Cas 816 Notice under Order XXI rule 56 may be sufficient not to demand that to revive decree notice should be given under this rule 33 M L J 533=40 M 1127=40 Ind Cas 608 Plea of legal representative not served with notice not taken during suit but after execution sale had become complete and in Appellate Court cannot nullify sale 4 Pat L J 645=52 Ind Cas 125 Court transferring decree cannot issue notice under Order XXI r 22 A I R 1922 Cal 3=26 C W N 29=63 Ind Cas 116 Application under this rule is to facilitate execution A I R 1922 Cal 44=35 C L J 8=6, Ind Cas 571 Execution sale

Order XXI r 22 has judgment-debtor A I R Service of notice of the co-defendants is good notice under this rule A I R 1921 Cal 47=35 C L J 9=64 Ind Cas 25 Each execution application made more than one year after first order need not be preceded by notice A I R 1911 Pat 111=2 Pat 916=4 P L T 721=74 Ind Cas 838 Party attaining majority during suit is not entitled to fresh notice of execution proceedings A I R 1925 Mad 158=78 Ind Cas 12



Application to set aside sale for want of notice under rule 22 is governed by Art. 181, Limitation Act A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 Issue of notice under the rule gives fresh start for limitation even though application be not according to law A I R 1927 Lah 106=9 Lah L J 76=28 P L R 93=100 Ind Cas 473, see also 34 Ind Cas 283=19 O C 17 Order 22 does not apply to transferee of decree A I R 1923 W N 723=87 Ind Cas 21 Sale is not judgment-debtor on the notice A I R 1934 Pat 211 Judgment debtor although minor is treated as minor, there A I R 1934 Pat 211 Judgment debtor

can show that the provision of the rule has not been complied with even where order sheet states issue of notice and set aside sale by legal representative all the while was need be issued 143 Ind Cas 293=1 to issue notice to legal representative and void *Ibid*; see also 144 Ind Cas 14=A I R 1933 Pesh 41; 133 Ind Cas 670=35 C W N 220=53 C L J 46=A I R 1931 Cal 555, A I R 1932 Cal 381=54 C L J 391, A I R 1933 Pesh 71, A I R 1933 Mad 224, A I R 1932 Pat. 199=138 Ind Cas 99=13 P L T 323=11 Pat 241 Person challenging correctness of official act must prove his allegation Burden of proving non service is on the judgment-debtor 36 C W N 242=A I R 1932 Cal 627=140 Ind Cas 732, see also 138 Ind Cas 99=13 P L T 323=11 Sub-rule (2) is not mandatory and omission to notices is irregularity not invalidating order made L R 987, 35 C W N 228=58 C 940=A I R 1931 Cal 555 not been issued to some of the judgment-debtors the sale cannot be set aside in its entirety but only to the extent of share of unserved ones 35 C W N 220=53 C L J 46=58 C 825=A I R 1931 Cal 555

23 [S 249] (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit

Sub-section (2)—Vide 5 B L R App 65=14 W R 155, 5 Ind Cas 546, 8 A. 301

### *Process for execution.*

24 [Ss 250, 251] (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed

(3) In every such process a day shall be specified on or before which it shall be executed.

N B—For local amendments in Allahabad, Bombay, C. P. Rangoon and Sind vide *infra*

Scope—Condition precedent not being complied with disempowers a court to execute decree A I R 1924 Rang 375=3 Ind L J 163=85 Ind Cas 352  
 Resistance of bail warrants  
 mandamus to seal with seal  
 orders without illegal 3 Pat  
 L J 636=49 Ind Cas 171 Execution of warrant after date of its return is act-  
 out of jurisdiction A I R 1924 Nag 68=19 N L R 183=23 C L J 112

Scope.—Rule 22 being mandatory reasons for not issuing notice must be stated. (1917) M W N 498=6 L W 361=33 M L J 339=40 Ind Cas 670, see also 44 C 934=21 C W N 776=24 C L J 523=38 Ind Cas 493 Notice must be issued by Court executing the decree and not by Court transferring it 43 C 903=20 C W N 889=23 C L J 645=56 Ind Cas 602 (F B), 26 C W N 292=63 Ind Cas 116 Notice not complying with rule 22 is not binding on judgment-debtor 32 Ind Cas 744 To give jurisdiction to effect sale in execution notice must be served A I R 1921 Cal 476=35 C L J 9=64 Ind Cas 25, see also 25 C W N 19=61 Ind Cas 823, 74 Ind 19=48 Ind Cas (39), 27 C L J L J 130=22 C W N 390=41 being given to the judgment debtor actually appearing C W N 9=131 Ind s being first taken out *infra* 87 Ind Cas 531= on record where others

Cas 702 Provision is A I R 1929 Mad 275 6 P L T 290=5 Pat 1 are minors is sufficient under the rule A I R 1929 Mad 275=30 L W 995=117 Ind Cas 703, see also A I R 1929 Mad 275=30 L W 995=117 Ind Cas 703 If judge records no reasons for not issuing process by overlooking notice renders proceedings void for want =7 Rang 110=117 Ind Cas 245, see =119 Ind Cas 43 Valid notice must come and oppose application A I R

1928 Mad 1052=116 Ind Cas 363

Omission to issue notice under sub rule (1) renders subsequent proceedings void and sub rule (2) does not cure defect A I R 1928 Cal 60=55 C 96=46 C L J 579, A I R 1926 Cal 539=91 Ind Cas 711, 102 Ind Cas 239=25 A L J 507=49 A 830=A I R 1928 All 74, A I R 1924 Mad 431=47 M 288=49 M L J 104=34 M L T 37=80 Ind Cas 92, but see 74 Ind Cas 202=(1919) Pat 386, A I R 1924 Oudh 120=26 O C 288=73 Ind Cas 241, A I R 1922 Mad 93=45 M 875=(1912) M W N 173=42 M L J 422=70 Ind Cas 611 Where proceedings are continuation of previous execution notice is not essential A I R 1928 Cal 241 Order deciding question of service or non service of notice under rule 22 is one under s 47 and second appeal lies A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 see also 91 Ind Cas 711=A I R 1926 Cal 539 Notice under r 22 is for judgment debtor to show cause against execution and also to give him opportunity to satisfy the decree and so failure to serve notice on one of the judgment-debtors ceasing to have interest in the property does not vitiate execution proceedings in view of Art 187 of the Limitation Act A I R 1926 Cal 86=88 Ind. Cas. 1039 Sale after judgment debtors death without bringing on record representatives is a nullity A I R 1926 Mad 138=22 L W 828=50 M L J 652=92 Ind Cas 308, but see 32 C W N 418=115 Ind Cas 520, A I R 1924 Mad 130=18 L W 577=45 M L J 413=47 M 63=75 Ind Cas 46 Notice under rule 22 is not needed where judgment-debtor has been given opportunity to show cause against sale being had 188 P L R 1920=5 Lah L J 67=55 Ind Cas 816 Notice under Order XVI rule 56 may be sufficient notice under Order XVI, rule 22 A I R 1921 Lah 384=5 Lah L J 67 Reason demands that to revive decree notice should be given under this rule 33 M L J 533=40 M 1127=40 Ind Cas 608 Plea of legal representative not served with notice not taken during suit but after execution sale had become complete and in Appellate Court cannot nullify sale 4 Pat L J 645=52 Ind Cas 125 Court transferring decree cannot issue notice under Order XVI r 22 A I R 1922 Cal. 3=26 C W N 292=63 Ind Cas 116 Application under this rule is to facilitate non sale r 22 has A I R of notice defendants

is good notice under this rule. A I R 1921 Cal 47=35 C L J 9=64 Ind Cas 25 Each execution application made more than one year after first order need not be preceded by notice. A I R 1921 Pat 111=2 Pat 916=4 P L T 721=74 Ind Cas 838 Party attaining majority during suit is not entitled to fresh notice of execution proceedings A I R 1925 Mad 138=78 Ind Cas 12

Application to set aside sale for want of notice under rule 22 is governed by Art. 181, Limitation Act A I R 1926 Pat 397=8 P L T 28=97 Ind Cas 798 Issue of notice under the rule gives fresh start for limitation even though application be not according to law A I R 1927 Lah 106=9 Lah L J 76=28 P L R 93=100 Ind Cas 475, see also 34 Ind Cas 283=19 O C 17 Order 22 does not apply to transferee of decree A I R 1925 Oudh 448=12 O L J 146=2 O W N 723=87 Ind Cas 21 Sale is not judgment-debtor on the notice A I R 1934 Pat 211 Judgment debtor although minor is treated as minor there A I R 1934 Pat 211 Judgment debtor

can show that the provision of the rule has not been complied with even where order sheet states issue of notice and set aside sale for want of notice and legal representative all the while was need be issued 143 Ind Cas 297=1 to issue notice to legal representative and void *Ibid*, see also 144 Ind Cas 670=35 C W N 220=33 C L 381=54 C L J 591, A I R 1933 Pesh 71, A I R 1933 Muz 224, A I R 1932 Pat 199=138 Ind Cas 99=13 P L T 323=11 Pat 241 Person challenging correctness of official act must prove his allegations Burden of proving non service is on the judgment debtor 36 C W N 242=A I R 1932 Cal 627=140 Ind Cas 732, see also 138 Ind Cas 99=13 P L T 323=11 Pat 241=A I R 1932 Pat 199 Sub-rule (2) is not mandatory and omission to record reason for dispensing with 2 Bom 309=34 Bom 3 Where notice has been set aside in its whole or in part W N 200=53 C L J 46=38 C 82=A I R 1931 Cal 55

23 [S 249] (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit

Sub-section (2)—Vide 5 B L R App 65=14 W R 155 5 Ind Cas 546, 8 A 301

### *Process for execution.*

24 [Ss 250, 251] (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall unless it sees cause to the contrary, issue its process for the execution of the decree

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed

(3) In every such process a day shall be specified on or before which it shall be executed

N B—For local amendments in Allahabad Bombay, C P Rangoon and Sind, Vide *infra*

Scope—Condition precedent not being complied with disentitles decree holder from executing decree A I R 1924 Rang 375=3 Bur L J 163=8, Ind Cas 352 Execution warrant without date before which it is to be executed is bad warrant One person cannot execute warrant directed to another Residence of bad warrant is no offence 1 Pat L J 550=36 Ind Cas 871 It is mandatory to seal with seal of Court warrant of attachment Non compliance renders warrant illegal 3 Pat L J 636=49 Ind Cas 171 Execution of warrant after date of its return is acting out of jurisdiction A I R 1924 Nag 68=19 N L R 183=25 Pat L J 223=76

Ind Cas 655 Warrant issued by *Sheristadar* by order\* must be presumed to be legal A I R 1923 Cal 584=37 C L J 331=27 C W N. 1042=73 Ind Cas 328 Where date for attachment is fixed, subsequent attachment is not lawful 144 Ind Cas 32=1933 A L J 1=55 A 119=A I R 1933 All 46

25 [S 243] (r) The officer entrusted with the execution of the Endorsement on process process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit summon and examine witnesses as to such inability, and shall record the result

N B—For local amendments in Allahabad Madras and Oudh vide *infra*

Notes—Officer means peon and not nazir 40 C 849=17 C W N 841=19 Ind Cas 706 The peon derives his authority from the Court *Ibid*

#### *Stay of execution*

26. [Ss 239, 240] (r) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto

(2) Where the property or person of the judgment debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the Court may require such security from, or impose conditions upon, the judgment debtor as it thinks fit

N B—For local amendments in Allahabad C P Lahore, Oudh Peshwar and Rangoon vide *infra*

Scope—The executing Court has no power to stay execution after appeal is filed 35 A 119=11 A L J 83 Stay order is not subject to appeal is under s 47 A I R 1924 All 808=46 A 733=22 A I J 706=83 Ind Cas 1035 Judgment debtor's property being attached in execution of decree, and he applying for adjudication execution may be stayed till disposal of application A I R 1926 Sind 199=19 S L R 35=76 Ind Cas 380 Unconditional stay order should never be issued A I R 1925 Mad 903=21 L W 635=88 Ind Cas 439 Furnishing security may empower Court to make stay order A I R 1925 Lah 552=7 Lah L J 343=26 P L R, 634=91 Ind Cas 772 Where Court takes security for mesne profits not determined must take it for indefinite amount A I R 1924 Lah 161=112 Ind Cas 689 Court need not accept security of person whose property is situate out of Court's jurisdiction *Ibid*

27. [S 241.] No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution

Liability of judgment debtor discharged

**28 [S 242]** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon Court appealed to which the decree was sent for execution

Order of Court which passed decree or of appellate Court to be binding upon Court appealed to

**Notes.**—Vide 27 Ind Cas 597

**29. [S 243]** Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided

Stay of execution pending suit between decree holder and judgment debtor

**N B**—For local amendment in Allahabad, Vide *infra* :

**Scope**—Where execution is stayed under this rule, order operates till disposal by Court making order and not till disposal of appeal 134 Ind Cas 939=35 C W N 540=58 C 1113=A I R 1932 Cal 19 Where judgment debtor applied to set aside *ex parte* decree and the Court stayed execution till further orders on judgment debtor's application, but the decree was not set aside the decree holder can apply for execution within three years of final decision of judgment debtor's application on appeal. *Ibid.* This rule has no application to granting of *interim* injunction and applicant can not be asked to furnish security A I R 1933 Nag 153 Court to which decree is transferred has power to stay execution A I R 1934 Cal 4 Execution Court is empowered to order stay of execution of *ex parte* decree for fraud A I R 1923 Lah 574=75 Ind Cas 419 This rule applies to cases not coming under Order XXI r 2 (3) joined with s 47 A I R 1923 Cal 645=27 C W N 575=72 Ind Cas 38 This order refers only to execution proceedings A I R 1930 Lah 961=129 Ind Cas 204 Execution proceedings may not be in Court in which suit is pending A I R 1931 Bom 247=33 Bom L R 370=132 Ind Cas 507 For applicability of this rule application to stay execution must be made to Court passing decree A I R 1930 All 121=122 Ind 722=35 C 512=37 C W N 181=107 Ind Courts discretion if properly exercised A I R 1931 Bom 247=33 Bom L R 370=132 Ind Cas 507, see also A I R 1929 Sind 110=116 Ind Cas 101

### Mode of execution

**30. [S 254]** Every decree for the payment of money, including a decree for the payment of money as the alter native to some other relief, may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his property or by both

Decree for payment of money,

**Scope**—Rule 30 is not exhaustive. A I R 1926 Oudh 616=1 Luck 569=3 O W N 749=98 Ind Cas 33 This rule applies to simple money decree not charging property A I R 1924 Pat 258=2 Pat 768=73 Ind Cas 598 Court issuing notice to surety under s 145 proviso accompanied by warrant for his arrest is legal A I R 1927 Lah 131=99 Ind Cas 518 Whether execution to be against person or property of judgment debtor judgment creditor is to decide Court may refuse execution against both but not against person in first place A I R 1926 Lah 110=6 Lah 548=93 Ind Cas 54

**31 [S 259] (1)** Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment debtor, or by the attachment of his property, or by both

Decree for specific moveable property,

(2) Where any attachment under sub rule (1) has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree

Ind Cas 655 Warrant issued by *Sheristidar* by order" must be presumed to be legal A I R 1923 Cal 584=37 C L J 331=27 C W N. 1042=73 Ind Cas 328 Where date for attachment is fixed, subsequent attachment is not lawful 144 Ind Cas 32=1933 A L J 1=55 A 119=A I R 1933 All 46

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N B—For local amendments in Allahabad C P Lahore Oudh Peshwar and Rangoon vide *infra*

Scope—The executing Court has no power to stay execution after appeal is filed 11 A 110=11 A I I 83 Stay order is not subject to appeal as under s 47 A I R

199=19 S I R 1925 Mad 908=21 L W 635=88 Ind Cas 439 Furnishing security may empower Court to make stay order A I R 1925 Lah 552=7 Lah L J 343=26 P L R, 634=91 Ind Cas 772 Where Court takes security for mesne profits not determined must take it for indefinite amount A I R 1924 Lah 161=112 Ind Cas 689 Court need not accept security of person whose property is situate out of Court's jurisdiction *Ibid*

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28. [S 242] Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution

Order of Court which passed decree or of appellate Court to be binding upon Court applied to

Notes—Vide 27 Ind Cas. 597.

29. [S. 243.] Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Stay of execution pending suit between decree holder and judgment debtor

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 . . . . . is no application to granting of *interim* to furnish security A. I R 1933 Cal 153  
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Decree for payment of money,  
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31. [S 259] (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment debtor, or by the attachment of his property, or by both

(2) Where any attachment under sub rule (1) has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree

holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

**N B**—For local amendments in Allahabad, C P, Lahore, Oudh, Peshwar, and Rangoon, Vide *infra*

**Scope**—For the application of the rule vide, 22 W R 36, 23 Ind Cas 828, 39 M 1=29 M L J 342=(1915) M W N 644=30 Ind Cas 840 (F B) Where the decree is under order XX, rule 10 the procedure of rule 31 is not to be followed A I R 1927 Cal 652=31 C W N 850=55 C 26=103 Ind Cas 740

**32. [S 260 R. S. C O 42, r 30]** (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced \* [in the case of a decree for restitution of conjugal rights by the attachment of his property, or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub rule (1) or sub rule (2) has remained in force for one year, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

#### *Illustration*

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B A, in spite of his detention in prison and the attachment of his property declines to obey a decree obtained against him by B and

\* These words were inserted by s 2 of the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923)



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N. B. For local amendments in Allahabad, C P Lahore, Oudh, Peshwar and Rangoon, see *infra*

**Scope**—Order to furnish account in preliminary decree does not amount to injunction under order XXI, r 32 3 Pat L J 106=44 Ind Cas 737=19 Cr L J 385=44 Ind Cas 737 Court can execute decree against person or property but cannot ask security bond 19 M I T 132=3 L W 161=(1916) 1 M W N 147=32 Ind. Cas 698 Mode of executing decree for injunction is provided by order XXI, rule 32 Appointment of Commissioner nor Police help is necessary 40 A 648=16 A L J 700=48 Ind Cas 26 Disobeying decree for injunction comes under rule 32, cl 5 A I R 1921 Lah 376=25 P L R 1921=59 Ind Cas 594 No suit lies for compensation for breach of terms of compromise decree O XXI, rule 32 and rule 34 apply 24 M L T 34=(1918) M W N 333=7 L W 663=45 Ind Cas 689, see also (1930) M W N 809 Cl 5 rule 32, does not apply to prohibitory injunction A I R. 1934 Cal 402 In a decree for specific performance of contract for sale, Court can as well grant possession of property 131 Ind Cas 529=12 P L T

89, which is not appl cable 141 Ind Cas 713=56 C L J 140=A I R 1930 Cal 96

**33 [N. v.] (1)** Notwithstanding anything in rule 32, the Court, either at the time of passing a decree \* [against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule]

Discretion of Court in execut  
ing decrees for restitution of  
conjugal rights

(2) Where the Court has made an order under sub rule (1) †, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf the judgment debtor shall make to the decree holder such periodical payments as may be just, and, if it thinks fit, require that the judgment debtor shall, to its satisfaction, secure to the decree holder such periodical payments

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same either wholly or in part as it may think just

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

wife from going to her husband 59 Ind Cas 887 Disobedience of decree for

\* These words were inserted by s 3 of the Code of Civil Procedure (Amendment) Act 1923 (29 of 1923)

† These words were substituted for the words 'shall not be executed by detent or in prison' by *Ibid*

‡ The words 'and the decree holder is the wife' were omitted by *Ibid*

restitution of conjugal rights passed against wife should not entail imprisonment 44B 972=22 Bom L R 1097=59 Ind Cas 361 Discretion in passing order under Order XXI, r 33 is not generally subject to revision 78 Ind Cas 190=A I R 1924 All 836

**34 [Ss 261, 262.]** (1) Where a decree is for execution of a document or for the endorsement of a negotiable instrument and the judgment debtor neglects or refuses to obey the decree holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf

(3) Where the judgment debtor objects to the draft, his objections shall be time, and the Court shall make such order as it thinks fit

such alterations (if any) as the Court may have directed upon the proper stamp paper if a stamp is required by the law for the time being in force, and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely —

‘C D, Judge of the Court of (or as the case may be), for A B in a suit by E F, against A B’, and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same

(6) The Court, or such person as the Court may appoint in this behalf, shall cause the document to be registered by the law for the time being in force or the instrument, if it is registered, and may make such order as it thinks fit as to the payment of the expenses of the registration

*note*—Execution of compromise decree for execution of patta comes under rule A I R 1926 Cal 975=95 Ind Cas 179, see also 61 Ind Cas 535 Defendant can execute decree for specific performance under Order XXI, rule 34 A I R 1923 Bom 26=24 Bom L R 496=46 B, 990 Execution of decree for specific performance is one in continuation of suit 14 N L R 176=48 Ind Cas 188 Decree for transfer of shares can be executed in case of default 41 Ind Cas 77

**35. [S 263]** (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may, appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property

(2) Where a decree is for the joint possession of immovable property such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession

**Delivery of possession**—Land if in actual possession of judgment debtor actual and not formal possession must be given A I R 1924 Lah 301=71 Ind Cas 885 Under sub section (1) a person can apply to be put in actual possession 45 Ind Cas 7 Failure to comply with the procedure laid down in this rule is fatal to the delivery of possession 2 Lah L J 202=55 Ind Cas 19 Delivery of possession can be made to any person orally authorised by the decree holder Power of attorney is not necessary 13 N L R 87=18 Cr L J 689=40 Ind Cas 689 Adverse possession does not run where actual possession is given A I R 1924 All 844=79 Ind Cas 1047 Formal delivery of possession amounts to actual delivery A I R 1923 Nag 237=6 N L J 157=72 Ind Cas 318 Delivery of extensive area can be made under rule 35 but will be regarded as one under rule 35 A I R 1923 Pat 76=3 P L T 628=71 Ind Cas 999 Order *ex parte* for delivery of possession should not be made A I R 1923 Pat 597=4 P L T 508=1 Pat L R 393=76 Ind Cas 49=79 Ind Cas 188 Where land is in actual possession of the judgment debtor sub section (1) applies 140 Ind Cas 530=33 P L R 1082=A I R 1933 Lal 22 Judgment debtor's consent is not necessary *Ibit* Cole prescribes two modes of delivery of possession based on nature of property concerned 142 Ind Cas 216=11 Pat 165=13 P L T 121=A I R 1932 Pat 145 Failure to apply for removal of obstruction within 30 days does not debar application to obtain fresh warrant for possession under rule 35 146 Ind Cas 11=35 Bom L R 1033=A I R 1933 Bom 457 (F B) Decree in ejectment against lessee at instance of lessor is also binding upon sub tenant who can be evicted under Order 21, rule 35 137 Ind Cas 139=35 C W N 1132=54 C L J 493=59 C 739=A I R 1932 Cal 241 Where in a decree for khas possession only symbolical possession is obtained during execution decree holder cannot subsequently in a second instalment ask for his possession 131 Ind Cas 623=35 C W N 11=1 A I R 1931 Cal 417 see also 29 M L J 509=32 Ind. Cas 44 26 P L R 1917=20 P R 1917=22 P W R 1917=39 Ind Cas 753.

**Joint possession**—Rule 35 2) is applicable to decree for joint possession A I R 1921 Lah 256=3 Lah L J 138=43 P L R 1911=59 Ind Cas 770 A person entitled to possession of immovable property jointly with others is entitled to a decree for joint possession Whether he was originally in possession or not matters not A I R 1922 All 314=44 A I =19 A L J 780=63 Ind Cas 802, see also A I R 1922 All 162=44 A 5=19 A L J 783=63 Ind Cas 806, A I R 1928 All 472=51 A 303=26 A L J 992=112 Ind Cas 143 Rule 35 alone applies in case of joint holding A I R 1926 Lah 668=27 P L R 617=97 Ind Cas 170 Symbolical joint possession prevents adverse possession from running against decree-holder A I R 1921 Lah 719=108 Ind Cas 396

**Symbolical possession**—Non accompaniment of warrant for delivery of delivery of possession cannot give symbolical delivery A I R 1913 Lah 693=5 Lah L J 507=74 Ind Cas 1 Delivery of symbolical possession through mistake operates for parties as actual possession A I R 1923 Pat 76=3 Pat L T 628=71 Ind Cas 999 Where symbolical possession is delivered in suit for khas possession by decree holder, symbolical A I R 1926 Cal 1172=96 Ind Cas 481 546=89 Ind Cas 596 A I R 1927 M 243, A I R 1925 M 140=49 M L of possession does not stop adverse possession A I R 1929 Lah 545=11 Lah L J 146=118 Ind Cas 391 In case of delivery of symbolical possession where khas possession is to be delivered the remedy open is by fresh suit A I R 1931 Cal 427=35 C W N 12=131 Ind Cas 698 Where the judgment-debtor is in actual possession and delivery of symbolical possession is made, the proper course to institute suit A I R 1927 Nag 36=97 Ind Cas 705 Procedure of delivery of possession purely symbolical must be strictly followed 26 P L R 1917=20 P R 1917=22 P W R 1917=39 Ind Cas 753 Where persons concerned were made aware of the delivery of possession in the course of execution proceedings there has been substantial compliance 2 Lah L J 563=68 Ind Cas 182 Where delivery of the immovable property with standing crops was prayed for in execution and delivery of the land only was given and no of crops, remedy is to apply again for effective possession of the whole and not delivery of the crops A I R 1927 Mad 71=97 Ind Cas 567 Where symbolical possession was delivered to auction purchaser in accordance with the provision of the law a fresh start for the

computation for limitation commences from the date of the delivery of such possession A I R 1928 Oudh 8=3 Luck 130=4 O W N 1005=105 Ind Cas 781

**36 [S 264]** Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property

**Scope**—Rule 36 covers delivery of a mortgagee, but such delivery is merely a holder is entitled to redeem 22 O C is in the possession of the tenant and plied with possession is not legally transferred 33 P W R 1917=41 Ind Cas 752 This rule applies only to a case of exclusive possession of a person not bound by the A I R 1926 Lah 668=27 P L R 501 In order to constitute proper delivery, the possession must be strictly observed A I R 1925 Lah 264=6 Lah L J 522=26 P L R 27=84 Ind Cas 733, see also A I R 1922 Bom 2=24 Bom L R 499=46 B 932=68 Ind Cas 91, A I R 1921 Lah 236=3 Lah L J 138=43 P L R 1921=59 Ind Cas 770 Erroneous delivery of symbolic possession operates as actual possession against the judgment debtor and his representatives A I R 1923 Pat 76=3 P L T 628=24 Cr L J 279=71 Ind Cas 999

### *Arrest and detention in the civil prison*

**37. [S. 245B] (1)** Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor

**Scope**—Where warrant and notice to appear are issued simultaneously warrant is illegal 142 Ind Cas 887=1932 A L J 1073=A I R 1932 All 692, see also 142 Ind Cas 160=11 Pat 743=13 P L T 502=A I R 1932 Pat 315 Notice is necessary before arrest is ordered A I R 1929 Snd 51=89 Ind Cas 401 Previous attachment is not necessary for an application of arrest A I R 1925 Lah 379=7 Lah L J 165=26 P L R 494=89 Ind Cas 138 The mere fact that an appeal is pending is no reason for not enforcing execution by arrest of judgment debtor A I R 1924 Lah 360=73 Ind Cas 766 In mortgage decree executing Court is not competent to direct the arrest of judgment debtor A I R 1930 Lah 103=31 P L R 143=121 Ind Cas 293 In the absence of protection order by the Insolvency Court, an adjudged insolvent can be arrested A I R 1929 Bom 135=31 Bom L R 201=118 Ind Cas 791, 49 A 201=100 Ind Cas 320=A L R 1927 All 418, A I R 1930 Lah 1070=31 P L R 456=128 Ind Cas 314 For a proper case of refusal of arrest vide A L R 1934 Lah 166 The fact that the judgment debtor does not reside within the territorial jurisdiction of the Court is not a sufficient reason for refusing to issue a warrant for his arrest Court should fix a date for its return in such a case 3 Pat L J 95=44 Ind Cas

295. Order issuing a warrant for arrest of a judgment-debtor in execution of a decree is appealable as a decree under s 95 A I R 1924 Lah 360=73 Ind Cas. 766.

38. [S 337] Every warrant for the arrest of a judgment debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid

Warrant for arrest to direct judgment debtor to be brought up

N B—For local amendments in Rangoon vide *infra*

39 [Ss 339, 340] (r) No judgment debtor shall be arrested in execution of a decree unless and until the decree holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment debtor has been arrested by monthly payments in advance before the first day of each month

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment debtor is committed to the civil prison and the subsequent payments (if any) shall be made to the officer in charge of the civil prison

(5) Sums disbursed by the decree holder for the subsistence of the judgment debtor in the civil prison shall be deemed to be costs in the suit

Provided that the judgment debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed

N B—For local amendments in Allahabad C P Lahore Madras Oudh Peshwar and Rangoon vide *infra*

Scope—Subsequent remittances to jail authorities by money order is application to Court and is step in aid of execution 140 Ind Cas 498=1932 M W N 1198=63 M L J 792=36 M L W 738=56 Mad 320=A I R 1933 Mad 83

40. [S 337A] (r) Where a judgment debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court, after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be

(2) Before making an order under sub rule (r), the Court may take into consideration any allegation of the decree holder touching any of the following matters, namely—

(a) the decree being for a sum for which the judgment debtor was bound in any fiduciary capacity to account,

(b) the transfer, concealment or removal by the judgment debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property.

with the object or effect or obstructing or delaying the decree holder in the execution of the decree ,

(c) any undue preference given by the judgment debtor to any of his other creditors ,

(d) refusal or neglect on the part of the judgment debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it ,

(e) the likelihood of the judgment debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree holder in the execution of the decree

(3) While any of the matters mentioned in sub rule (2) are being considered, the Court may, in its discretion, order the judgment debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court

(4) A judgment debtor released under this rule may be re-arrested

(5) Where the Court does not make an order under sub rule (2), it shall cause the judgment debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison

*NB*—For local amendments in Allahabad and Madras vide *infra*

**Scope**—An executing Court cannot decline to issue a warrant of arrest without a finding under order XXI, rule 40. Before issuing warrants it is proper to inform the judgment debtors, that they can avoid arrest by presenting a petition in insolvency

*Ind Cas 279 Judgment debtor can pauperism after the issue of a warrant rest He should surrender himself in 40 (3) A I R 1929 Sind 110=116*

*Ind Cas 101 Order of release cannot be passed where decree holder proves that the judgment debtor has concealed or removed his property A I R 1929 Pat 728 =118 Ind Cas 312 As regards the effect of insolvency of the judgment debtor, vide A I R 1931 Lah 121=32 P L R 311=131 Ind Cas 208, A I R 1930 Lah 1070=31 P L R 456=128 Ind Cas 314, A I R 1929 Lah 776=116 Ind Cas 178 The security to be furnished by judgment debtor must be proper A I R 1928 Cal 62-54 C 782 106 Ind Cas 66 Contract on the basis of a surety bond becomes operative from the date of its acceptance unless there is something contrary to the bond A I R 1928 Mad 469=51 M 61=54 M L J 267=27 L W 662=*

*should be stayed in cases where when it is not detrimental to*

*things A I R 1927 Mad 42=*

*the property of the judgment*

*off the decretal amount or any*

*A I R 1922 Lah 259=4 Lah*

*L J 266=79 Ind Cas 551, see also A I R 1934 Lah 217 Judgment debtor cannot be excused from arrest unless he comes to Court 144 Ind Cas 255=14 P L T 271=A I R, 1933 Pat 248 Detention to be valid need not be in writing 142 Ind Cas 242=1932 M W N 1222=A I R 1933 Mad 278*

#### *Attachment of property*

**Examination of judgment debtor as to his property** 41 [S 267] Where a decree is for the payment of money, the decree holder may apply to the Court for an order that—

(a) the judgment debtor, or

(b) in the case of a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what other property or means of satisfying the decree, and the Court may make an order for the attendance and examination of such judgment debtor, or officer or other person, and for the production of any books or documents

**Scope**—Application for the examination of the judgment-debtor can be made at any stage of the execution proceedings. 34 Ind Cas 287 Garnishee should admit or deny debt in express terms. A I R 1933 Sind 350 Attachment does not *per se* create or confer a title. It only prevents an alienation of the property during the subsistence of the attachment. A I R 1937 All 552=(1930) A L J 934=125 Ind Cas 28

**42. [S. 255]** Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined

**Scope**—This rule does not apply to a preliminary decree passed in a suit for partnership account. A I R 1926 Sind 178=93 Ind Cas 306 see also A I R 1929 Mad 641=52 M 563=57 M L J 264 An equity into the state of accounts under s 93 C P. Code, with a view to ascertain the liability of the trustee is covered by this rule. 41 Ind Cas 89 Plaintiff cannot complain defendant to produce accounts not connected with suit so that he may be in better position to realise his decree debt if decree is obtained in suit. A I R 1934 Mad 179

**43. [S. 269]** Where the property to be attached is movable property other than agricultural produce, in the possession of the judgment debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof

Attachment of movable property other than agricultural produce, in possession of judgment-debtor.

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once

N B.—For local amendments in Lahore, Madras and Peshwar, vide *infra*

**Scope**—The word "seize" means taking possession forcibly or in pursuance of a warrant or legal process. Attachment must be deemed to have been effected by the seizure and removal of the articles from the defendant's house. 1930 M W N 487 Actual seizure of cattle to be attached does not require physical contact. A I R 1930 Mad 670=(1930) M W N 347=32 L W 23=31 C L J 1086=126 Ind Cas 601 Attaching officer is responsible for the due custody of the property attached

A I R 1930 Mad 670=(1930) M W N 347=32 L W 23=31 C L J 1086=126 Ind Cas 601

6=16 N L R 178, 51 Ind as 134=12 L W 329=(1920) attached by attaching officer J 288=33 C W N 174=113

Ind Cas 572 Mon his movable property 28 Bom L R 23 his official capacity 188=112 Ind Cas is not restored by the order XXI A I R 1930 Mad 670=(1930) M W N 347=32 L W 23=31 C L J 1086=126 Ind Cas 223 Section 145 order 21, rule 43 142 Ind Cas 219 The proper procedure for to proceed in execution *Ibid* years from the date of decree *Ibid*

Attachment of property attached is always responsible to *amin* and cannot hand over property to judgment-debtor without direction of *amin*. A I R. 1934 All 357

44. [New] Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

- (a) where such produce is a growing crop, on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder stack on or in which it is deposited,
- and another copy on the outer door or on some other conspicuous part of the house in which the judgment debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

N B.—For local amendment in Bombay vide *infra*.

Notes.—Vide 129 Ind. Cas. 115 = A. I. R. 1931 All. 142.

45. [New] (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as they were incurred in or formed part of, the decree.

(3) A crop which is attached as a growing crop shall not be deemed to have ceased to be attached or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it so thinks fit, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

N B.—For local amendments in Bombay, Lahore and Rangoon vide *infra*.

Scope.—Rule 45 does not apply in the case of attachment of agricultural produce in the hands of third parties. A. I. R. 1931 S. 20 = 1, D. L. R. 118 = 4 Ind. Cas. 107. This rule applies when crops are in the possession of judgment-debtor or otherwise. A. I. R. 1931 L. 200 = 112 Ind. Cas. 547.

Attachment of debt, share and other property not in possession of judgment-debtor.

46. [S. 268] (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,



- (c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of any Court,

the attachment

- (i) in -

and  
order

of the Court,

- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon,

- (iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor

(2) A copy of such order shall be affixed on some conspicuous part of the Court house, and another copy shall be sent in the case of the debt, to the debtor in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same

(3) A debtor prohibited under clause (i) of sub rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same

N B—For local amendment in Rangoon, vide *infra*

Scope—Attachment of property movable or immovable outside the jurisdiction of Court can be made except under rule 48 A I R 1909 Lah 645=118 Ind Cas 908 Attachment does not affect the rights of the parties at a given point of time and no new interest can be created to defeat it Attachment does not amount to a specific charge but is the basis of all the judgment creditor's rights to assert his debtor's interest A I R 1924 Cal 744=51 C 548=39 C L J 418=83 Ind Cas 233 Rule 46 (3) operates quite independent of the circumstances under which the payment is made or the motive which may have influenced the making of it A I R 1921 All 81=42 A 777=10 A I R 41=60 Ind Cas 885 *Prasad*

is taken over  
Jurisdiction  
the Manager of

Court of Wards resides 137 Ind Cas 377=11 Pat 473=13 P L T 466=A I R 1932 Pat 148

Debt—Unpaid portion of loan by mortgagee is not debt and cannot be attached A I R 1934 All 449 Executing Court can pass a prohibitory order where either the debt on the garnishee is within the jurisdiction A I R 1934 Nag 167 Where third party admits debt he can be ordered to deposit it in Court 35 Ind Cas 469=10 Bur L T 6 see also 33 Ind Cas 169 Order of attachment of debt is no bar to suit for recovery 5 O L J 766=49 Ind Cas 88 In case of attachment of debt, objection that no debt is due is allowed A I R 1922 All 384 Right to sue for damages arising out of a breach of contract is not a debt A I R 1925 Sind 98=78 Ind Cas 409 Attaching creditors can only obtain that the judgment debtors can honestly give them A I R 1924 Cal 1068=40 C L J 228=84 Ind Cas 1022 In case of denial of debts receiver may be appointed to sue and recover 10 Bur L T 6=35 Ind Cas 469, A I R 1926 Rang 175=4 Rang 100=97 Ind Cas 247, A I R 1924 Nag 28=20 N. L R 11=78 Ind Cas 601 A I R 1927 All 41=97 Ind Cas 467, 97 Ind Cas 780=A I R 1926 Mad 1011=24 L W 333 Court having jurisdiction can pass a prohibitory order for attachment of money under r 46 A debts are also debts A I R 1931 Ind Cas 255 Payment of debt to the party A I R 1924 Nag it by a judgment debtor with an Ind Cas 418=A I R 1927 Bom 365=29 Bom L R 416 Debts due to the estate of a deceased person of the judgment-debtor is co heir are not proper subject for garnishee

39 M L J 91=28 M L T 34=57 Ind Cns 854 Sites of debt is the debtor's place of residence as a general rule Place where a debt is payable is an exception 143 Ind Cas 211=35 Bom L R 799=57 C L J 487=37 C W N 825=65 M L J 37=1933 M W N 105=60 I A 211=1933 A L J 629=A I R 1933 (P C) 150, see also 137 Ind Cas 483=56 B 349=34 Bom L R 17=1932 Bom 206

**Share**—Where the shares are sold in execution of a decree and the sale is confirmed the duty of court ends It is for the company either to recognise the transfer or refuse to recognise A I R 1928 Mad 241=42 M L J 449=46 M 537=15 L W 470=(1922) M W N 332=70 Ind Cas 659=30 M L T 231 Service of prohibitory order on the attorney of the Managing Director of a private company is a proper service A I R 1928 Rang 36=3 Rang 385=107 Ind Cas 860

**Movable property**—Simple hypothecation bond is a movable property A I R 1930 Oudh 473=7 O W N 944=121 Ind Cas 274 So also is a debt under a usufructuary mortgage deed (1929) M W N 138, see also A I R 1931 Pat 63=133 Ind Cas 265 A I R 1928 Mad 648=111 Ind Cas 218, 138 Ind Cas 819=35 M L W 257=A I R 1932 Mad 283 Simple mortgage bond or a charge is a movable property A I R 1924 All 976=22 A L J 840=46 A 917=80 Ind Cas 890, A I R 1926 Mad 903=51 M L J 447=60 O L J 49=21 O C 400=50 Ind C 205=60 C 782 Agricultural produce is not but attachment of agricultural produce in the hands of third party should be made under this rule A I R 1921 Sind 95=15 S L R 128=64 Ind Cas 1007 Mortgage debt is to be attached under rule 46 and not under rule 51 144 Ind Cas 175=A I R 1933 Rang 61 Mortgage debt can be attached by the court within whose jurisdiction the mortgage bond is found 143 Ind Cas 785=57 C L J 205=60 C 782 Provisions of this rule do not empower executing officer to seal up premises other than those used by judgment debtor for containing goods which are attempted to be seized 139 Ind Cas 834=A I R 1932 Pat 279

**47. [New]** Where the property to be attached consists of the share or interest of the judgment debtor in movable property belonging to him and another as co-owners the attachment shall be made by a notice to the judgment debtor prohibiting him from transferring the share or interest or charging it in any way

**Scope**—No more than interest of the judgment debtor in joint family property can be attached see also 138 Ind Cas 548=36 M L W 402=55 Mad 1041=63 M L J 142=1932 M W N 457=A I R 1932 Mad 538 137 Ind Cas 672=54 C L J 488=59 C 808 A I R 1932 Cal 408

#### 48. [New] (1) Where

Attachment of salary or allowances of public officer or servant of railway company or local authority is the salary or of a servant of a local authority, the Court, whether the judgment debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction may order that the amount shall, subject to the provisions of section 60 be withheld from such salary or allowances either in one payment or by instalments, and, upon notice of the order by notification in the Gazette of India case may be, appoint in this behalf, the officer to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment

... is in receipt  
 ... revenues or  
 ... British India  
 or local authority in British India and the Government or the railway company  
 or local authority, as the case may be, shall be liable for any sum paid in  
 contravention of this rule.

N B—For local amendment in Madras, vide *infra*

Scope—This rule has no application in the case of persons who are in private  
 service A I R 1929 Nag 333=120 Ind Cas 209 Where decree is transferred  
 to a court other than the court which passed the decree, transferee court has power  
 to attach under rule 43 A I R 1927 Oudh 112=13 O L J 174=6 O W N 1144  
 to be made to a Railway Contractor  
 servant of a Railway Company  
 or pension for the month is due on

1934 Bom. 31

49. [Nag.] (1) Save as otherwise provided by this rule, property  
 belonging to a partnership shall not be attached  
 Attachment of partnership property or sold in execution of a decree other than a  
 property decree passed against the firm or against the  
 partners in the firm as such

(2) The Court may, on the application of the holder of a decree against  
 a partner, make an order charging the interest of such partner in the partner-  
 ship property and profits with payment of the amount due under the decree,  
 and may, by the same or a subsequent order, appoint a receiver of the share  
 of such partner in the profits (whether already declared or accruing) and of

stances of the case may require

(3) The other partner or partners shall be at liberty at any time to  
 redeem the interest charged or, in the case of a sale being directed, to pur-  
 chase the same

(4) Every application for an order under sub rule (2) shall be served on  
 the judgment debtor and on his partners or such of them as are within  
 British India

(5) Every application made by any partner of the judgment debtor  
 under sub rule (3) shall be served on the decree holder and on the judgment-  
 debtor, and on such of the other partners as do not join in the application  
 and as are within British India.

(6) Service under sub rule (4) or sub rule (5) shall be deemed to be  
 service on all the partners, and all orders made on such applications shall be  
 similarly served.

Execution of decree against firm

50 [R. S. C. O. 48A. r. 8] (1) Where a decree has been passed against a firm execution may be granted—

- (a) against any property of the partnership ;
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear :

Provided that nothing in this sub rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, 1872.\*

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

Scope—Order XXI, rule 50 should be read subject to provisions of order 30 138 Ind Cas 314=34 Bom L R 617=A I R 1932 Bom 334, see also A I R 1927 Bom 581=51 B 96=29 Bom L R 1296=105 Ind. Cas 305 Where a person is a partner can be determined by the executing Court A I R 1929 Lah 228=115 Ind Cas 536, see also A I R 1930 Cal 53=56 C 704=121 Ind Cas 403 This rule is applicable where a decree against the firm is sought to be executed against person alleged to be a partner A I R 1930 Lah 243=120 Ind Cas 611 Rule 50 (2) is limited to the case of a partner living at the date of the decree A I R 1925 Sind 298=87 Ind Cas 992, see also A I R 1931 All 65=1930 A L J 1913, 32 M 885=A I R 1929 Mad 733 (F. B.); 105 Ind Cas 305=29 Bom L R 1296=51 B 986=A I R 1927 B 581 Order XXX does not militate against order XXI, rule 50 A I R 1925 Sind 293=19 S L R. 1=86 Ind Cas 1013 This rule also applies to awards against firms they having the force of a decree A I R 1925 Sind 29 : also A I R 1929 Sind 28=23 S L R 422= to execute a decree under order XXI, the language of s 38, Presidency Small Cause Courts Act A I R 1930 Bom 412=32 Bom L R 1009=120 Ind Cas 17

Legal representatives of a deceased partner dying before the institution of a suit but after the passing of a decree passed

Ind Cas 204

be issued unless

his liability as a partner if he so desire A I R 1926 Cal 271=53 C 214=39 C

r 50, A. I. R. 1925 Lah 379=9 Lah L J 165=26 P L R 494=89 Ind Cas 138

Where decree against a firm is sought to be executed against an alleged partner, who denies the liability, issue as to his liability must be first tried. A I R 1927 921=103 Ind Cas 256. Sons of deceased are liable to the extent of their father's A I R 1927 Sind 247=107 Ind Cas 221.

Where decree against a firm mentions some members especially it does not exclude the liability of other partners. The only difference between the two is that in the latter case . . .

or a decree, the term "the Court which passed the Court for the purpose of rule 50 (2) 43 A. 394 . . . 35=61 Ind Cas 401. Whether execution should be to be adjudicated not under order XXI, although notices are served on him during the course of managing partner of a firm A I R. 1929 Lah 228=115 Ind Cas 536.

If a decree holder seeks to execute a decree against a partner personally he should proceed under rule 50 136 Ind Cas 728=33 P. L. R. 240, see also A. I. R. 1933 Lah 591. Holder of award can enforce under order 21, r 50 (2) by applying to High Court. 35 Bom L. R. 941=A I R 1933 Bom 433, see also 134 Ind Cas 1026=13 Lah 327=33 P. L. R. 598=A I R 1931 Lah 736. In case of decree against a firm the decree holder can pursue any of the three courses regardless of A I R 1933 Lah 472. Executing with notice in suit 140 Ind Cas, see also 134 Ind Cas 1026=13 Lah 736. Application for execution or leave to execute decree against partner 134 Ind Cas 1026=13 Lah 327=33 P. L. R. 598=A I R 1931 Lah 736.

*ex parte* order granting leave to apply for execution is neither the decree nor has it the force of a decree 53=115 Ind Cas 865, see also A. I. R. 995=120 Ind Cas 833, but see A. I. R. 1931 Lah 736. Application for leave to execute decree against partner cannot be 1931 Lah 736. Proceedings in execute the decree under rule 50 (2) is application in Lah 327=33 P. L. R. 598=A I R 1931 Lah 736. Court which passed the decree and not from the Ind Cas 61=13 P. L. T. 751=11 Pat 580=A I R 1932 Pat. 323.

Leave of Court is necessary before attachment can issue against property in hands T 318=A I R 1931 ed to be partner" in Sind 194. Decree merely against firm 143 Ind Cas 228=A I R 1933 Pesh 63.

51. [S 270] Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Scope—Notice to the debtor that he should not pay the money due under the promissory A I R 1928 Mad 940=1928 " " also A I R 1923 Mad 317=86 M. W. N. 19=72 Ind Cas 189. *Ibid*

52 [S 272] Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer requesting that such property, and any interest or dividend becoming payable thereon

Attachment of property in custody of Court or public officer

be held subject to the further orders of the Court from which the notice is issued

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree holder and any other person, not being the judgment debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Scope—Under Order XXI r 52, property in the custody of any Court can be attached A I R 1930 Mad 4 Two or more judgment debtors can attach the same property *Ibid* he property to be attached is actually in the custody attachment being that the alienation of the further order of the Court and that it confers no title on the person 1072=25 C L J 595=21 C W N 887=41 Ind. Cas 516, see also 14 A L J 236=33 Ind Cas 723 Property in the lands of a receiver or of an official Assignee can also be attached with the permission of the Court A I R 1930 Mad 4, see A I R 1925 Bom 344=49 B 638=22 Bom L R 545, 130 Ind Cas 836=12 P L T 318=A I R 1931 Pat 204 Money in custody of Court is not assets in attaching Court unless such money is 144 Ind Cas 252=37 M L W 366= see also 35 C W N 517 Custody unless it happens to be the attaching 1933 Cal 214 This rule has no application where receiver has been appointed to realise rents and profits 144 Ind Cas 142=60 C 343=A. I R 1933 Cal 417 Question relating to the money in the hands of the receiver can be tried only by the Court appointing the receiver and by no other 1 Pat L J 449=35 Ind Cas 589 Decree holder in another Court, is entitled to be paid

5 Cal 354=82 Ind Cas 240. Executing Court must decide the question (if it is in issue) as to the ownership of property even if the same question was involved in another pending suit, inasmuch as rule 52 does not override s 47 A I R 1927 All 574=102 Ind Cas 179 Supardar is not public officer A I R 1934 All 357

53 [S 273] (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

- (a) if the decrees were passed by the same Court, then by order of such Court, and,
- (b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—
  - (i) the Court which passed the decree sought to be executed cancels the notice, or
  - (ii) the holder of the decree sought to be executed or his judgment debtor applies to the Court receiving such notice to execute its own decree

(2) Where a Court makes an order under clause (a) of sub rule (1), or receives an application under sub head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way, and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall assist the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment debtor bound by the decree attached, and no payment or adjustment of the attached decree made . . . . . in violation of such order after receipt of notice . . . . . or otherwise, shall be recognised by any Court . . . . . remains in force.

N. B.—For local amendments in Allahabad, Calcutta, Madras, Peshwar and Rangoon, Vide *infra*

Scope—Procedure to be followed in execution when a decree is attached is given by rule 53. A I R 1924 Rang. 11—But L J 151=7 C L J 69. Holder of decree for payment of money can transfer decree attached and the transfer is not affected by attachment. A I R 1921 Pat 1=7 L J 726=9 P L T 822=113 Ind Cas 673. This rule applies only where mortgage property is sought to be sold in execution of money decree and not where it is ordered to be sold to satisfy mortgage decree by terms of decree itself. 50 Ind Cas 448. Attached decree must be executed and the net proceeds to be applied towards satisfaction of decree sought to be executed. It cannot be sold. 45 B 343=22 Bom L R 1304=59 Ind Cas 541, see also 48 Ind Cas 183. 41 L J 336, 5 Pat L W 191. Transaction between judgment debtor and decree holder cannot be affected if notice is not given. A I R 1921 Mad 135=13 L W 34=61 Ind Cas 815, see also (1918) M W N 874=24 M L T 495=9 L W 32=48 Ind Cas 109. Adjustment of decree after its attachment does not bind attaching creditor whether notice is issued to judgment debtor or not. (1918) M W N 874=24 M L T 495=9 L W 32=48 Ind Cas 109. Proper course for decree holder attaching decree for maintenance charging immovable property is to apply for its execution. 23 M L T 355=47 Ind Cas 630.

Person attaching decree becomes a representative of the holder of the attached decree is entitled to take money out of the Court and certify payments. A I R 1930 All 659=129 Ind Cas . . . . . 1919=86 P W R 1918=85 P L R . . . . . 580=35 C L J 109. Adjustment between . . . . . decree sought to be attached is prohibited but not between the judgment debtors and the person attaching such decree. A I R 1924 Pat 696=5 P L T 631=79 Ind Cas 900. . . . . decree covered by rule is attached and executed as if it were other than that . . . . .

B's decree but also under A's decree from date of respective . . . . . Cal 580=35 C L J 109=64 Ind Cas 780. Notice to judgment debtor of attached decree is not necessary before attachment comes into force. Clause 6, of rule 53 means that Court will not recognize payment or adjustment only after the judgment-debtor under the attached decree receives notice of the order attachment and that payment or adjustment made in ignorance of such attachment should be regarded as payment or adjustment properly made under the decree to the rightful person. A I R 1927 Mad 728=50 M 677=53 M L J 150=26 L W 103=103 Ind Cas 502. This rule does not prohibit the holder of a decree for

payment of money from transferring the decree attached. The transferee pending attachment can well apply for execution under Order 21, rule 16 of the Code. A I R 1921 Pat 1=7 Pat 726=9 P L T 822=113 Ind Cas 673, see also A I R 1927 Nag 132=23 N L R 20=99 Ind Cas 635 Preliminary decree directing taking of partnership accounts involving payment of partner's share in money is decree for payment of money within this rule. A I R 1929 Mad 641=52 M 563=29 L W 823=57 M L J 264=116 Ind Cas 343 Decree in regard to immovable property is not immovable property. 44 Ind Cas 252=16 N L R 72 Attaching decree holder is not bound by compromise between parties of attached decree during proceedings for further leave to appeal if judgment debtor had notice of attachment. 141 Ind Cas 625=1932 A L J 792=A I R 1922 All 82, see also 141 Ind Cas 125=35 C W N 955=59 C 1464=A I R 1933 Cal 39 Attaching creditor cannot proceed under Order 21, rule 53, where judgment debtor becomes insolvent. 145 Ind Cas 695=29 N L R 303=A L R 1933 Nag 229 Where preliminary decree in partition suit is attached, procedure under rule 53 (4) is to be followed. 133 Ind Cas 181=53 C 934=A I R 1931 Cal 80 see also 10 O W N 664=A I R 1933 Oudh 349 Money decree can not be sold The procedure laid down in rule should be followed. 141 Ind Cas 37=12 Pat 36=13 P L T 612=A I R 1932 Pat 349 Where an *ex parte* decree in favour of the judgment is attached and subsequently the *ex parte* decree is set aside but finally the judgment debtors obtain a decree after contest the attachment of the attaching decree holder revives with the passing of the contested decree. A I R 1933 Rang 346 Where decree is attached, adjustment of such decree, if not certified cannot be recognized. 145 Ind Cas 525=11 Rang 420=A I R 1933 Rang 239 Where order and attachment is valid, it is immaterial whether adjustment is prior or subsequent to attachment. 134 holder attaching. 83 Attached decree holder but only in 1934 Lah 142, see also A I R 1934 Cal 140 Attachment of decree is not a step-in aid of execution of such decree. A I R 1934 Cal 234

#### 54 [S 274] (1) Where the property is immovable, the attachment

shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house and also where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate

N B For local amendment in Allahabad, Bombay, C. P., Lahore, Oudh, Peshwar and Rangoon, vide *infra*

Scope—Attachment is meant to place property in *custodia legis* and its effect is to prohibit alienation by judgment-debtor. A I R 1927 Mad 190=24 L W 8,6=99 Ind Cas 656 It does not give any title. 345=116 Ind Cas 271, see also A I R 19 6,6=90 Ind Cas 1037 Court is not in rule 54. A I R 1926 Sind 199=19 S L R 35=76 Ind Cas 380 Occupancy right created during attachment of property is invalid as prohibited by rule 54. 13 R D 429 Mere order does not complete attachment until followed up by procedure laid down in order XXI r 54. A I R 19 9 Bom 595=53 B 851=31 Bom L R 1111=123 Ind Cas 510, A I R 1927 Mad 450=99 Ind Cas 989, see also A I R 1931 Pat 58=9 Pat 860=12 P L T 398=129 Ind Cas 142, A I R 1929 All 846=122 Ind Cas 679, 1928 Pat 600=8 Pat 1=9 P L T 523=111 Ind Cas 797, 104 Ind Cas 340=A I R 1927 Cal 885, A I R 1925 Lah 583=7 Lah L J 501=26 P L R 7,6=88 Ind Cas 321, 77 Ind Cas 879=A I R 1923 Lah 671, A I R 1923 Lah 423=5 Lah L J 200=72 Ind Cas 452, 70 Ind Cas 527, 34 Ind Cas 34, 39 Ind Cas 34, A I R 1934 Cal 251. All the other formalities having been observed mere failure to post copy of attachment



order in office of Collector does not make attachment invalid A I R 1923 Nag 78=69 Ind Cas 563 Interest of mortgagee is interest in land A I R 1929 Cal 227=33 C W N 44=56 C 224=117 Ind Cas 854, but see A I R 1924 Mad 217=46 M 736=(1923) M W N 463=45 M L J 263=75 Ind Cas 869 Mortgagee's equity of redemption is immovable property A I R 1921 Cal 801=33 C L J 7=62 Ind Cas 167 Undivided share of co-percener is attachable 10 L W

.. e, when copy of order is 844=37 M J J 375=26  
 . (F B)=53 Ind Cas 207  
 . J 387=48 Ind Cas 232, but see 53 Ind Cas 237=42 M 844 (F B) It is not necessary to beat drum at time of sale proclamation of sale by beat of drum being sufficient 2 U P L R (All) 147=56 Ind Cas 523 Rights obtained subsequent to attachment is void as against claims under it under s 54 C P Code, 55 Ind Cas 481=7 O L J 1=23 O C 18 Identification must be proved when fact of attachment is in question 13 Where compromise orality of attachment property A I R 1921

rule 46 and not under rule 54 144 Ind Cas 175=, transferee without notice is not affected by att In case of resistance to proclamation by beat adjacent to property for attachment is sufficient 136 Ind Cas 335=8 O W N 1353=A I R 1932 Oudh 76 Where judge ordering attachment fell ill and notice was issued in form ordered by Judge but by signed by Court reader for Judge, this does not prevent attachment from being effective 134 Ind Cas 506=9 Rang 140=A I R 1931 Rang 185 Decree holder can attach property of the judgment debtor in the custody of receiver appointed in a other suit with the leave of the Court under this rule 144 Ind Cas 142=60 C 345=A I R 1933 Cal 417

Removal of attachment after satisfaction of decree

55 [S 272] Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule

N B For local amendments in Allahabad and Oudh, Vide *infra*

Scope—Rai

consent out of C  
 648=30 M L J  
 ment was effected

due A I R 1928 Nag 65=105 Ind Cas 790 Attachment is not withdrawn for part

165 Court's losing territorial  
 Mad 852=30 L W 649=123  
 wn between money voluntarily

paid by judgment debtor are assets under s 73 A I R 1930 Sind 300=128 Ind Cas 686, but see 36 B. 146=13 Bom L R 1193 Confirmation of trial Court's decree in second appeal,

.. ded, by first appeal  
 . . . Cas 386 Dismissal  
 38 Ind Cas. 300=

21 M L T 88=5 L W 204, see also 44 Ind Cas 566=(1917) M W N 816, 35 Ind. Cas 240=3 L W 601

The transferee pending  
16 of the Code A I  
as 673, see also A I R  
preliminary decree directing

decree during proceedings for further let  
of attachment 141 Ind Cas 625=1932 A L J 792=A I R 1922 All 82, see also  
141 Ind Cas 125=35 C W N 955=59 C 1464 A I R 1933 Cal 39 Attaching  
creditor cannot proceed under Order 21, rule 53 where judgment debtor becomes  
insolvent 145 Ind Cas 695=29 N L R 303=A I R 1933 Nag 229 Where  
preliminary decree in partition suit is attached procedure under rule 53 (4) is to be  
followed 133 Ind Cas 181=53 C 934=A I R 1931 Cal 80 see also 10 O W N  
664=A I R 1933 Oudh 349 Money decree can not be sold The procedure laid  
down in rule should be followed 141 Ind Cas 37=12 Pat 36=13 P L T 612=  
A I R 1932 Pat 349 Where an *exp*  
attached and subsequently the *exparte*

A I R 1933 Rang 346 Where  
not certified cannot be recognized  
145 Ind Cas 55=11 Rang 420=A I R 1933 Rang 239 Where order and  
attachment is valid it is immaterial whether adjustment is prior or subsequent to  
attachment 134  
holder attaching Decree  
83 Attached decr 934 Nag  
holder but only in decree  
1934 Lah 142, set A I R  
step in aid of execution of such decree A I R 1934 Cal 234 s not a

54 [S 274] (1) Where the property is immovable, the attachment  
Attachment of immovable shall be made by an order prohibiting the judg  
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any benefit from such transfer or charge property in any way, and all persons from taking

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property by beat of drum or other customary mode and a copy of the order  
shall be affixed on a conspicuous part of the property and then upon a cons  
picious part of the court house and also where the property is land paying  
revenue to the Government, in the office of the Collector of the district in  
which the land is situate

N B For local amendment in Allahabad Bombay C P Lahore Oudh, Pesh  
war and Rangoon vide *infra*

*custodia legis* and its effect is  
27 Mad 190=24 L W 836=

266=90 Ind Cas 1037 Court is not i  
rule 54 A I R 1926 Sind 199=19 S L R 35=76 Ind Cas 380 Occupancy  
right created during attachment of property is invalid as prohibited by rule 54  
13 R D 429 Mere order does not complete attachment until followed up by proce  
dure laid down in order XXI r 54 A I R 1929 Bom 395=53 B 851=31 Bom  
L R 1111=123 Ind Cas 510, A I R 1927 Mad 450=99 Ind Cas 989, see also  
A I R 1931 Pat 58=9 Pat 860=12 P L T 398=129 Ind Cas 142 A I R 1929  
All 846=122 Ind Cas 679 1928 Pat 600=8 Pat 1=9 P L T 523=111 Ind Cas  
797, 104 Ind Cas 340=A I R 1927 Cal 885, A I R 1925 Lah 583=7 Lah L J  
301=26 P L R 726=88 Ind. Cas 321, 77 Ind Cas 879=A I R 1923 Lah  
671, A I R 1923 Lah. 423=5 Lah L J 200=72 Ind Cas 452, 70 Ind Cas  
527, 34 Ind Cas. 34, 39 Ind Cas 34, A I R 1934 Cal 251 All the other  
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order in office of Collector does not make attachment invalid A I R 1923 Nag 78=69 Ind Cas 563 Interest of mortgagee is interest in land A I R 1929 Cal 227=33 C W N 44=56 C 224=117 Ind Cas 854, but see A I R 1924 Mad 217=46 M 736=(1923) M W N 463=45 M L J 263=75 Ind Cas 869 Mortgagee's equity of redemption is immovable property A I R 1921 Cal 801=33 C L J 7=62 Ind Cas 167 Undivided share of co-percener is attachable 10 L W 449=53 Ind Cas 336 Only when proclamation is made i e, when copy of order is fixed as in rule 54 the attachment is complete 42 M 844=37 M J J 375=26 M L T 281=10 L W 391=(1919) M W N 678 (F B)=53 Ind Cas 207 Proclamation is only ministerial act 42 M 1=35 M L J 387=48 Ind Cas 232, but see 53 Ind Cas 237=42 M 844 (F B) It is not necessary to beat drum at time of sale, proclamation of sale by beat of drum being sufficient 2 U P L R (All) 147=56 Ind Cas 523 Rights obtained subsequent to attachment is void as against claims under it under s 54 C P Code. 55 Ind Cas 481=7 O L J 1=23 O C 18 Identification must be proved when fact of attachment is in question

303 Where compromise formality of attachment,

Pat 320=2 P L T 58=58 Ind Cas 292 Mortgage debt is to be attached under rule 46 and not under rule 54 144 Ind Cas 175=A I R 1933 Rang 61 *Bona fide* transferee without notice is not affected by attachment A I R 1933 Rang 198 In case of resistance to proclamation by beat of drum proclamation in loud voice adjacent to property for attachment is sufficient 136 Ind Cas 335=8 O W N 506=9 Rang 140= judgment debtor in the custody of receiver appointed in another suit with the leave of the Court under this rule 144 Ind Cas 142=60 C 345=A I R 1933 Cal 417

Removal of attachment after satisfaction of decree

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- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule

N B For local amendments in Allahabad and Oudh, Vide *infra*

jurisdiction does not end attachment A I R 1929 Mad 852=30 L W 649=125 Ind Cas 90 From r 55 no distinction can be drawn between money voluntarily paid by judgment debtor and money realised through attachment and both of them are assests under s 73 A I R 1930 Sind 300=128 Ind Cas 686, but see 36 B 38 Ind Cas. 300= in second appeal, led, by first appeal, Cas 386 Dismissal 21 M L T 88=5 L W 204, see also 44 Ind Cas 566=(1917) M W N 816, 35 Ind. Cas 240=3 L W 601



third party such as objector A I R 1925 Mad 1113=48 M L J 616=(1925) M W N 406=87 Ind Cas 635 Private sale made after suspension of execution subsequently revived, is invalid as revival is retrospective A I R 1926 All 734=48 A 698=24 A L J 901=97 Ind Cas 102

Attachment ceases on dismissal by Collector to which the rule applies A I R 1923 Nag 18=68 Ind Cas 643, see also 64 Ind Cas 420=4 N L J 118=18 N L R 152=A I R 1922 Nag 267 Dismissal on decree holders agreeing to give time, makes attachment cease A I R 1923 Pat 446=4 P I T 418=71 Ind Cas 881 Default of decree holder in appearance at sale or to bid is not within the rule A I R 1923 Mad 703=45 M L J 315=(1923) M W N 529=75 Ind Cas 491 Attachment continues if execution is discontinued not by decree holder's default but on account of a claim case 46 C 64=27 C L J 145=44 Ind Cas 249, see also 23 O C 166=7 O L J 337=57 Ind Cas 509 Generally attachment cannot be either made or unmade by mere writing and signing of dismissal order without its communication but where it can be so removed it can also be revived, or continued under inherent power of s 151 where court has power to revive A I R 1922 Nag 367=18 N L R 152=4 N L J 118=64 Ind Cas 420 Attachment of property made prior to setting aside of sale on ground other than decree holders default, revives on a fresh execution petition being put in Court 3 Pat L J 310=(1918) Pat 343=45 Ind Cas 589 Whether order of attachment is subsisting depends on the facts of each case, and presumption is that it is in force unless withdrawn or dealt with on merits 31 Ind Cas 911 Dismissal of an application on the sale being stayed pending an appeal has not the effect of removing the attachment 35 Ind Cas 240, so also 15 Ind Cas 49, 9 Ind Cas 558

### *Investigation of claims and objections*

58 [S 278] (1) Where any claim is preferred to or any objection is

Investigation of claims to  
and objections to attachment  
of, attached property

made to the attachment of any property attached  
in execution of a decree on the ground that  
such property is not liable to such attachment,  
the Court shall proceed to investigate the claim or  
objection with the like power as regards the examination of the claimant or  
objector, and in all other respects, as if he was a party to the suit

Provided that no such investigation shall be made where the Court considers  
that the claim or objection was designedly or unnecessarily delayed

(2) Where the property to which the claim or objection applies has been  
advertised for sale, the Court ordering the sale

Postponement of sale  
claim or objection

may postpone it pending the investigation of the

N B—For local amendments in Allahabad C P, Lahore and Oudh vide *infra*

Scope and object.—The procedure referred to in this rule is merely permissive  
A stranger whose property has been seized under an attachment may apply under  
this rule but his failure to do so does not in any way affect his right to take any other  
legal alternative 18 Ind Cas 949=17 C W N 541=(1913) M W N 406=13 M L T  
406=11 A L J 417=17 C L J 472=15 Bom L R 472=184 P L R 1913=40

e is governed by rule

s 47 A I R 1929

R 1928 Rang 29=

1064=107 Ind Cas

357, A I R 1927 Oudh 120=4 O W N 102=2 Luck 145=100 Ind Cas 464,

A I R 1926 Mad 355=91 Ind Cas 414, A I R 1927 Lah 895=28 P L R 121,

A I R 1925 Pat 482=3 Pat L R 90=87 Ind Cas 743, A I R 1925 Oudh

618=28 O C 39=47 M L J 720=

20 L W 864= R 1924 Lah 589=75

Ind Cas 747, 440=73 Ind Cas 419

Order under r *re judicata* A I R

1923 Mad 562=44 M L J 583=72 Ind Cas 558 An order dismissing an objection

of whatever kind under this rule comes under order 63 (1930) A L J 1322=10

Ind Cas 200, see also A I R 1931 Oudh 1 (F B)=7 O W N 1173=131 Ind

Cas 77 In a suit under r 63 validity of attachment also can be challenged A I



third party such as objector A I R 1925 Mad 1113=48 M L J 616=(1225)  
M W N 406=87 Ind Cas 63, Private sale made after suspension of execution  
subsequently revived, is invalid as revival is retrospective A I R 1926 All 734=  
48 A 698=24 A L J 901=97 Ind Cas 102

Attachment ceases on dismissal by Collector to which the rule applies A I R  
1923 Nag 18=68 Ind Cas 643, see also 64 Ind Cas 420=4 N L J 115=18  
V L R 152=A I R 1922 Nag 267 Dismissal on decree holder's agreeing to give  
time, makes attachment cease A I R 1923 Pat 446=4 P L J 418=71 Ind Cas  
881 Default of decree holder in appearance at sale or to bid is not within the rule  
A I R 1923 Mad 703=45 M L J 315=(1923) M W N 52=75 Ind Cas 421  
Attachment continues if execution is discontinued not by decree holder's default  
but on account of a claim case 46 C 64=27 C L J 145=44 Ind Cas 242; see  
also 23 O C 166=7 O L J 337=57 Ind Cas 52 Generally attachment  
cannot be either made or unmade by mere writing, and signing of dismissal  
order without its communication, but where it can be so removed it can  
also be revived, or continued under inherent power of a court where court  
has power to revive A I R 1922 Pat 367=18 P L R 152=4 P L J  
118=64 Ind Cas 420 Attachment of property made prior to sending bill of  
sale on ground other than decree holder's default, revives it as fresh sale  
on petition being put in Court 3 Pat L J 315=121 Ind Cas 341=45 Ind Cas  
589 Whether order of attachment is valid is a question of fact and  
and presumption is that it is in force unless shown to the contrary  
Ind Cas 911 Dismissal of attachment is not a bar to a fresh attachment  
appeal has not the effect of reviving the attachment A I R 1923 Pat 342=45 Ind Cas  
Ind Cas 49, 9 Ind Cas 358

### Investigation of claims and objections

58 [S 278] (1) Where any claim is preferred to or any objection is

Investigation of claims to made to this attachment of any property attached  
and objections to attachment in execution of a decree on this ground that  
of attached property such property is not liable to such attachment,  
the Court shall proceed to investigate the claim or  
objection with the like power as regards the examination of the claim of  
objector, and in all other respects, as if he was a party to the suit.

Provided that no such investigation shall be made where the Court is satisfied  
that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies is being  
advised for sale, the Court may postpone it pending the investigation of the  
claim or objection.

N B—For local amendments in Allahabad C P Act see

Scope and object—The procedure referred to in this rule is for the purpose of  
A stranger whose property has been seized under an attachment made under  
this rule but his failure to do so does not in any way affect the validity of the  
legal alternative 18 Ind Cas 949=17 C W N 511=(1917) 57 Ind Cas 406=11 A L J 417=17 C L J 472=15 Bom

357, A I R 1927 Oudh 120=4 O W N 102=2 L J 418=71 Ind Cas 414, A I R  
A I R 1926 Mad 355=91 Ind Cas 414, A I R 1925 Pat 482=3 Pat L R 90=87 Ind  
618=28 O C 175=85 Ind Cas 997, A I R 1923 Pat 446=4 P L J 418=71 Ind  
20 L W 864=1928 M W N 551=84 Ind Cas 421, A I R 1923 Bom. 381=  
Ind Cas 747, A I R 1923 Bom. 381=  
Order under r 58 if not challenged by respondent 1923 Mad 562=44 M L J 583=72 Ind Cas  
of whatever kind under this rule comes  
Ind Cas 200, see also R. 1931 Oudh  
Cas 77 In a suit under validly made

R 1927 Mad. 450=99 Ind. Cas. 989, see also 100 Ind. Cas. 298=A. I. R. 1927 Lah. 190. Where attachment is withdrawn after objection rule 63 does not apply. A. I. R. 1930 All. 177=1930 A. L. J. 594=122 Ind. Cas. 865. Enquiry under rule 58 is summary, and suit under s. 63 is in the nature of appeal. A. I. R. 1926 Nag. 197=90 Ind. Cas. 196; see also A. I. R. 1924 Lah. 367=13 P. W. R. 1923=71 Ind. Cas. 45, A. I. R. 1923 Pat. 152=1 P. L. R. 51=3 P. L. T. 832=70 Ind. Cas. 332, 41 M. 849=35 M. L. J. 231=24 M. L. T. 134=8 L. W. 197 (F. B.)=47 Ind. Cas. 1000, 6 L. W. 518=42 Ind. Cas. 554. Order XXI, r. 58, is not applicable to decree on mortgage by sale. A. I. R. 1930 Mad. 712=125 Ind. Cas. 559, see A. I. R. 1929 Lah. 760=116 Ind. Cas. 882, A. I. R. 1929 Lah. 167=117 Ind. Cas. 815, A. I. R. 1926 Nag. 423=22 N. L. R. 94=97 Ind. Cas. 178, A. I. R. 1924 Oudh. 394=11 O. L. J. 240=83 Ind. Cas. 869. A. I. R. 1922 Pat. 408=1 Pat. 159=70 Ind. Cas. 306. But order XXI, rules 11 Lah. 365 97 Ind. Cas. possession preferring an objection. see also A. I. R. 1927 Pat. 51=101 as trustee for third person is under order XXI, r. 58. A. I. R. 1930 Nag. 293=13 N. L. J. 205=27 N. L. R. 10=128 Ind. Cas. 401. Property under attachment claimed under a deed of sale if not proved cannot be released from attachment. A. I. R. 1930 Cal. 390=34 C. W. N. 254=127 Ind. Cas. 670. This rule affords summary remedy and persons seeking remedy under rule 58 must abide by advantages and disadvantages of the remedy. 11 Lah. 369=31 P. L. R. 752=120 Ind. Cas. 679. Objections to execution must be made at the earliest opportunity and cannot be allowed to be brought piecemeal unless they cannot be brought at once. A. I. R. 1930 Mad. 303=121 Ind. Cas. 845. Question of possession and not of title should be decided. A. I. R. 1929 Nag. 66=115 Ind. Cas. 167, A. I. R. 1928 Mad. 163=54 M. L. J. 321=27 L. W. 536=108 Ind. Cas. 67, 103 Ind. Cas. 12=A. I. R. 1927 Nag. 286=10 N. L. J. 155, 13 Bur. L. T. 214=64 Ind. Cas. 66, A. I. R. 1925 Mad. 588=(1925) M. W. N. 599=48 M. L. J. 603=21 L. W. 230=87 Ind. Cas. 189. But question of title can be incidentally enquired into. A. I. R. 1927 Sind. 114=98 Ind. Cas. 888, see also A. I. R. 1929 Pat. 283=119 Ind. Cas. 909, A. I. R. 1929 Mad. 383=119 Ind. Cas. 33. Court is entitled to go into the question of *benami*. A. I. R. 1929 Pat. 273=119 Ind. Cas. 909. Objection on the ground of adjustment need not be made separately. A. I. R. 1929 All. 79=113 Ind. Cas. 760.

192 of s. 170 of B. T. Act. A. I. R. T. 717=95 Ind. Cas. 303; see also A. I. R. 1927 Pat. 152=1 P. L. R. 51=3 P. L. T. 832=70 Ind. Cas. 332, 41 M. 849=35 M. L. J. 231=24 M. L. T. 134=8 L. W. 197 (F. B.)=47 Ind. Cas. 1000, 6 L. W. 518=42 Ind. Cas. 554. Order XXI, r. 58, is not applicable to decree on mortgage by sale. A. I. R. 1930 Mad. 712=125 Ind. Cas. 559, see A. I. R. 1929 Lah. 760=116 Ind. Cas. 882, A. I. R. 1929 Lah. 167=117 Ind. Cas. 815, A. I. R. 1926 Nag. 423=22 N. L. R. 94=97 Ind. Cas. 178, A. I. R. 1924 Oudh. 394=11 O. L. J. 240=83 Ind. Cas. 869. A. I. R. 1922 Pat. 408=1 Pat. 159=70 Ind. Cas. 306. But order XXI, rules 11 Lah. 365 97 Ind. Cas. possession preferring an objection. see also A. I. R. 1927 Pat. 51=101 as trustee for third person is under order XXI, r. 58. A. I. R. 1930 Nag. 293=13 N. L. J. 205=27 N. L. R. 10=128 Ind. Cas. 401. Property under attachment claimed under a deed of sale if not proved cannot be released from attachment. A. I. R. 1930 Cal. 390=34 C. W. N. 254=127 Ind. Cas. 670. This rule affords summary remedy and persons seeking remedy under rule 58 must abide by advantages and disadvantages of the remedy. 11 Lah. 369=31 P. L. R. 752=120 Ind. Cas. 679. Objections to execution must be made at the earliest opportunity and cannot be allowed to be brought piecemeal unless they cannot be brought at once. A. I. R. 1930 Mad. 303=121 Ind. Cas. 845. Question of possession and not of title should be decided. A. I. R. 1929 Nag. 66=115 Ind. Cas. 167, A. I. R. 1928 Mad. 163=54 M. L. J. 321=27 L. W. 536=108 Ind. Cas. 67, 103 Ind. Cas. 12=A. I. R. 1927 Nag. 286=10 N. L. J. 155, 13 Bur. L. T. 214=64 Ind. Cas. 66, A. I. R. 1925 Mad. 588=(1925) M. W. N. 599=48 M. L. J. 603=21 L. W. 230=87 Ind. Cas. 189. But question of title can be incidentally enquired into. A. I. R. 1927 Sind. 114=98 Ind. Cas. 888, see also A. I. R. 1929 Pat. 283=119 Ind. Cas. 909, A. I. R. 1929 Mad. 383=119 Ind. Cas. 33. Court is entitled to go into the question of *benami*. A. I. R. 1929 Pat. 273=119 Ind. Cas. 909. Objection on the ground of adjustment need not be made separately. A. I. R. 1929 All. 79=113 Ind. Cas. 760.

Where objection is in possession of property, decree holder must prove that the property belongs to the person in debt. 19 O. W. N. 1017=A. I. R. 1913 Oudh. 471. [Under s. 63 and 64 must be read as part of whole scheme on point of attachment and sale. 117 Ind. Cas. 114=98 Ind. Cas. 888, A. I. R. 1929 Pat. 283=119 Ind. Cas. 909, A. I. R. 1929 Mad. 383=119 Ind. Cas. 33. Court is entitled to go into the question of *benami*. A. I. R. 1929 Pat. 273=119 Ind. Cas. 909. Objection on the ground of adjustment need not be made separately. A. I. R. 1929 All. 79=113 Ind. Cas. 760.]



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59. [S 279] The claimant or objector must adduce evidence to

Evidence to be adduced by claimant

show that at the date of the attachment he had some interest in, or was possessed of, the property attached

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ie of s 170 of B T Act A I R T 717=95 Ind Cas 303, see also Ind Cas 203, 3 Pat L R 329=7 under s 58 is summary and suit 1926 Nag 197=90 Ind Cas 196 Order under r 58 even against a mortgage decree holder is inclusive if no suit is brought A I R 1926 Mad 593=93 Ind Cas 335 An order dismissing a claim as too late has to be set aside within one year A I R 1928 Mad 525=110 Ind Cas 567, see also 66 P R 1916=117 P W R 1916=35 Ind Cas 321 Objection by the attached property is a trust under s 47 38 Ind Cas possessed of the property Ind Cas 446 Attachment being unnecessary in a mortgage decree for sale r 58 does not apply 23 P W R 1918=58 P R 1918=113 P L R 1918=44 Ind Cas 986 see also 2 U P L R (Lah) 90=55 Ind Cas 895=2 Lah L J 348, 139 Ind Cas 452=1932 M W N 1287=A I R 1932 Mad 716 Investigation on application under rule 58 (1) may be refused on the ground of deliberate delay But if investigation has once been sed dismissal after investigation being L T 41=39 Ind Cas 345 Order of on the ground that the objector did not ught on the same in time is conclusive. as 1005 Order dismissing father's objection by the order A I R 1934 Lah 193 In a by executor that decree cannot be executed under order 21 rule 58 A I R 1934 Cal 258

Where objector is in possession of property decree holder must prove that the property belongs to the judgment debtor 19 O W N 1017=A I R 1933 Oudh 473 Rules 58 and 63 must be read as part of whole scheme on point of attachment and sale 137 Ind Cas 603=34 Bom L R 206=A I R 1932 Bom 210, see also 133 Ind Cas 318=1931 A L J 856=53 A 918=A I R 1931 All 608 Remedy

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59. [S. 279] The claimant or objector must adduce evidence to

Evidence to be adduced by claimant show that at the date of the attachment he had some interest in, or was possessed of, the property attached

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Mad 383=119 Ind Cas 33 Court is  
A I R 1929 Pat 273=119 Ind. Cas 909  
need not be made separately A I R

1929 All 79=113 Ind Cas 760

Rule does not apply to rent decree by virtue of s 170 of B T Act A I R 1926 Pat 213=3 Pat L R 341=7 Pat L T 717=95 Ind Cas 303, see also A I R 1929 Pat 195=10 P L T 118=117 Ind Cas 203, 3 Pat L R 329=7 Pat L ... nary and suit  
under s Cas 196 Order  
under r suit is brought  
A I R 1 ... aim as too late  
has to be set aside within one year A I R 1928 Mad 525=110 Ind Cas 567, see also 66 P R 1916=117 P W R 1916=35 Ind. Cas 321 Objection by the judgment-debtor to attachment on the ground that the attached property is a trust property, must be made under order XXI, r 58 and not under s 47 38 Ind Cas 152 Where the Court having no jurisdiction becomes possessed of the property attached in execution, proviso to rule 58 (1) applies 41 Ind Cas 446 Attachment being unnecessary in a mortgage decree for sale, r 58 does not apply 23 P W R 1918=58 P R 1918=111 P L R 1918=44 Ind Cas 986 see also 2 U P Lah L J 348, 139 Ind Cas 452=1932 M Investigation on application under rule 58 (1) ... berate delay But if investigation has once been ... sed dismissal after investigation being L T 41=39 Ind Cas 345 Order of on the ground that the objector did not ... ught on the same in time is conclusive.  
40 A. 325=16 A L J 256=44 Ind Cas 1005 Order dismissing father's objection being conclusive, the son is bound by the order A I R 1934 Lah 193 In a decree against legal heir objection by executor that decree cannot be executed against him is one under s 47 and not under order 21, rule 58 A I R 1934 Cal. 258

Where objector is in possession of property decree holder must prove that the O W N 1017=A I R. 1933 Oudh whole scheme on point of attachment 206=A I R. 1932 Bom 210, see A 918=A I R 1931 All 608 Remedy

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59. [S 279] The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant



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ment of rights of real owner he can pay money under protest and seek proper remedy to have the same back 135 Ind Cas 24=34 M L W 399=A I R 1931 Mad 753 Claim under rule 58 put in after sale is not infructuous 134 Ind Cas 809=55 M 251=61 M L J 884=A I R 1931 Mad 782, see also 145 Ind Cas 142=27 S L R 256=A I R 1933 Sind 198 Where attachment is by Revenue Court in execution of rent decree, objection to attachment is entertainable 139 Ind Cas 452=1932 M W N 1287=37 M L W 655=A I R 1932 Mad 716 In a rent-decree objector claiming title to tenure cannot file application under rule 58 142 Ind Cas 40=13 P L T 643=11 L J 775=A I R 1933 Ld 37 Where decree holder did not object to oral application for attachment on application in writing, he cannot subsequently file a written application was submitted 143 Ind Cas 702=A I R 1933 Sd 126 Where order under rule 58 is passed without consideration of evidence High Court will interfere in revision 142 Ind Cas 628=14 P L T 70=A I R 1933 Ld 158 In case of objection under this rule, Court should investigate into claim and should not partly admit objection and dismiss execution 145 Ind Cas 736=A I R 1933 Lah 421 Where objection is disallowed and sale held under mortgage decree suit need not be brought within one year 141 Ind Cas 252=33 P L R 1033=A I R 1933 Lah 75 Mere attachment does not give reversioner right to sue for declaration that it shall not affect his reversionary rights 136 Ind Cas 265=13 Lal 524=33 P L R 46=A I R 1932 Lah 179 After final decree for sale of property under Order 34, rule 5, objection under Order 21 r 58 to sale of property cannot be entertained 143 Ind Cas 246=33 P L R 868=A I R 1932 Lah 618 Court attaching debt cannot inquire into existence of truth of debt 136 Ind Cas

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=1932 M W N 280=A I R

incompetent to attach or decide

R 1924 Cal 193=28 C W N

d for default can be restored to file

13=34 M L T 309=19 L W

claim or objection under Order XXI

60 or r 61 and r 63 applies to

an order made either under r 60 or 61 A I R 192, Oudh 154=27 O C 308=81 Ind Cas 1013. Objection by representative of judgment debtor claiming separate title is to be decided under Order XXI, r 58 and not under s 47 A I R 1924 All 183=75 Ind Cas 1053 Sale determines attachment and no jurisdiction is

Ind Cas

suit A I

of decree

can object to its attachment under rule 58 even before his name is substituted A I R 1928 Rang 25=5 Rang 595=6 Bur L J 221=106 Ind Cas 853 In objection by vendee decree holder must show sale is fraudulent A I R 1927 P C 237=29 Bom L R 1481=46 C L J 349=32 C W N 28=53 M I J 388 (P C)=105 Ind Cas 788 Claim to property should be investigated if inconsistent with continuance of unqualified attachment A I R 1927 All 593=49 A 903=25 A L J 609=102 Ind Cas 792

59. [S 279] The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached

Evidence to be adduced by claimant

before judgment A I R 1929 Cal 225=49 C L J 151=115 Ind Cas 362 In a suit under r 63 the plaintiff has to establish his title 41 M 205=34 M L J 295=45 Ind Cas 703, 43 M 760=39 M L J 350=28 M L T 170=12 L W 475=(1920) M W N 572 (F B)=59 Ind Cas 947, 42 Ind Cas 438=33 M L J 316=6 L W 588 A suit under rule 63 is not merely in the nature of appeal The words 'establish the right in the rule cover not only a mere suit but also one for consequential relief, i.e. recovery of the value of the land when sold prior to the order on the claim petition 40 M 733=31 M L J 394=(1916) 2 M W N 207=4 L W 300=20 M L T 353=36 Ind Cas 445 A suit under rule 63 is a continuation of claim proceedings A I R 1925 Nag 82=22 N L R 67=80 Ind Cas 905, see also A I R 1928 Mad 840=(1928) M W N 336=28 L W 82=52 M L J 52=110 Ind Cas 554, A I R 1928 Mad 1201=52 M 465=30 L W 36=116 Ind Cas 827 Cause of action arising subsequent to the dismissal of the claim need not be joined in a suit under rule 63, to set aside the order under rule 58 A I R 1928 Mad 810=(1928) M W N 336=28 L W 82=56 M L J 52=110 Ind Cas 554 Where objection was dismissed but the attachment was also ceased within one year the claimant is not bound to bring suit for declaration of title A I R 1934 All 267 (F B) Where one of two unsuccessful claimants brings a suit under this rule making the other defendant and admitting his claim, the non suing claimant also gets the advantage of the decree A I R 1934 Bom 129 Where objection dismissed on ground of unnecessary delay still suit must be brought within one year 144 Ind Cas 993=35 Bom L R 147=57 B 213=A I R 1933 Bom 190 Where no adverse order is made against a person, it is not necessary for him to bring a suit within one year 133 Ind Cas 248=33 Bom L R 396=A I R 1931 Bom 288, Ind Cas 326=9 Rang 561, 142 M W N 669=A I R 1933 Mad 328

Plaintiff must affirmatively prove see also 144 Ind Cas 1002=55 A claim to attached property is be assailed only by the institution of a suit within one year as provided for in rule 63 A I R 1928 Mad 1259, see also 26 A L J 974=A I R 1928 All 327, 35 Ind Cas 321=66 P R 1916, 44 C 698=21 C W N 222, 41 Ind Cas 684=6 L W 281, 38 M L J 397=27 M L T 312=56 Ind Cas 481, 45 Ind Cas 270=41 M 985 (F B), 51 Ind Cas 100=45 P L R 1919, 94 Ind Cas 573=A I R 1925 Nag 390=8 N L J 170 26 C W N 126=64 Ind Cas 713, 64 Ind Cas 209=A I R 1921 Oudh 54=24 O C 213, 54 Ind Cas 530=37 M L J 547=26 M L T 513, 75 Ind Cas 322=2 Bur L J 60, 80 Ind Cas 994=A I R 1924 Sind 97=17 S L R 63, A I R 1924 Cal 744=51 C 548=39 C L J 418=83 Ind Cas 233

If a claim under r 58 is allowed and the judgment debtor is not a party to such claim suit, the order does not bind the judgment-debtor so as to compel him to bring a suit for a declaration under rule 63 A I R 1929 Pat. 604=10 P L T 581=120 Ind Cas 762 Order under r 63 is conclusive as between claimant and decree-holder and does not affect judgment debtor's right and title to the property A I R 1931 Lah 74=131 Ind Cas 225 The word 'conclusive' means final, i.e., unappealable A I R 1923 Rang 195=76 Ind Cas 677 Dismissal of claim petition by Court without jurisdiction need not be set aside by suit A I R 1928 Mad 878=112 Ind Cas 619 Where a claim petition is dismissed for default, Court can restore it to file

47 M 451=47 M a claim has not Ind Cas, 511 owing to the in there is no attachment 110 Ind Cas 115, A I R 1930 All 177=1930 A L J 594=122 Ind Cas 865, but see A I R 1929 Rang 228=124 Ind Cas, 261

In defence to a suit under rule 63 an attaching decree holder can plead that the

the basis of the order under Order 21 rule 63 144 Ind Cas 378=34 P L R 443=A I R 1933 Lah 449 Where substantial portion of the consideration is found to be fraudulent, the whole transfer should be treated as fraudulent 131 Ind Cas 383=12 Lah. 763=33 P I R =A 2 Lah 174 Where declaratory suit is dismissed on





**Scope**—The interest has relation with possession not title. In order to succeed he must show that person in possession holds it on his behalf. 146 Ind Cas 9=A I R 1933 Nag 297. Rules apply to investigation of claims in attachment. R 1933 Nag 297. No enquiry as to made under rule 59. A I R 1929 78. If in an enquiry under Order XXI, by claimant to attached property the question of title only should be dealt with by the Court. 32 Ind Cas 34. Apart from rule 59 where in the property can be released on the ground that person has some interest in the property which cannot be attached. A I R 1931 Pat 409=2 P L T 240=61 Ind Cas 922. In order to become in order under Order XXI, there is an enquiry and adjudication though summary, of the rights of the parties. A I R 1929 Mad 69=56 M L J 199=(1929) M W N 174=29 L W 537=115 Ind Cas 504, A I R 1923 Rang 195=1 Rang 276=2 Bur L J 134=76 Ind Cas 677, 10 Bur L T 14=39 Ind Cas 275.

**60 [S 280]** Where upon the said investigation the Court is satisfied that for the reason stated in the claim or Release of property from objection such property was not, when attachment attached, in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property wholly or to such extent as it thinks fit, from attachment.

**Scope**—Where objector is found to be in possession attachment should be removed. A I R 1933 Rang 259. Mistake upon fact or law on merits occasioned by not directing proper attention to rule 60 can be revised by the High Court. A I R

the attached property in possession of judgment-debtor did not belong to him but to a *Moth*. A I R 1928 All 392=50 A 801=26 A L J 477=113 Ind Cas 171. A person in actual possession in his own account before attachment though not proving title can claim under Order XXI, rules 60 and 50 for declaration that property is not saleable in execution against judgment debtor. Court has in such cases to investigate fact of possession at the time of attachment. A I R 1928 All 668=110 Ind Cas 365. Questions of title arising incidentally as to whether judgment debtor was in possession of the property as trustee or agent for another have got to be determined under rr 60 and 61 to that extent. A I R 1924 Cal 744=51 C 548=39 C L J 418=83 Ind Cas 233, 75 Ind Cas 1033=A I R 1924 All 183=L R 4 A 447 (Civ). Where in a claim petition, it was found that the claimant had some interest and there was no decision as to possession and nature of the interest of the claimant, the order disallowing the claim was illegal and subject to revision by the High Court. 60 Ind Cas 616.

**61. [S 281]** Where the Court is satisfied that the property was, at the time it was attached, in the possession of the Disallowance of claim to judgment debtor as his own property and not property attached on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

**Notes**—Extent of investigation under rule 58 depends upon circumstances. High Court should not interfere in revision with decision under rule 61 as party

aggrieved by order under r 58 or rule 61 has his remedy under s 63. A I R 1930 Pat 394=12, Ind Cas 575, see also A I R 1922 Cal 165=64 Ind Cas 713=26 C W W 126. Third party whose claim is dismissed but attachment is subsequently raised is not bound to sue within 1 year of order and his subsequent suit is not time-barred. 45 B 561=22 Bom L R 1446=59 Ind Cas 774. An order under XXI, rule 61 is got an order *in rem*. 38 M L W 813=1933 M W N 1357=A I R 1933 Mad 879.

**62 [S. 282]** Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Continuance of attachment subject to claim of incumbrancer

o mortgage or lien  
it if attachment is  
to an application by  
rule is not appli  
time of attach  
of redemption in  
O L J 239=81

1924 Oudh 384=11 O L J 240=8 Ind Cas 869. Only the result of Court's action under rule 62 will be notified to purchaser. In the proclamation of sale under rule 66 cl (2) and intending purchaser will look only to such entry in sale proclamation irrespective of the basis. A I R 1925 Oudh 154=27 O C 305=81 Ind Cas 1013, see also 3 O L J 422=36 Ind Cas 732. A I R 1930 Oudh 362=126 Ind Cas 389, 47 C 446=30 C L J 495=74 C W N 289, 55 Ind Cas 189. On continuing attachment subject to mortgage purchaser takes only mortgagor's right of redemption. 12 Bur L T 43=51 Ind Cas 580, see also 82 Ind Cas 771=19 N L R 15. Purchaser before claiming possession must pay off incumbrance subject to which the property was purchased. 50 Ind Cas 909. Order that proceedings are dropped recorded after withdrawing objection petition under rule 61 is not one under the rule and is not final under r 63 but is equivalent to order under O 23 r 1. A I R 1925 Nag 2=20 N L R 106=7 N L J 170=79 Ind Cas 1007. Benefit of notified mortgage turning out invalid goes to purchaser from whom judgment debtor can not claim refund of amount alleged to be due on mortgage and purchaser is free to contest validity when attached by mortgagee. A I R 1921 Cal 435=34 C L J 333=25 C W N 942=66 Ind Cas 694, see also 44 B 860=22 Bom L R 640=58 Ind Cas 217. The code makes a clear distinction between a case where property is sold subject to mortgage as under order 21, rule 62 and a case in which the notice of an alleged encumbrance is given in the proclamation of sale as under Order 21, rule 66. In the former case the court is satisfied of the existence of the mortgage and sells only the judgment debtor's equity of redemption and the purchaser has to redeem the property. In the latter case the purchaser buys the property with notice of the mortgage subject to such risk as the notice might involve, in other words the executing court does not decide whether the mortgage subsists or not and the purchaser is not precluded from questioning the validity of the mortgage. A I R 1933 Mad 1183=38 L W 813=65 M L J 819=1933 M W N 1357=A I R 1933 Mad 879.

**63. [S. 283]** Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property

N B—For local amendments in Lahore and Rangoon vide *infra*

**Scope**—This rule applies to every order against a party to a claim preferred or an objection made under rule 58 whether the order was passed after contest and enquiry or for default and without investigation. 11 Lah 369=31 P L R 752=120 Ind Cas 679, see also 113 Ind Cas 77=A I R 1931 Oudh 1=7 O W N 1173=131 Ind Cas 77, 2 Bur L J 173=76 Ind Cas 841, A I R 1928 All 327=26 A L J 794=116 Ind Cas 81. This rule has application to a case of attachment

before judgment A I R 1929 Cal 225=49 C L J 151=115 Ind Cas 362 In a suit under r 63 the plaintiff has to establish his title 41 M 205=34 M L J 295=45 Ind Cas 703, 43 M 760=39 M L J 350=28 M L T 170=12 L W 475=(1920) M W N 572 (F B)=59 Ind Cas 947, 42 Ind Cas 438=33 M L J 316=6 L W 588 A suit under rule 63 is not merely in the nature of appeal The words establish the right in the rule cover not only a mere suit but also one for consequential relief, i.e. recovery of the value of the land when sold prior to the order on the claim petition 40 M 733=31 M L J 394=(1916) 2 M W N 207=4 L W 300=20 M L T 353=36 Ind Cas 445 A suit under rule 63 is a continuation of claim proceedings A I R 1925 Nag 82=22 N L R 67=80 Ind Cas 905, see also A I R 1928 Mad 810=(1928) M W N 336=28 L W 82=52 M L J 52=110 Ind Cas 554, A I R 1928 Mad 1201=52 M 465=30 L W 36=116 Ind Cas 827 Cause of action arising subsequent to the dismissal of the claim need not be joined in a suit under rule 63, to set aside the order under rule 58 A I R 1928 Mad 810=(1928) M W N 336=28 L W 82=56 M L J 52=110 Ind Cas 554 Where objection was dismissed but the attachment was also ceased within one year, the claimant is not bound to bring suit for declaration of title A I R 1934 All 267 (F B) Where one of two unsuccessful claimants brings a suit under this rule making the other defendant and admitting his claim, the non suing claimant also gets the advantage of the decree A I R 1934 Bom 129 Where objection dismissed on ground of unnecessary delay still suit must be brought within one year 144 Ind Cas 993=35 Bom L R 147=57 B 213=A I R 1933 Bom 190 Where no adverse order is made against a person, it is not necessary for him to bring a suit within R 396=A I R 1931 Bom 288, Ind Cas 326=9 Rang 561, 142 M W N 669=A I R 1933 Mad 328

see also 144 Ind Cas 1002=55 A claim to attached property is - be assailed only by the institution of a suit within one year as provided for in rule 63 A I R 1928 Mad 1259, see also 26 A L J 974=A I R 1928 All 327, 35 Ind Cas 321=66 P R 1916, 44 C 698=21 C W N 222, 41 Ind Cas 684=6 L W 281 38 M L J 397=27 M L T 312=56 Ind Cas 481, 45 Ind Cas 270=41 M 985 (F B), 51 Ind Cas 100=45 P L R 1919, 94 Ind Cas 573=A I R 1925 Nag 390=8 N L J 170, 26 C W N 126=64 Ind Cas 713, 64 Ind Cas 209=A I R 1921 Oudh 54=24 O C 213 54 Ind Cas 530=37 M L J 547=26 M L T 513, 75 Ind Cas 322=2 Bur L J 60, 80 Ind Cas 994=A I R 1924 Sind 97=17 S L R 63, A I R 1924 Cal 744=51 C 548=39 C L J 418=83 Ind Cas 233

If a claimant sues a party to such claim suit, compel him to bring a suit for a L T 581=120. Ind Cas 762 Order under r 63 is conclusive as between claimant and decree holder and does not affect judgment debtor's right and title to the property A I R 1931 Lah 74=131 Ind Cas 225 The word conclusive means final i.e., unappealable A I R 1923 Rang 195=76 Ind Cas 677 Dismissal of claim petition by Court without jurisdiction need not be set aside by suit. A I R 1928 Mad 878=112 Ind Cas 619 Where a claim petition is dismissed for default, Court can restore it to file and that right is not taken away by rule 63 A I R 1924 Mad 715=47 M 451=47 M L J 13=79 Ind a claim has not been disposed Ind Cas 511 Where a claim petition owing to the insolvency, the claimant is not bound to bring a suit there is no attachment 110 Ind Cas 115, A I R 1930 All 177=1930 A L J 594=122 Ind. Cas 865, but see A I R 1929 Rang 228=124 Ind Cas 261

In defence to a suit under rule 63 an attaching decree-holder can plead that the alienation is a fraudulent one intended to defeat or delay the creditors 43 M 760=38 M L J 350=12 L W 47=59 Ind Cas 947, see also 57 Ind Cas 430=22 Bom L R 743, 54 Ind Cas 793 Where the objection of the claimant was granted on the basis of a deed of gift, suit to declare gift as fictitious and fraudulent is not suit under Order 21 rule 63 144 Ind Cas 378=34 P L R 443=A I R 1933 Lah 449 Where substantial portion of the consideration is found to be fraudulent, the whole transfer should be treated as fraudulent 131 Ind Cas 383=12 Lah. 763=31 P L R. 350=A I R 1932 Lah 174 Where declaratory suit is dismissed on

ground of ceasing of attachment due to dismissal of execution proceedings does not decide title to attached property A I R 1933 Rang 190 Order by executing Court on objection under order 21, rule 58 is covered by order 21, rule 63 whether passed after or without investigation 131 Ind Cas. 77=7 O W N 1173=6 Luck. 461= editor cannot without previous leave bring declaration 145 Ind Cas 697=A I R 1933 Nag 217, 333 M W N 152=37 M L W 346 Suit under order 21, r 63 is of a comprehensive nature and not confined to whether execution Order is correct 132 Ind Cas 215=13 Lah L J 143=33 P L R 345=A I R 1931 Lah 483. Dismissal of first objection to attachment bars second objection 130 Ind. Cas 406=32 P L R 413=A. I R 1931 Lah 6

**Onus**—Onus is on the plaintiff to prove his case A I R 1929 Lah 455=30

(1919) rat. 409=53 Ind Cas 892, see also A I R 1919 Pat 579=10 P L T 339=8 Pat 890=119 Ind Cas 74, 117 Ind Cas 20=A I R 1929 Nag 121, A I R 1928 Mad 1259=113 Ind Cas 358, 142 Ind Cas 112=34 P L R 363=A I R 1933 Lah 337, A I R 1929 Nag 293=92 Ind Cas 810, 105 Ind Cas 208=A I R 1927 Oudh 440=4 O W N 794, A I R 1928 Pat. 434=7 Pat 777=9 P L T 461=112 Ind Cas 371, 107 Ind Cas 782=10 L L J 42, 78 Ind Cas 887=A I R 1914 Nag 40, 77 Ind Cas 50=A I R 1923 Nag 334, A I R 1924 Mad 770=34 M L J 201=47 M L J 14=19 L W 627 50 Ind Cas 884=47 P L R 1919 56 Ind Cas 427=19 O C 64 67 Ind Cas 876=3 Lah L J 198, 131 Ind Cas 383=12 Lah 763=32 P L R 350 A I R 1932 Lah 174, 58 Ind Cas. 205, 55 Ind Cas 72 5, Ind Cas 752 60 Ind Cas 751 In a suit under rule 63 the plaintiff has to prove that he and not the judgment debtor was the owner of the decree tile was based on roving fraud is on Cas 453, see also 43 Ind Cas 419 is out of posses

sion under s 110 of the Evidence Act 37 Ind Cas 767=10 Bur L T 238

**Declaratory suit.**—A suit under rule 63, may be suit for declaration to set aside an order passed in the execution department within one year A I R 1930 All 39=124 Ind Cas 713, see also 120 Ind Cas 679=A I R 1929 Lah 865=11 Lah. 369=31 P L R 752=11 Lah L J 452=120 Ind Cas 679, A I R 1926 Rang 124=4 Rang 22=95 Ind Cas 98, 93 Ind Cas 997=A I R 1926 Lah 348=7 Lah. 235=27 P L R 408=8 Lah L J 359, 52 Ind Cas 157, 9 Bur L T 199=34 Ind Cas 125, 9 Bur L T 89=33 Ind Cas 124

**Party**—A judgment debtor not party to the claim proceedings does not become so by reason solely of his being the judgment debtor A I R 1924 All 302=46 A 45=21 A L J 770=77 Ind Cas 87, see also 144 Ind Cas 524=A I R 1933 Lah 573 On the death of a decree holder his representatives should be made parties A I R 1922 Lah 78=16 P L R 1922=64 Ind Cas 359 So also claimants representatives should be made parties where the suit is by decree holder A I R 1921 Cal 101=33 C L J 201=25 C W N 544=62 Ind Cas 348 Where property is sold by auction after rejecting the objection decree holder is not a necessary party to the suit against auction purchaser A I R 1927 Lah 631=103 Ind Cas. 763 see also A I R 1923 Mad 58=16 L W 350=1922 M W N 674=32 M L T 124=70 Ind Cas 168, A I R 1928 Nag 65=105 Ind Cas 799 A judgment debtor or his Official Receiver when not a party to the claim proceedings is not bound by any order passed on the claim petition, nor can he take advantage of such order to defeat the sale executed by the judgment debtor on the ground that the suit was not brought within one year from the order 110 Ind Cas 511 (Mad) Attaching creditor whose attachment is raised on objection from transferee can institute suit without impleading other creditors of judgment-debtors 133 Ind. Cas. 118=32 P L R 201=A I R 1931 Lah 430.

**Limitation**—Limitation for suit to set aside an order under r. 58 is one year even if that order is passed without investigation and not on merits A I R

Nag 69=69 Ind Cas 522, see also A I R 1923 Nag 187=6 N L J 66=19 N L R 34=71 Ind Cas 404 A I R 1927 Bom 234=29 Bom L R 285=101 Ind Cas 335 The limitation runs from the date of order passed under rule 58 A I R 1927 Lah 680=104 Ind Cas 289, A I R 1929 Pat 166=11 P L T 28=115 Ind Cas 703; A I R 1923 Nag 187=19 N L R 34=71 Ind Cas 404

**Costs**—Under s 63 Court cannot allow the successful party in a regular suit to have his costs of the claim petition A I R 1925 Mad 233=20 L W 557=35 M L T 106=83 Ind Cas 89; see also 37 Ind Cas 78=3 O L J 529 In a regular suit the question of costs of the miscellaneous proceedings should also be dealt with A I R 1928 Rang 245=6 Rang 408=112 Ind Cas 285, see also A I R 1929 Rang 128=119 Ind Cas 213, 144 Ind Cas 315=A I R 1933 Rang 91

**Appeal**—A claimant under rule 58 ca under s 47 3 L W 377=34 Ind Cas 759, se 14 A L J 722, 38 Ind Cas 152 If on an appeal for execution is dismissed, the decree holder can either bring a suit against decree or prefer an appeal No revision can lie 38 Ind Cas 299 Appeal from original side from order in claim case does not lie 37 C W N 641=60 C 914=A I R 1933 Cal 715

**Revision**—Conclusive in rule 63 means 'unappealable' and does not preclude revision in case of an order r 60 or r 61 in proper cases A I R 1927 Nag 286=10 N L J 125=103 Ind Cas 12, see also 120 Ind Cas 735 High Court can interfere in revision even though remedy of suit is open A I R 1933 Rang 259.

**Revival of attachment**—When the claim being allowed under Order XXI, rule 60, a property is released from attachment and a suit is brought by decree holder as provided by r 63, and decided in his favour the result is that the attachment is revived although the property was released from attachment A I R 1929 Cal 524=57 C 122=123 Ind Cas 737

**Valuation**—The plaint in a suit under rule 63 has to be charged with a fixed Court fee of Rs 10 and not with *ad valorem* Court fee. 64 Ind Cas. 49. The proper valuation for purposes of jurisdiction is the decree amount and not the value of the property when it is higher than the decree amount 38 A L J 1103=31 Ind Cas 879, but see A I R 1929 Mad 323=56 M L J 589=119 Ind Cas 46, 137 Ind Cas 55=A I R 1932 Rang 20

### Sale generally

64. [S 284] Any Court executing a decree may order that any property

Power to order property attached to be sold and proceeds to be paid to person entitled

attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same

**Scope**—Attachment is a condition precedent for sale A I R 1930 Mad. 414=120 Ind Cas 863, 42 Ind Cas 259, but see A I R 1931 Cal 35=57 C 1206=129 Ind Cas 779, A I R 1923 Pat 45=3 P I T 765=2 Pat 207=68 Ind Cas 363 64 Ind Cas 420=A I R 1922 Nag 267=18 N L R 152=4 N L J 118=63 Ind Cas 420 Sale is valid where proclamation contains correct number, no matter writ of attachment states wrong one A I R 1931 Cal 35=57 C 1206=129 Ind Cas 779 Proceedings if not objected to on notice of sale a proclamation cannot be questioned at sale A I R 1930 Lah 685=121 Ind Cas 369 Where property attached by one Court but sold by different Court the sale is not invalid A I R 1929 Mad 852=30 L W 649=125 Ind Cas 90 Attachment may be had before judgment A I R 1919 Cal 818=33 C W N 848=57 C 67=A I R 1919 Cal 67=126 Ind Cas 43 Where there are two applications for sale in execution of two decrees of different decree-holders sale should be ordered first in case of application which is prior 138 Ind Cas 686=A I R 1933 Lah. 10

Money decree cannot be sold 141 Ind Cas 37=11 Pat 36=A I R 1932 Pat 349 Court in execution can sell any right and interest of judgment debtor which he is competent to sale A I R 1931 Oudh 352=7 Luck 111

**65. [S. 286]** Save as a otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed

N B—For local amendments in C P and Rangoon, vide *infra*

Scope—Sale is complete when property is knocked down to highest bidder 131 Ind Cas. 227=A. I R 1931 Lah 78 Bidders can be from a particular class of persons A. I R 1927 Bom. 143=29 Bom L R 102=100 Ind Cas 1008 Where sale is made under direction of officer not entrusted with case, but subsequently the fact that the sale is invalid A I R 1928 Pat 615=8 According to the Rangoon High Court, Judge for the completion of the sale. A I R 1929 Rang 311=7 Rang 425=120 Ind Cas 142

**66. [S. 287] (1)** Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold,
- (b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government,
- (c) any incumbrance to which the property is liable,
- (d) the amount for the recovery of which the sale is ordered, and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property

are known to or can be ascertained by the person making the verification, the matters required by sub rule (2) to be specified in the proclamation.

(3) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto

N B—For local amendments in C P Lahore Peshwar and Rangoon vide *infra*

Scope—Court must inquire all details required to be mentioned in sale proclamation from the judgment debtor A I R 1918 Nag 281=109 Ind Cas 443 Court can act on report of certain person A I R 1927 Mad 943=105 Ind Cas 335 Failure to issue notice is material irregularity A I R 1927 Lah 84=99 Ind Cas 515, but see A I R 1926 Cal 879 Failure to mention place of sale in sale proclamation is material irregularity A I R 1927 Rang 84=5 Bur L J 183=100 Ind Cas 74 Proceedings under rule 66 are administrative only A I R 1927 All 208=93 Ind Cas 208 Determination of question under rule 66 is unappealable A I R 1926 Cal 1184=96 Ind Cas 567 A I R 1927 All 208=99 Ind Cas 208, A. I R 1926 All 268=48 A 260 Order under rule 66 coming under s 47 is only appealable A I R 1926 Mad 834=51 M L J 135 A I R 1926 Cal 610=91 Ind Cas 819 Failure to publish sale proclamation is irregularity only A I R 1926 Cal 577 Notice of sale proclamation is only necessary A I R 1926 Oudh. 45=89 Ind Cas 107, see also A I R 1924 All 747=19 L W 583=76 Ind Cas 173 Omission to state time of sale in proclamation vitiates sale if loss is proved 15 N L R 125=51 Ind Cas 864 Notice issued under rule 66 is enough even for purpose of r 22 A I R 1921 Lah 384=5 Lah L J 67=118 P L R. 1920=2

Ind Cas 816 Failure to mention amount of revenue assessed vitiates sale proclamation 28 C W N 593=75 Ind Cas 546 (P C) Proclamation of sale is not rendered void for failure to mention plea of house A I R 1925 Oudh 150=80 Ind Cas 667 It is not incompetent to add minor's interest in joint family in sale proclamation A I R 1929 B 465=53 Bom 777=31 Bom L R 1115 onus of proof of that notice was not properly served on judgment debtor is on him 145 Ind Cas 915=A I R 1933 Pat. 640 Inquiry contemplated by rule is a summary one and need not be elaborate 35 C W N 907=136 Ind Cas 468=A I R 1932 Cal 141 Under this rule Court can grant interest up to the date of sale A I R 1932 Cal

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XXI,

r 90 A I R 1929 Nag 130=25 N L R 58=118 Ind Cas 49

Valuation—Sale proclamation must state value of property A I R 1930 Nag 191=124 Ind Cas 250, see also 35 C W N 142=58 C 577, A I R 1930 Oudh 81=5 Luck 481=6 O W N 1085=124 Ind Cas 422, A I R 1930 Cal 781=52 C W N 848=57 C 67

2=83 Ind Cas 430, 1

A I R 1934 Cal 204

L J 580=48 Ind Cas

wrong 4 Pat L J 37

17 Court's valuation of

A I R 1922 Pat 551=1

Pat 214=75 Ind Cas 185 Incorrect valuation gives right to have sale set aside A I R 1924 Mad 767=19 L W 585=76 Ind Cas 173, 55 A 519=1933 A L J

1273=A I R 1933 A 546 Valuation in proclamation is approximate only A I R 1926 Pat 140=6 P L T 859=92 Ind Cas 350 But failure to enter value of property in proclamation is not material irregularity A I R 1927 Mad 1009=106 Ind

Cas 201, 106 Ind Cas 138=A I R 1928 Mad 398, 109 Ind Cas 443, 70 Ind Cas 308, A I R 1932 All 664 Order fixing up set price is unappealable A I R

to adjourn sale

5=52 B 444=

in sale procla-

L J 363=109

tion A I R,

23 Mad 619=

does not pre-

ment A I R

ailure to assist

on operates as

721=74 Ind Cas 838

court the valuation given

mentioned 35 C W N

142=132 Ind Cas 687=58 C 577=A I R 1931 Cal 520, see also 35 C W N. 907=A I R 1932 Cal 141, 37 C W N 231=60 C 581=A I R 1933 Cal 511

Order as regards valuation is not appealable A I R 1932 All 136=1931 A L J, 1084

Income of the property—Sale proclamation need not mention the income of the property A I R 1930 Lah 692=122 Ind Cas 234, A I R 1928 Lah 918=110 Ind Cas 339, 39 Ind Cas 59=11 P L R 1917,

Description of property Misdescription of property is no ground for invalidating sale if property could be identified otherwise A I R 1929 Cal 409=

as to identify it A I R 1928 Pat 615=8 Pat 122=9 P L T 627=113 Ind Cas 631 Purchaser takes the risk if property does not answer description unless sale

is vitiated by fraud 9 Bur L T 169=8 L B R 427=33 Ind Cas 1003



**Encumbrance** Proclamation should not specify more alleged encumbrance 134 Ind Cas 746=9 Rang 367=A I R 1931 Rang 301 Court can only notify but cannot order sale subject to prior encumbrance 132 Ind Cas 767=8 O W N 179=A I R 1931 Oudh 157 Omission to mention encumbrances in sale proclamation cannot be by itself injurious to judgment debtor 143 Ind Cas 673=55 A. 519=1933 A L J 1273=A I R 1933 All 546, see also 140 Ind Cas 494=A I R 1932 All 369 Where reasonable particulars of encumbrances are given, exact amount need not be given A I R 1934 Mad 260 In a suit by subsequent mortgagee prior mortgage may be shown in sale proclamation A I R 1921 Oudh 88=5 O W N 210=110 Ind Cas 79

**Other information**—Court is justified in giving information material for judging the nature and value of property 136 Ind Cas 47=1931 M W N 1162=61 M L J 683=56 M 203=A I R 1932 Mad 119 High Court will not interfere where Judge has used his discretion fairly under Order 21, rule 65 (2) (e) 139 Ind Cas. 225=56 C W N 347=A I R 1932 Cal 576

**67. [S 289]** (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2)

**Mode of making proclamation** (2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given

**Scope**—A proclamation affixed to one of the properties is quite sufficient A I R 1930 Lah 685=121 Ind Cas 369 Failure to publish sale proclamation by beat of drum where it is possible is material irregularity 1933 A L J 73=55 A 182=A I R 1933 A. 147 For publication of proclamation no particular period is required to be elapsed 140 Ind Cas 732=36 C W N 242=A I R 1922 Cal 627

**68 [S. 290.]** Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale

N B—For local amendments in Allahabad Lahore, Oudh and Peshwar, vide *infra*

**Scope**—Where a sale takes place 29 days after sale proclamation in Court it was not illegality but a material irregularity and the sale case not be set aside unless substantial injustice resulted A I R 194 Nag 293=78 Ind Cas 746, see also 20 I R 176=21 C 66, 31 C 385, 68 Ind Cas 363=3 P L T 765=A I R 1923 Pat 45=2 Pat 207, 145 Ind Cas 125=A I R 1933 Lah 186, but see 16 C 794, 17 C 769 (F B)

**69 [S 291]** (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment.

**Adjournment or stoppage of sale** Provided that, where the sale is made in, or within the precincts of the court house, no such adjournment shall be made without the leave of the Court

(2) Where a sale is adjourned under sub rule (1), for longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

N B—For local amendments in Allahabad, Bombay, C P, Lahore Oudh, Peshwar and Rangoon vide *infra*

Scope—Omission to state date and hour of adjourned sale vitiates sale A I R 1930 All 540=1930 A L J 1062=124 Ind Cas 721 Hour of adjourned sale may be presumed to be same but date of hour should be fixed A I R 1978 Mad 823=110 Ind Cas 779 Holding of sale on day to which it was not adjourned is material irregularity A I R 1921 Cal 397=35 C L J 140-65 Ind Cas 746 Omission of fresh proclamation after adjournment is irregularity A I R 1928 Pat 615=8 Pat 122-113 Ind Cas 681, see also A I R 1978 Oudh 98=2 Luck 490=4 O W N 273=100 Ind Cas 787, 43A 433=60 Ind Cas 763=19 A L J 262 A I R 1923 Rang 154=2 Bur L J 54=75 Ind Cas 343, 3 P L W 357=41 Ind Cas 63 Omission to announce hour fixed for sale is material irregularity A I R 1927 All 241=49A 403=25 A L J 302=99 Ind Cas 926 Successive adjournments beyond seven days is mere irregularity A I R 1929 Mad 24=117 Ind Cas 727 Where with the hope of higher bid the property is kept under hammer for 12 days it is a continuous sale and rule 63 (2) does not apply A I R 1927 Pat 313=6 Pat 432=8 P L T 796=104 Ind Cas 315 Where a sale has tak the order of stay the sale is good and not Lah L J 457=125 Ind Cas 53 This rule do on the ground that the decree has been satis T 493=75 Ind Cas 676 Sale by amin inignora nullity A I R 1921 All 102=19 A L J 225=62 Ind Cas 687 Order under rule 69 is only interlocutory A I R 1924 Mad 234=46 M L J 71=18 L W 615=(1973) M W N 894=75 Ind Cas 901 Where sale is adjourned without reasons being recorded it amounts to material irregularity 140 Ind Cas 499=1932 A L J 357=A I R 1932 All 369 So also when it is adjourned and no time is specified it is material irregularity *Ibid*, see 143 Ind Cas 673=55 A 519=1933 A L J 1273 =A I R 1933 All 546, 37 C W N 622=A I R 1933 Cal 662

70 [S 287, last para] Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector

Saving of certain sales

Scope—Vide A I R 1929 Oudh 235=6 O O N 226=4 Luck 635=117 Ind Cas 431

71 [S 293] Any deficiency of price which may happen on a re sale

Defaulting purchaser answer by reason of  
able for loss on re sale \* penses attendir  
to the Court

of the Collector, as the case may be, by the officer or other person holding the sale, and shall at the instance of either the decree holder or the judgment debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money

Scope—Defaulting purchaser is answerable for loss on re sale if his bid is finally accepted by Court A I R 1929 Lah 673=118 Ind Cas 901 A I R 1925 Mad 631=21 L W 232=87 Ind Cas 1, A I R 1921 Mad 476=46 M L J 134=34 M L T 358=78 Ind Cas 295, 42 M 776=37 M L J 274=(1919) M W N 784=54 Ind Cas 803, 43 Ind Cas 685=41 M 474=31 M L J 156=23 M L T 9=(1918) M W N 1121 Defaulting purchaser is not liable for deficiency if re sale is not held forthwith A I R 1929 Lah 714=121 Ind Cas 189, 88 Ind Cas 131=12 O L J 261=2 O W N 212=A I R 1925 Oudh 397, see also A I R 1922 All 200=20 A L J 105=40 A 266=55 Ind Cas 815 (F B), 45 P W R 1916=32 Ind Cas 407 Remedy under this rule is not exhaustive (1919) Pat 210=50 Ind Cas 97=78 Ind of order to pay ly from date Cas 293 Certif attached

decree A I R 1926 All 379=24 A L J. 385=95 Ind Cas 1033 Order concerning liability to pay deficit is appealable A I R 1927 Nag 112=23 N L R 14=100 Ind Cas 691 In execution of decree for deficiency defaulting purchaser becomes judgment debtor A I R 1926 Mad 872=49 M 570=97 Ind Cas 86 Decree holder means decree holder who brings property to sale A I R 1926 Mad 672=49 M 570=97 Ind Cas. 86. Where deficit is less than Rs 500 no second appeal lies A I R 1921 Bom Ind Cas 192 This rule applies to g 25=17 N L R 49=62 under rule 71 A I R 1925 Oudh 360=12 O L J 80=2 O W N 141=23 O C 18=87 Ind Cas 284 Misdescription of property by decree holder is fraud and defaulting purchaser is not liable for deficit. A I R 1929 Oudh 294=6 O W N 407=4 Luck 814=118 Ind Cas 833, see also 134 Ind Cas 622=33 Bom L R 750=A I R 1931 B 367 Deficiency is not recoverable by officer holding sale 134 Ind Cas 692=33 Bom L R 750=A I R 1931 Bom 367 Where deficiency is certified but not in prescribed form, deficiency can be recovered 141 Ind Cas 367=29 N L R 32=A I R 1933 Nag 123

**72. [S. 294.]** (1) No holder of a decree in execution of which Decree holder not to bid for property is sold shall, without the express or buy property without per permission of the Court, bid for or purchase the property.

(2) Where a decree holder purchases with such permission, the purchase-money and the amount due on the decree Where decree holder purchases, amount of decree may be taken as payment. may, subject to the provisions of section 73,

of the decree in whole or in part - - -

(3) Where a decree holder purchases by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by order set aside the sale, and the costs of such application and order, and any deficiency of price which may happen on the re sale and all expenses attending it, shall be paid by the decree holder

**N B**—For local amendments in Allahabad Bombay, Oudh, Peshwar and Rangoon, vide *infra*

A I R 1927 All 681=25 A L J 121=104 Ind Cas 315 Purchase without permission under the rule is mere voidable A I R 1927 Mad 1135=101 Ind Cas 89, see also 41 B 857=39 Ind Cas 3=19 Bom L R 75 A I R 1923 Cal 302=27 C W N 208=37 C L J 403=75 Ind Cas 196, A I R 1922 P C 336=24 A L J 23=49 I A 312=27 C W N 294=44 M L J 718=25 Bom L R 680=67 Ind Cas 914 (P C) 62 Ind Cas 854=A I R 1921 Mad 402=13 L W 616=(1921) M W N 535 Decree holder bidding with permission at Court at auction sale is in the position of ordinary purchaser 142 Ind Cas 595=10 O W N 1=8 Luck 233=A I R 1933 Oudh. 124 Exemption to decree holder from making deposit of 25 p. c. of purchase money, under rule 84 (2) need not be express and is necessarily implied if permission is granted to him under rule 72 to bid A I R 1931 Lah 78=131 Lah 387=121 Ind Cas 227 Order for set off under the rule is possible only after sale has taken place A I R 1931 Bom 252=33 Bom L R 503 Decree holder purchaser must pay poundage as part of execution costs A I R 1909 All 256=(1929) A L J 243=118 Ind Cas 578 Even permission granted to decree holder to set off purchase money against decretal amount does not affect right of rival decree holder to distribute under s 73 12 L W 328=59 Ind Cas 86, see also A I R 1930 Cal 761=52 C L J 19=129 Ind Cas 776, A I R 1931 Bom 252=33 Bom L R 503, 1933 A L J 1102=A I R 1933 All 665, A I R 1931 Bom 350=55 B 473=33 Bom L R 537=133 Ind. Cas. 817, 130 Ind Cas 458=A I R 1931 Mad 103=1930 M W N 563=130 Ind Cas 458 Sale cannot be upheld where Receiver purchases property at auction sale

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

N B—For local amendments in Allahabad, Bombay, C P, Lahore, Oudh, Peshwar and Rangoon vide *infra*

Scope—Omission to state date and hour of adjourned sale vitiates sale A I R 1930 All 540=19  
 be presumed to A I R 1928 Mad 823=  
 110 Ind Cas 779 not adjourned is material  
 irregularity A I R 1921 Cal 597=35 C L J 140=65 Ind Cas 746 Omission of  
 fresh proclamation after adjournment is irregularity A I R 1928 Pat 615=8 Pat  
 122=113 Ind Cas 631, see also A I R 1928 Oudh 98=2 Luck. 490=4 O W N  
 273=100 Ind Cas 787, 43A 433=60 Ind Cas 763=19 A L J 262, A I R  
 1923 Rang 154=2 Bur L J 54=75 Ind Cas. 343, 3 P L W 357=41  
 Ind Cas 63 Omission to announce hour fixed for sale is material irregularity  
 A I R 1927 All 241=49A 403=25 A L J 302=99 Ind Cas 926 Successive  
 adjournments beyond seven days is mere irregularity A I R 1929 Mad  
 124=117 Ind Cas 727 Where with the hope of higher bid the property is kept  
 under hammer for 12 days, it is a continuous sale and rule 6) (2) does not  
 apply A I R 1927 Pat 313=6 Pat 432=8 P L T 795=104 Ind Cas 315  
 Where a sale has taken place without communication of the order of stay the  
 sale Lah L J 457=125 Ind  
 Cas on the ground that the  
 decree T 493=75 Ind Cas 676  
 Sale nullity A I R 1921 All  
 102=19 A L J 225=62 Ind Cas 637 Order under rule 69 is only interlocutory  
 18 L W 615=(1933) M W N 894=75  
 without reasons being recorded, it amounts  
 79=1932 A L J 357=A I R 1932 All  
 369 So also when it is adjourned and no time is specified it is material irregularity  
*Ibid*, see 143 Ind Cas 671=35 A 519=1933 A L J 1273 =A I R 1933 All 546,  
 37 C W N 622=A I R 1933 Cal 662

70 [S 287, last para] Nothing in rules 66 to 69 shall be deemed  
 Saving of certain sales to apply to any case in which the execution of a  
 decree has been transferred to the Collector

Scope—Vide A I R 1929 Oudh 235=6 O O N 226=4 Luck 635=117 Ind  
 Cas 431

71 [S 293] Any deficiency of price which may happen on a re sale  
 by reason of the purchaser's default, all ex  
 Defaulting purchaser answer penses attending such re sale, shall be certified  
 able for loss on re sale to the Court or to the Collector or subordinate  
 of the Collector, as the case may be, by the officer or other person holding  
 the sale, and shall, at the instance of either the decree holder or the judg  
 ment debtor, be recoverable from the defaulting purchaser under the pro  
 visions relating to the execution of a decree for the payment of money

Scope—Defaulting purchaser is answerable for loss on re sale if his bid is finally  
 accepted by Court A I R 1929 Lah 673=118 Ind Cas 901 A I R 1925 Mad  
 631=21 L W 232=87 Ind Cas 1 A I R 1924 Mad 476=46 M L J 134=34  
 M L T 358=78 Ind Cas 295, 42 M 776=37 M L J 274=(1919) M W N  
 784=54 Ind Cas 805, 43 Ind Cas 635=41 M 474=34 M L J 156=23 M L T  
 9=(1918) M W N 1121 Defaulting purchaser is not liable for deficiency if re sale  
 is not held forthwith A I R 1929 Lah 714=121 Ind Cas 189 88 Ind Cas  
 131=12 O L J 261=2 O W N 212=A I R 1925 Oudh 397, see also A I R  
 1922 All 200=20 A L J 105=40 A 266=55 Ind Cas 815 (F B), 45 P W R  
 1916=32 Ind Cas 407 Remedy under this rule is not exhaustive (1910) Pat  
 210=50 Ind Ca  
 of order to pay  
 Cas 296 Certific

decree A I R 1926 :

liability to pay deficit :

Cas 691 In execution

debtor. A I R 1926 :

decree holder who brings property to sale A I R 1926 Mad 672=49 M 570=97  
Ind Cas 86 Where deficit is less than Rs 500, no second appeal lies A I R  
1921 Bom 720=15 B 772=72 Bom I R 1103=59 Ind Cas 192 This rule

1 Nag 25=17 N L R 49=62

order under rule 71 A I R

1=27 O C 18=87 Ind Cas 234

and defaulting purchaser is

not liable for deficit. A I R 1929 Oudh 294=6 O W N 407=4 Luck 814=118  
Ind. Cas 833 ; see also 134 Ind Cas 622=33 Bom L R 750=A I R 1931 B 367

Deficiency is not recoverable by order holding sale 134 Ind Cas 692=33 Bom  
L R 750=A I R 1931 Bom 367 Where deficiency is certified but not in  
prescribed form, deficiency can be recovered 141 Ind Cas 367=29 N L R

52=A I R 1933 Nag 123

## 72. [S. 294] (1) No holder of a decree in execution of which

Decree holder not to bid for property is sold shall, without the express  
or buy property without per permission of the Court, bid for or purchase  
mission the property.

## (2) Where a decree holder purchases with such permission, the purchase-

Where decree holder pur money and the amount due on the decree  
chases, amount of decree may may, subject to the provision of section 73,  
be taken as payment and the Court

of the decree in whole or in pa

(3) Where a decree holder purchases by himself or through another  
person, without such permission, the Court may, if it thinks fit, on the  
application of the judgment debtor or any other person whose interests are  
affected by the sale, by order set aside the sale ; and the costs of such  
application and order, and any deficiency of price which may happen on  
the re sale and all expenses attending it, shall be paid by the decree holder.

N B—For local amendments in Allahabad Bombay, Oudh, Peshwar and  
Rangoon, vide *infra*

A I R 1927 All 681=25 A L J  
led to be permitted to bid under

1927 Pat 312=6 Pat 432=8 P L T

706=104 Ind Cas. 315 Purchase without permission under the rule is mere  
voidable A I R 1927 Mad 1135=101 Ind Cas 89, see also 41 B 857=39  
Ind Cas 3=19 Bom L R 75, A I R 1923 Cal 302=27 C W N 208=37 C L J

403=75 Ind Cas 196, A I R 1922 P C 336=24 A L J 23=49 I A 312=

27 C W N 291=44 M L J 718=25 Bom L R 680=67 Ind Cas 914 (P C)

62 Ind Cas 8,4=A I R 1921 Mad 402=13 L W 616=(1921) M W N 535  
Decree holder bidding with permission at Court at auction sale is in the position

of ordinary purchaser 142 Ind Cas 595=10 O W N 1=8 Luck 233=A I R

1933 Oudh 124 Exemption to decree holder from making deposit of 25 p.c. of  
purchase money, under rule 84 (2), need not be express and is necessarily implied

if permission is granted to him under rule 72 to bid A I R 1931 Lah 78=131

Lah 387=121 Ind Cas 227 Order for set off under the rule is possible only after  
sale has taken place A I R 1931 Bom 252=33 Bom L R 503 Decree holder

purchaser must pay poundage as part of execution costs A I R 1929 All  
206=(1929) A L J 243=118 Ind Cas 378 Even permission granted to decree

holder to set off purchase money against decretal amount does not affect right  
rival decree holder to distribute under s 73 12 L W 328=59 Ind Cas 8  
see also A I R 1930 Cal 761=52 C L J 19=129 Ind Cas 776, A I R  
1931 Bom 252=33 Bom L R 503, 1933 A L J 110=A I R 1933 All  
A I R 1931 Bom 350=55 B 473=33 Bom L R 537=133 Ind  
130 Ind Cas 458=A I R 1931 Mad 103=1930 M W N 568=130  
458 Sale cannot be upheld where Receiver purchases property at

as decree-holder. 139 Ind Cas. 186=36 C. W. N. 125=55 C. L. J. 85=59 C 956=A. I. R. 1932 Cal 672. Set-off should be deemed to be made as soon as sale is made and other decree-holders cannot claim rateable distribution in the amount  
 . . . . . I. 1145=38 M. L. W. 529=65 M. L. J. 569=  
 . . . . . using to execute order granting rateable  
 . . . . . 166=12 P. L. T. 477=10 Pat. 830=A. I. R.  
 need not offer decretal amount plus costs of sale. 145 Ind. Cas 158=A I. R. 1933 Rang. 151=6 R. R. 26 Where decree-holder does not bid upto price mentioned in sale proclamation, Court cannot dismiss execution A. I. R. 1934 Pat 345. Where proceedings are transferred to Collector, decree holder can apply to him for leave to bid but should apply to Court for set off under rule 72.  
 44 Bom L R. 346=22 Bom L. R. 106=55 Ind Cas 527. *Benami* purchase by decree-holder without leave is also voidable at the instance of judgment-debtor.  
 44 B 352=22 Bom L R 295=36 Ind. Cas. 349

73. [S. 292.] No officer or other person having any duty to perform in Restriction on bidding or connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire rchase by officers any interest in the property sold.

Notes—Vide A I R 1924 Lah 70=40 P L R 1922=69 Ind Cas 718

#### *Sale of movable property.*

Sale of agricultural produce. 74. [New.] (1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like or fodder stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75 [New.] (1) Where the property to be sold is a growing crop and the Special provisions relating to crop from its nature admits of being stored but growing crops has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to cutting or gathering it.

N. B—For local amendments in C. P. Oudh, Peshwar and Punjab vide *infra*.

**76. [S 296]** Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker

**77. [S 297]** (1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re sold

(2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment debtor and a co owner, and two or more persons, of whom one is such co owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co owner

**78. [S 298]** No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery

*Scope*—On sale of movable property it automatically becomes absolute A I R 1930 Lah 236=3 P L R 241=115 Ind Cas 70, see also A I R 1930 All 513=124 Ind Cas 48 Under the rule irregularity in publishing or conducting sale of movable property does not vitiate sale 119 Ind Cas 285 (All)

**79 [Ss 299, 300, 301.]** Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer to making any such payment to any person except the purchaser

*Scope*—Simple mortgage deed can be sold under the rule A I R 1924 All 976=46 A 917=22 A L J 840=80 Ind. Cas 890 This rule does not compel a company to accept purchaser of shares at Court sale as the transferee 41 B 76=18 Bom L R 982=37 Ind Cas 669

**80. [S 302]** (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf

as decree holder 139 Ind Cas 186=36 C W N 125=55 C L J 85=59 C 956=A I R 1932 Cal 672 Set-off should be deemed to be made as soon as sale is made and other decree holders cannot claim rateable distribution in the amount of bid 145 Ind Cas 975=1933 M W N 1145=38 M L W 529=65 M L J 569=A I R 1933 Mad 804 Order refusing to execute order granting rateable distribution is appealable. 133 Ind Cas 166=12 P L T 477=10 Pat 830=A I R 1931 Pat 359 Where decree holder has been allowed to bid upto decretal amount need not offer decretal amount plus costs of sale 145 Ind Cas 158=A I R 1933 Rang 151=6 R R 26 Where decree holder does not bid upto price mentioned in sale proclamation, Court cannot dismiss execution A I R 1934 Pat 345 Where proceedings are transferred to Collector decree holder can apply to him for leave to bid but should apply to Court for set off under rule 72 44 Bom L R 346=22 Bom L R 106=55 Ind Cas 527 Benami purchase by decree holder without leave is also voidable at the instance of judgment debtor 44 B 352=22 Bom L R 296=36 Ind Cas 349

### 73 [S 292] No officer

Restriction on bidding or  
purchase by officers

Notes—Vide A I R. 1924 Lah 70=40 P L R 1922=69 Ind Cas 718

### *Sale of movable property*

74 [New] (1) Where the property to be sold is agricultural produce, the sale shall be held,—

Sale of agricultural produce

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered at or near the threshing floor or place for treading out grain or the like or fodder stack on or in which it is deposited

Provided that the Court may direct the sale to be held at the nearest place of public resort if it is of opinion that the produce is thereby likely to sell to greater advantage

(2) Where on the produce being put up for sale,—

- (a) a fair price in the estimation of the person holding the sale, is not offered for it and
- (b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale the next market day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce

75 [New] (1) Where the property to be sold is a growing crop and the

Special provisions relating to growing crops crop from its nature admits of being stored but has not yet been stored the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day and the sale shall not be held until the crop has been cut or gathered and is ready for storing

(2) Where the crop from its nature does not admit of being stored it may be sold before it is cut and gathered and the purchaser shall be entitled to enter on the land and to do all that is necessary for the purpose of tending and cutting or gathering it

N B—For local amendments in C P Oudh Peshwar and Punjab vide *infra*



**76 [S 296]** Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker

**77 [S 297]** (1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re sold

(2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute

(3) Where the movable property to be sold is a share in goods belonging to the judgment debtor and a co owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co owner

**78 [S 298]** No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery

**Scope**—On sale of movable property automatically becomes absolute A I R 1930 Lah 236=3 P L R 241=115 Ind Cas 70 see also A I R 1930 All 513=124 Ind Cas 48 Under the rule irregularity in publishing or conducting sale of movable property does not vitiate sale 119 Ind Cas 285 (All)

**79 [Ss 299, 300, 301.]** Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer to making any such payment to any person except the purchaser

**Scope**—Simple mortgage deed can be sold under the rule A I R 1924 All 976=46 A 917=22 A L J 840=80 Ind Cas 890 This rule does not compel a company to accept purchaser of shares at Court sale as the transferee 41 B 76=18 Bom L R 982=37 Ind Cas 669

**80. [S 302]** (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this

may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party

(2) Such execution or endorsement may be in the following form, namely —

A B by C D, Judge of the Court of (*or as the case may be*), in a suit by E, F against A B

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself

Scope —To entitle purchaser at auction of share to the share, execution of transfer by Court under this rule which is permissive is not necessary in every case but only where execution is required for transfer A I R 1928 Mad 571=(1928) M W N 442=28 L W 932=111 Ind Cas 225

81 [S 303.] In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct, and such property shall vest accordingly

Vesting order in case of other property

Accordingly

N B—For local amendment in Burma Vide *infra*

Scope—Mortgagee of movables cannot follow the same into hands of auction purchaser A I R 1925 Rang 303=4 Bur L J 135=92 Ind Cas 370 Rule 81 is subject to accepted principle that courts or its officers acts should prejudice none A I R 1924 Mad 324=45 M L J 849=47 M 543=1923 M W N 811=33 M L T 106=79 Ind Cas 651

### *Sale of immovable property.*

82 [S 304.] Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes

What Courts may order sales

83 [S 305] (1) Where an order for the sale of immovable property has been made, if the judgment debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the sale of such property, or some part thereof

Postponement of sale to enable judgment debtor to raise amount of decree

of the judgment debtor, the Court may postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper to enable him to raise the amount

(2) In such case the Court shall grant a certificate to the judgment debtor authorizing him within a period to be mentioned therein and no withstanding anything contained in section 64, to make the proposed mortgage, lease or sale

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment debtor but save in so far as a decree holder is entitled to set off such money under the provisions of rule 72 into Court

Provided also that no mortgage lease or sale under this rule shall become absolute until it has been confirmed by the Court

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on such property

Scope—Decree or properly exercised a refusing certificate for private sale, after allowing sufficient time A I R 1911 L 11 384=2 U P L R (L) 9=118 P

L. R. 1920=5 Lah L J 67=45 Ind Cas 816 Rule 83 and para 11 Sch III, are entirely independent and uncontrolled by each other A I R 1911 Oudh 176=8 O L J 338=66 Ind Cas 642 For private alienation under the rule reference necessary A I R 1924 Lah 134=5 Lah under mortgage decree for payment can 4 Mad 234=46 M L J 71=1933 M W N 894=75 Ind Cas 901 No special form under r 83 is necessary for Collector's written permission under the rule A I R 1911 Oudh 176=8 O L J 338=66 Ind Cas 642 Where case falls both under order XXI, r 83 and s 29 Guardian and Words Act, procedure under both must be followed A I R 1922 Cr 150=49 C 911=28 C W N 57=36 C L J 326=70 Ind Cas 930 Order under r 83 is appealable 103 Ind Cas 524 Mortgage decrees are exempt from operation of the rule because right of sale is specifically provided in decree independently of attachment A I R 1921 Lah 384=118 P L R 1921=2 U P L R 91=5 Lah L J 67=55 Ind Cas 816

84 [S 308] (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty five per cent on the amount of his purchase money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold

(2) Where the decree holder is the purchaser and is entitled to set off the purchase money under rule 72, the Court may dispense with the requirements of this rule

N B.—For local amendment in Oudh vide *infra*

Scope.—Failure to deposit 25 per cent of purchase money immediately is only irregularity which does not affect validity of sale unless substantial injury is caused to judgment debtor 144 Ind Cas 314=10 O W N 440 A I R 1933 Oudh 345 Sale of property in auction held by Court does not become complete before its acceptance by Court 134 Ind Cas

Knocking down property to final bid 29 N L R 52=A I R 1933 Nag necessary *Ibid* It is only officer to the purchaser A I R 1929 Rang 311=7 Rang 425=120 Ind Cas

rests with Court and until that is not done deposit of one fourth cannot be called upon as 901 Deposit of 25 per cent must be made unless with by Court A I R 1929 Lah 492=116 Ind Cas 901 per cent immediately is mere irregularity under r 90 and does not avoid sale unless it results in substantial injury 110 Ind Cas 773, see also 67 Ind Cas 427 A I R 1934 Pat 329, A I R 1934 Pesh 25 It is sufficient although not re-sold for want

1926 Mad 739=23 L W R 1922 All 200=44 A 266= L J 274=(1919) M W N with A I R 1930 Mad 761= s 303 If final bid remains void of 30 days under r 92 will Lah 41=118 Ind Cas 900 at 52=2 Pat 548=4 P L T grant of time by Court on though material irregularity 81=2 Bur L J 166=79 Ind auction purchaser to deposit

purchase money is not appealable 53 Ind Cas 597

85 [S 307.] The full amount of the purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property

Time for payment in full of purchase money

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under rule 12

**N B**—For local amendment in C P vide *infra*

**Scope**—This rule is applicable when bid of decree holder purchaser allowed set off before sale exceeds the decretal amount, in which case 25 p c if excused from being deposited at sale due can be paid within 15 days after sale A I R 1931 Mad 103=(1930) M W N 568=130 Ind Cas 438 With consent of parties time for payment of balance of purchase money can be extended A I R 1927 Lah 337=103 Ind Cas 800, see also A I R 1931 Lah 15=112 Ind Cas 561, A I R 1923 Mad 48=16 L W 319=43 M L J 477=(1922) M W N 707=31 M L T 363=69 Ind Cas 101 Property will be re sold on decree holder purchaser's failing to deposit balance of purchase money after deducting decree amount as the rules are mandatory 51 Ind Cas 316 Payment of whole balance of purchase money on behalf of all w 51 C 992=81 Ind for carrying out order

on lower Courts setting aside sale (1917) M W N 861=42 Ind Cas 552 Court can not extend period under Order 21, r 85 35 C W N 877=59 C 117=A I R 1932 Cal 126 Effect of extension of period on consent of judgment debtor is that irregularity is to be deemed to have waived 138 Ind Cas 177=35 C W N 877=59 C 117=A I R 1932 Cal 126 Under certain circumstances the provisions of this rule may be directory only and not mandatory and as such the Court may in its discretion refuse to set aside the sale 122 Ind Cas 561=A I R 1931 Lah 15, see also 140 Ind Cas 98=12 P L T 559=A I R 1932 Pat 342

**86 [S. 308]** In default of payment within the period mentioned in the last preceding rule, the deposit may, if the

Procedure in default of payment Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold

**Scope**—This rule shows that the effect of delay in paying balance of purchase money is not necessarily to invalidate sale A I R 1924 Rang 81=2 Bur L J 166=79 should not be a bar to sale and forfeiture and del R 1924 W 1=

Extends to decree cause no loss to judgment debtor A I R 1924 Rang 81=2 Bur L J 166=79 Ind Cas 741 Any person interested can move Court to re sell property 138 Ind Cas 103=1932 A L J 501=A I R 1932 All 392

**87 [S 309]** Every re-sale of immovable property, in default of payment of the purchase-money within the period

Notification on re sale allowed for such payment shall be made after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale

**Scope**—This rule does not apply to a case in which the property is put up and sold forthwith under the provisions of rule 84 2 C W N 411

**88 [S 310]** Where the property sold is a share of undivided immo

Bid of co sharer to have preference vable property and two or more persons, of whom one is a co sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co sharer

**Scope**—Co-sharer bidding same amount as preceding stranger bestowed and asserting pre-emption right is within the rule 3 O L J 403=36 Ind Cas 654, but see 3 A 817, (1888) A W N 208 Officer appointed to conduct sale has no jurisdiction to determine claims under this rule 145 Ind Cas 281=10 O W N 816=A L R 1933 Oudh 491

**89 [S 310 A] (1)** Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent, of the purchase money, and

(b) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule

(3) Nothing in this rule shall relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

**N B**—For local amendment in Allahabad C P Lahore Madras and Peshwar Vide *infra*

**Scope**—The provisions of r 89 must be strictly complied with being of the nature of an exceptional concession allowed to the judgment debtor A I R 1929 Nag 10 Person making payment under rule 89 must accept the validity of sale and cannot challenge its validity A I R 1928 Pat 193=7 Pat 30=115 Ind Cas 193 Court is bound to reject the application under this rule where the deposit is after expiry of 30 days from the date of sale A I R 1928 Nag 136=109 Ind Cas 449, see 335, A I R 1926 Lah 638, A I R 1928 Rang 490=113 Ind Cas 310 Persons in r referred to in rule 89 The wording of rule 89 A I R 1928 Mad 454=1928 M W 57 Where necessary amount is deposited but a sale the application is one under this rule A I R 1928 Nag 111=106 Ind Cas 333 Provisions of C P Code under rule 89 are not applicable to sales under Bengal Land and Tenant Procedure Act A I R 1927 Cal 752=31 C W N 1016=104 Ind Cas 180 Compensation under rule 89 is payable to a purchaser for disappointment caused by having the sale set aside A I R 1927 Pat 288=6 Pat 386=105 Ind Cas 724 A man is not debarred from defending his action under rule 89 if he 327=25 L W 106=1927 M W N e 89 need not show the name of the

sale under rule 89 A I R. 1925 Oudh 411=12 O L J 289=87 Ind Cas 8-9, 87 Ind Cas 437=28 M L J A I R 1923 Cal 394=82 Ind C A I R 1924 Pat 37=4 Pat L 89, notice must be given to the must be decided A I R 1923 Pat 353=4 P L T 247=73 Ind Cas 12 After admitting sufficiency of deposit, the decree holder cannot take out execution 141 Ind Cas 297=11 Pat 796=A I R 1933 Pat 89 Money paid under this rule is assets in the hands of Court A I R 1933 Pat 303=12 Pat 772, see also 29 N L R 179=A I R 1937 Nag 156, A I R 1933 Nag 347 Starting point of limitation is date when bid is accepted and declaration and deposit of one fourth is

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under rule 12

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sale under rule 89 A I R 1  
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admitting sufficiency of deposit, the decree holder cannot take out execution 141  
Pat 89. Money paid under this rule is  
1933 Pat 303=12 Pat 772, see also 28  
A I R 1933 Nag 347. Starting point of  
declaration and deposit of one fourth is

made by purchaser and not date when bid was made 132 Ind Cas 263=A I R 1931 Oudh 291 Amount deposited in Court is not amount 'received' within the meaning of rule 89 141 Ind Cas 167=A I R 1933 Mad 263=1933 M W N 48 This rule applies to sale of original side of High Court under mortgage 133 Ind Cas 557=58 C 510=A I R 1931 Cal 688 Sale can be confirmed only 30 days after the declaration of bid A I R 1934 Oudh 25

**Immovable property**—The interest of a usufructuary mortgagee is immovable property A I R 1930 All 110=1930 A. L. J. 330=122 Ind Cas 409 Simple mortgage bond is movable property A I R 1924 All 976=22 A. L. J. 840=46 A 917=80 Ind Cas 890 This rule is mainly to prevent sale of immovable property for inadequate price. 40 B 557=18 Bom L R 571=37 Ind Cas 211

**Any person**—Judgment debtor is entitled to apply order rule 89 to set aside sale even after the transfer of his interest in the property to another after court sale 37 Ind Cas 211=40 B 557=18 Bom L R 571, A I R 1921 Pat 364=4 Pat L J 340=51 Ind Cas 873, A I R 1926 All 204=48 A 183=24 A L J 69=93 Ind Cas 24 But in the above case the purchaser after sale has no right to apply under this rule A I R 1921 Mad 157=44 M 554=40 M L J 497=63 Ind Cas 937, see also 26 C W N 149=49 C 434, A I R 1930 Mad 921=53 M 943, A I R 1927 Mad 151 An applicant under rule 89 must be a person who can even at the date of his application, be proved to be a person either owning the property or holding an interest therein by virtue of a title and further that title must have been a pre-existing title that is to say a title acquired before the auction sale A I R 1926 Nag 10=21 A L R 102=90 Ind Cas 953, see also 102 Ind Cas 471=A I

109 Ind Cas 168 A purchaser of a portion of a transferable occupancy holding can apply under this section A I R 1927 Cal 817=53 C 103=31 C W N 1050=105 Ind Cas 143 A mortgagee of the property of the judgment-debtor mortgaged after attachment and before sale is entitled to apply under this rule for setting aside the sale A I R 1927 Mad 445=52 M L J 157=100 Ind Cas 82, see also A I R 1926 Oudh 17=2 O W N 860=91 Ind Cas 95, 29 C 1=5 C W N 824 (F B) The mortgagee of the property is entitled to apply under rule 89 to set aside sale, even though the property is sold subject to the mortgage 10 L W 556=1920 M W N 151=77 M L J 130=53 Ind Cas 958 see also 87 Ind Cas 829=12 O L J 289 65 Ind Cas 929 Mortgagee purchasing equity of redemption of a

sioner of a person can deposit A I R 1928 ee also 30 C 425 Lessee 9=51 M 770=54 M L

at 490=2 Pat 715=74 by the word owning I R 1927 Mad 327 99 Ind Cas 893 A 78=5 Rang 500=113 I R 1926 Mad 765 the court erroneously revisio: A I R 1926 gagee is a part owner 15=74 Ind Cas 102 re co-judgment debtor benefit of deposit A

1 Cas 983 A person not entitled to apply 1 C 839 Person paying entitled to get his money Holder of money decree decree holder can not 1=33 Bom L R 455 It need not be at the date

**Interest in property at the time of application is sufficient** of sale A I R 1934 Lesh 25

**Court**—Court mentioned in this rule is not the Court of the Collector or the sale officer where the proceedings take place but the Civil Court A I R 1927 All 754=100 Ind Cas 726

**Clause (a)**—Purchaser in addition to the price is entitled to be paid by the judgment debtor any loss of interest and costs which he may have incurred A I R



1930 Cal 685=37 C 676=139 Ind Cas 181 Deposit by judgment debtor of price of property sold to auction purchaser, together with 5 p.c. of the decretal amount is good deposit within rule 8; A I R 1930 All 843=120 Ind Cas 818 Amount of sale price with 5 p.c. deposited by judgment debtor must be deposited A I R 1929 Bom 215=31 Bom L R 433=117 Ind Cas 527 A small shortage of deposit does not vitiate the deposit A I R 1925 Rang 255=6 Rang 492=113 Ind Cas 810 The provision of law regarding the deposit of 5 per cent commission in addition to the amount specified in the proclamation must be strictly complied with A I R 1924 Nag 216=78 Ind Cas 270, 1 Pat L J 459=31 Pat L W 48=36 Ind. Cas 779 In case of deficient deposit, time should be given to the applicant to make good the deficient amount A I R 1933 Pat 515=14 P. L. J 473 Deposit of mere 5 p.c. is not sufficient to set aside sale 143 Ind Cas 854=38 M L W. 138=6 M L J 253=1933 M W. N 1031=36 M 200=A I R 1933 Mad 338 Decree holder can not be evoked for setting aside sale on application under this rule but without 5 p.c. deposit 137 Ind Cas 735=A I R 1933 Lah 335=33 P L R 145 Decree holder who has not, and later is entitled to 5 p.c. 55 A 200=A I R 1933 All 22, see also A I R 1933 All 155=55 A 123 Where mortgage is taken to set aside sale, decree holder is not liable C 510 A I R 1931 R 1934 Pat 25, see set of Court's order in the

deposit is short by a small amount, Court should set aside sale A I R 1934 Pat 246, but see A I R 1934 Pat 356

1930 Oudh 7=118 Ind Cas 205 Deposit of amount stated in sale proclamation gives *ipso facto* a right to relief under rule 8; A I R 1923 All 315=21 A L J 162=71 Ind Cas 1013 Conditional deposit is not good but if condition is with drawn the deposit is good A I R 1923 Pat 418= Pat 334=72 Ind Cas 907, see also A I R 1923 Pat 33=4 P L J 79, 63 Ind Cas 63 35 C W N 1056= the amount due to the decree holder with not amount to a lease within the meaning concessio allowed to judgment debtor and I R 1922 Bom 193=46 B 171=23 Bom L R 455=62 Ind Cas 104, 57 B 601= A mere deposit without application 35=21 Bom L R 835=53 Ind Cas 135, 63 Ind Cas 140, 3 L W 174=32 Ind Cas 783, 32 Ind Cas 45; A I R 1933 Lah 210, A I R 1933 All 510 Period of thirty days cannot be extended except with consent of parties 2 Pat L J 164=39 Ind Cas 664, A I R 1923 Rang 8 Judgment debtor is to deposit only the amount of that decree under which property is sold 143 Ind Cas 768=14 Lah 55=A I R 1933 Lah 226

90 [S. 311] (1) Where any immovable property has been sold in

Application to set aside sale on ground of irregularity or fraud

execution of a decree the decree holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud

And also a case of fraud in publishing or conducting the sale 66 Ind Cas 220, see also A I R. 1925 103, A I R. 1923 Cal 538=37 C L J 145 M L J 611=3 L W 504=19 M L T 357 though material irregularity must result in serious injury to set aside sale under r 90 A I R 1927 Lah. 84=99 Ind Cas 515 Previous irregularity or fraud does not come within the purview of rule 90 Suppression of prices and low price are enough A I R. 1926 Cal 829=93 Ind Cas 870 Illegal sale is not covered by rule 90 but is covered by s 47 A I R 1924 All 698=22 A L J 413=83 Ind Cas 1028 Right of auction purchaser to apply under rule 90 does not mean that general enquiry into judgment-debtor's title would be opened A I R 1925 All 459=47 A 479=2, A L J 233=87 Ind Cas 278 Where there is no irregularity or fraud in applicable 1933 M W N 77=A I R. 41=144 Ind Cas 14, 144 Ind Cas judgment debtor to assail sale is not res 522=1932 A L J 1118=A I R 1933

Sale of properties need not be in the order in which they are entered A I R 1931 All 159=1921 A L J 62, A I R 1933 All 546=55 A 519=1933 A L J 1273 System of conducting sale from day to day and fixing date for bringing sale to end is deprecated 144 Ind Cas 414=56 M 356=A I R 1933 Mad 225 Whole sale is to be dealt with unless properties are sold in lots A I R 1926 Cal 829=93 Ind Cas 870, see also A I R 1928 Cal 349=32 C W N 519=47 C L J 351, (1930) A L J 1177=A I R 1930 All 556 Under this rule substantial injury must be proved A I R 1934 Pat 274 Section 5 Limitation Act has no application to petitioner under order 21, r 90 A I R 1934 All 314 Attaching creditor can apply under this section A I R 1934 Cal 477 After waiver of irregularities in service of notice and of proclamations, such question can not be raised subsequently A I R 1934 Cal 251  
mention of time of sale,  
material A I R 1934 I  
holder to prevent raising  
decree holder A I R 1934 Oudh 94 Parties must be given opportunity to adduce evidence to prove their case A I R 1932 Pat 376=11 Pat 542 Under this rule, it is the duty of Court to decide three points namely whether there has been material irregularity whether property is sold for unreasonable low price and whether injury to judgment debtor is caused A I R 1932 All 369=1932 A L J 357 Refusal by judgment debtor to take property at sale price is test of adequacy of price 37 C W N 622=A I R 1933 Cal 662, see also A I R 1933 Cal 486=37 C W N 146

Order 9 does not apply to application under order 21 r 90 136 Ind Cas 283 = 1931 A L J 622-A I R 1931 All 594 Application under rule 90 must be decided on merits even in default of purchaser 135 Ind Cas 412=27 N L R 339=A, I R 1932 Nag 14

Who can apply—Auction purchaser is not a person whose interests are affected by sale and he cannot apply under r 90. A I R 1928 Cal 828=49 C L J 207=116 Ind Cas 156, 114 Ind Cas 538—A I R 1929 Rang 33=6 Rang 821, *contra* A I R 1927 Rang 301=5 Rang 516, 87 Ind Cas 278=47A 479=23 A L J 233=A I R 1925 All 459. "Interest" includes proprietary, pecuniary or other interest. A I R 1928 Mad 454=109 Ind Cas 148. Next reversioner (A I R 1928 Mad 1139, 51 Ind 454) purchaser of one item of M L J 229), a simple reversioner R 1926 Cal 879) or a mortgagee for the estate or a mortgagor of part Pat 461= Cal 925 Mad 67=

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apply under rule 90 A I R 1926 Cal 53=87 Ind Cas 94 Heir presumptive of transferee of a portion of property can not apply under rule 90 A I R 1925 Pat 556=86 Ind Cas 575 Holder of protected interest is not bound to apply under this rule. A I R 1925 Pat 556=86 Ind Cas 575 Holder of money decree can not apply under this rule A I R 1925 Sind 101=86 Ind Cas 1025 Attaching creditor though his claim to rateable distribution is lost can still apply under this rule A I R 1924 Cal 786=51 C 495=28 C W N 899=84 Ind Cas 119, A I R 1932 All 2=53 A 759 An interest created by sale itself does not come under rule 90 Interest affected by the sale in this rule means interests in the property existing before the sale and adversely affected thereby This rule is intended for the relief of the decree holder and judgment debtor so far as material irregularity or fraud is concerned The auction purchaser can not take the benefit of that rule by pleading fraud He must apply under rule 91 A I R 1914 Pat 319=5 P L T 41=74 Ind Cas 765, A I R 1932 Lah 468, A I R 1931 Sind 107, 35 Ind Cas R 1923 Nag 161=68 Ind Cas 429, but see

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63 M L J 945=A I R 1933 Mad 96 Receiver in insolvency objecting to sale  
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**Notice**—Omission of notice under rule 66 is material irregularity A I R 1929 Nag 130=25 N L R 58 75 Ind Cas 103=4 Lah 243 Sale is void when there is no notice under rule 22 A I R 1930 Pat 153=119 Ind Cas 891 Want of notice to receiver who is not in possession nor is a party is not material irregularity A I R 1929 Rang 311=120 Ind Cas 142 Sale is inoperative for omission to serve notice on legal representative A I R 1928 All 74=25 A L J 507 Notice under rule 92 must be served 62 Ind Cas 113=2 P L T 270 Auction sale by Court without notice to judgment debtor is bad and must be set aside 20 M L T 479=37 Ind Cas 387, but see 74 Ind Cas 458=A I R 1922 Mad 95=16 L W 934

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**Bar of suit**—In case of fraudulent sale only application under this rule lies  
A I R 1930 All 556=1930 A L J 351=40  
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**Appeal**—An appeal against an order dismissing an application for setting aside a sale under Order 21, r 90 lies to the Divisional Court 59 Ind Cas 372=11 Bur L T 8, see also 36 C W N 125=55 C L J 83=89 C 956=A I R 1932 Cal 672, A I R 1933 Mad 851 (1 B)=65 M L J 719=38 M L W 743 In cases falling under order 21 rule 90 no second appeal lies 1933 M W N 77=A

I R, 1933 Mad 838, see also A I R 1929 Mad 624, A I R 1927 Cal 657=45 C L J 172, A I R 1925 Lah 624, 87 Ind Cas 555, 5 P L T 444=78 Ind Cas 315, 74 Ind Cas 838=4 P L T 721, 62 Ind Cas 685, 2 P L T 401=6 P L J 319=61 Ind Cas 623, 56 Ind Cas 646=1 P L T 265, 39 Ind Cas 374=11 Bur L T 26, 40 A 122=43 Ind Cas 522 Second appeal lies where decree holder himself is purchaser A I R 1930 Nag 191=124 Ind Cas 250, see also A I R 1923 Mad 1142=87 Ind Cas 413

Application by purchaser to set aside sale on ground of judgment debtor having no saleable interest

91 [S 313] The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment debtor had no saleable interest in the property sold

N B—For local amendment in Bombay, vide *infra*

Scope—Where the judgment debtor has no saleable interest in the property the auction purchaser must apply within 30 days to set aside the sale under Order XXI, rule 91 13 Bur L T 152=61 Ind Cas 805, 7 P L T 25=88 Ind Cas 537, 88 Ind Cas 693 An auction purchaser has no right to maintain suit for refund of purchase money on the ground of absence of saleable interest in the judgment-debtor A I R 1924 Cal 172=28 C W N 20=80 Ind Cas 257, A I R 1925 Lah 199, 6 P L T 769=3 Pat 917=88 Ind Cas 219 The auction purchaser's right is limited to an application for an order for repayment of the purchase money after the sale has been set aside A I R 1921 All 377=43 A 60=58 Ind Cas 105, 65 Ind Cas 230, but see 76 Ind Cas 605 No sale can be set aside except by a resort to the procedure of Order XXI A I R 1924 Pat 273=2 Pat 829=76 Ind Cas 927 If the property has been sold in execution, the judgment-debtor has no interest thereafter in the property 40 A 411=16 A L J 236=44 Ind Cas 697 The court sale carries no guarantee that the property belongs to the judgment debtor and the auction purchaser takes the risk and bears the loss if property does not belong to the judgment debtor A I R 1927 Mad 394=50 M 639=52 M L J 148 The Court sale of a property not belonging to the judgment debtor is not void *ab initio* but only voidable A I R 1927 Mad 835=53 M L J 25=104 Ind Cas 614 Before a decree-holder can apply again to execute the decree, recorded as satisfied by the previous Court sale he must have the sale set aside To such an application Order 21, r 91 in terms applies and it must be put in within 30 days of the sale A I R 1925 Mad 394=50 M 639=100 Ind Cas 522, see also 33 Bom L R 503=A I R 1931 Bom 252 Although a purchaser at an auction sale can get the sale set aside if he cannot get possession it does not prevent him from asserting the title, of his vendor acquired by the purchase A I R 1929 Cal 218=33 C W N 117 Where subsequent to the purchase half of the property is lost, A 496=1931 A L J 228=

nt of saleable interest in the

L T 388=A I R 1933

is not proper sale could well

R 1931 Lah 244 Where

nd appeals lies 140 Ind Cas

833=33 P L R 625 Decree holder purchaser cannot set aside sale merely because he is not allowed to set off on account of rateable distribution to other decree holders 133 Ind Cas 737=33 Bom L R 503=A I R 1931 Bom 252 Only remedy to claim refund is under Order 21 rule 91 A I R 1934 Oudh 233

92 [Ss 312, 314] (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon

made and allowed and where, in the case 39, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby



(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made

N B—For local amendment in Allahabad, C P Madras and Oudh *vide, infra*

**Scope**—Where there is no irregularity in publishing and conducting the sale, execution Court cannot refuse to confirm the sale A I R 1934 Lah 146 This rule applies only to valid sales 143 Ind Cas 854=56 M L J 253=56 M 808—A I R 1933 Mad 598 Where objection under rule 90 is dismissed sale must be automatically confirmed A I R 1933 Lah 99=34 P L R 70=13 Lah 761, A I R 19-6 Nag 193=21 N L R 157 Confirmation of sale may be presumed from conduct of executing Court, 31 Ind Cas 254=81 P R 1915 Where sale is confirmed by order of Court and becomes absolute under rule 92 the only remedy is by suit, and an application under s 47 is incompetent A I R 1922 Mad. 63=70 Ind Cas 567=15 L W 272 This rule is mandatory in its provisions A I R 1930 All 843 But the Court may stay confirmation of sale by virtue of its power under s 151 A I R 1930 Lah 793, see also A I R 1929 All 671=121 Ind. Cas. 270 On the date fixed for confirmation of sale held in execution of a decree ; 134=120 Ind Cas  
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 s rule a suit for setting  
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**Setting aside of sale**—The executing Court has to consider in deciding if the sale should be confirmed whether there is any reason with reference to rr 89 91 for refusing to do so If there are not the Court must confirm the sale If there are circumstances which vitiate the sale at its inception the executing Court can refuse to confirm the sale even apart from the contingencies contemplated in rr 89, 91 A I R 1926 Nag 17 88 Ind Cas 693 Making sale absolute after satisfaction of decree is without jurisdiction A I R 1922 Nag 748=18 N L R 134=65 Ind Cas 331

**Notice**—Order setting aside sale without notice to auction purchaser is bad for want of jurisdiction 32 Ind Cas 891, see also A I R 1921 Pat 498=2 P L T 336=62 Ind Cas 61 Order under r 90 without notice is nullity A I R 1921 Pat 293=62 Ind Cas 113, 3 Lah L J 463=62 Ind Cas 986 see also 68 Ind Cas 238, 75 Ind Cas 863=5 P L T 233, A I R 1924 Bom 130=80 Ind Cas 648, 80 Ind Cas 931, A I R 1927 Lah 681, A I R 1929 Mad 763=52 M 861

93. [S. 315] Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase money, with or without interest as the Court may direct, against any person to whom it has been paid

**Scope**—Principle of *caveat emptor* applies at Court sale 39 Ind Cas 763=1 Pat L W 551 Mistake in sale proclamation is good ground for suit to cancel sale and for refund of proportionate part of purchase money 8 L B R 427=33 Ind Cas 1030 But under the new code action to recover money must be taken in execution proceedings Under old code separate suit lay for same 37 Ind Cas 663 see also 44 Ind Cas 200, 22 C W N 760=46 Ind Cas 783 Order for refund of purchase money can be executed like decree 23 M L T 355=47 Ind Cas 630 Unlike private sale no genuineness of title is implied in court sale 52 Ind Cas. 174=12 Bur L T 211, 52 Ind Cas 818=15 N L R 40, 49 Ind Cas 359 Court may award interest while refunding purchase money when sale is set aside 48 J A 24=19 A L J 101=25 C W N 376=59 Ind Cas 782 P C, see also 40 M 1009=45 Ind Cas 109, 57 C 676=A I R 1930 Cal 685, A I R 1929 Lah 617=50 P L R 439 Separate suit does not lie to recover purchase money on account of absence of saleable interest in judgment debtor 3 Pat 947=88 Ind Cas 218, see 5=79 Ind Cas  
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 provided by r  
 92 A I R 1926 Cal 971=53 C 758=43 C L J 418=96 Ind Cas 64 Right to  
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I R, 1933 Mad 838, see also A I R 1929 Mad 624, A I R 1927 Cal 657=45 C L J 172, A I R 1925 Lah 624, 87 Ind Cas 555, 5 P L T 444=78 Ind Cas 315, 74 Ind Cas 838=4 P L T 721, 62 Ind Cas 685, 2 P L T 401=6 P L J 319=61 Ind Cas 623, 56 Ind Cas 636=1 P L T 263, 39 Ind Cas 374=11 Bur L T 26, 40 A 122=43 Ind Cas 522 Second appeal lies where decree holder himself is purchaser A I R 1930 Nag 191=124 Ind Cas 250, see also A I R 1923 Mad 1142=87 Ind Cas 413

Application by purchaser to set aside sale on ground of judgment debtor having no saleable interest

91 [S 313] The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment debtor had no saleable interest in the property sold

N B—For local amenity in Bombay, vide *infra*

Scope—Where the judgment debtor has no saleable interest in the property sold in execution of the decree, he may apply within 30 days to set aside the sale under order

debtor A I R 1924 Cal 172=20 C L J 199, 6 P L T 769=3 Pat 917=88 Ind Cas 219 The auction purchaser's right is limited to an application for an order for repayment of the purchase money after the sale has been set aside A I R 1921 All 377=43 A 60=58 Ind Cas 102, 65 Ind Cas 230, but see 76 Ind Cas 605 No sale can be set aside if it is a result to the procedure of Order 21 A I R 1924 Pat 273=2 Pat 40 A 411=16 A L J 236=44 that the property belongs to the judgment debtor and bears the loss if A I R 1927 Mad 394=50 M 639=52 M L J 148 the Court is not void *ab initio* but only voidable A I R 1927 Mad 835=53 M L J 25=104 Ind Cas 614 B fore a decree holder can apply again to execute the decree recorded as satisfied by the previous Court sale he must have the sale set aside To such an application Order 21, r 91 in terms applies and it must be put in within 30 days of the sale A I R 1925 Mad L R 503=A I R 1931 Bom 23 get the sale set aside if he asserting the title of his vendor C. W. N 117 Where subsequent to the purchase of a property not belonging to the decree holder is not entitled to get back the money 53 A 496=1931 A L J 228=A I R 1931 All 377 Rule 91 contemplates want of saleable interest in the judgment debtor 145 Ind Cas 421=12 Pat 663=14 P L T 388=A I R 1933 Pat 435 (S B) WJ under this rule a sale could well be confirmed 134 Ind Court refused to set 244 Where 833=33 P L R 62, 140 Ind Cas because he is not allowed to set off on account of rateable distribution of sale merely decree holders 133 Ind Cas 737=33 Bom L R 503=A I R 1931 Bom, 252 Only remedy to claim refund is under Order 21 rule 91 A I R 1934 Oudh 233

92 [Ss 312, 314] (1) Where no application is made under rule 89, rule 90 or rule 91 or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute

(2) Where such application is made and allowed and where, in the case of an application under rule 89, the deposit required by that rule is made setting aside the sale

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby

Sale when to become absolute or be set aside

is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute

(2) Where such application is made and allowed and where, in the case of an application under rule 89, the deposit required by that rule is made setting aside the sale

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

N B—For local amendment in Allahabad, C P, Madras and Oudh *vide, infra*.

Scope—Where there is no irregularity in publishing and conducting the sale, execution Court cannot refuse to confirm the sale A I R 1934 Lah 146 This rule applies only to valid sales 143 Ind Cas 854=56 M L J 253=56 M 809=A. I. R 1933 Mad 598 Where objection under rule 92 is dismissed sale must be automatically confirmed A I R 1933 Lah 97=34 P L R 70=13 Lah 761, A. I. R. 1926 Nag 193=21 N L R. 157 Confirmation of sale may be presumed from conduct of executing Court. 31 Ind Cas 254=81 P R 1915 Where sale is confirmed by order of Court and becomes absolute under rule 92, the only remedy is by suit and an application under s 47 is incompetent A I R 1922 Mad 63=70 Ind Cas 567=15 L W 272 This rule is mandatory in its provisions. A. I. R 1930 All 843 But the Court may say confirmation of sale by virtue of its power under s 151 A. I R 1930 Lah 793, see also A I R 1927 All 671=121 Ind. Cas. 270 On the date fixed for confirmation of sale held in execution of a decree decree holder's presence is not necessary A I R 1930 Vig 154=120 Ind Cas 405 Order XXI, rule 92 is applicable only to immovable property A I R 1930 Lah. 236=30 P L R 421=115 Ind Cas 70 Under this rule a suit for setting aside a sale does not lie if an order confirming the sale is made A I R 1926 Oudh 45=89 Ind Cas 107.

Setting aside of sale—The executing Court has to consider in deciding if the sale should be confirmed whether there is any reason with reference to rr 89-91 for refusing to do so If there are not the Court must confirm the sale If there are circumstances which vitiate the sale at its inception the executing Court can refuse to confirm the sale even apart from the contingencies contemplated in rr 89-91 A I R 1926 Nag 17-83 Ind Cas 693 Making sale absolute after satisfaction of decree is without jurisdiction A I R 1922 Nag 245=18 N L R 134=65 Ind Cas 331

Notice—Order setting aside sale without notice to the purchaser is bad for want of jurisdiction 32 Ind Cas 891, see also A I R 1921 Pat 497=2 P L T 336=62 Ind Cas 61 Order under r 90 without notice is nullity A I R 1921 Pat 293=62 Ind Cas 113, 3 Lah L J 463=62 Ind Cas 956, see also 63 Ind Cas 238, 75 Ind Cas 863=5 P L T 231, A I R 1924 Bom 150=80 Ind Cas 648, 80 Ind Cas. 931, A. I. R. 1927 Lah 631, A I R 1,229 Mad 763=52 M 861.

93. [S. 315] Where a sale of immovable property is set aside under rule

Return of purchase money 92, the purchaser shall be entitled to an order in certain cases for repayment of his purchase money, with or without interest as the Court may direct, against any person to whom it has been paid.

Scope—Principles of  *caveat emptor*  applies to Court sale 39 Ind Cas 763=

round for suit to cancel 8 L B R 427=33 Ind y must be taken in execution 37 Ind Cas 663

see also 44 Ind Cas 200, 22 C W N 760=26 Ind Cas 783 Order for refund of purchase money can be executed like decree 23 M L J 355=47 Ind Cas 630 Unlike private sale no genuineness of title is implied in court sale 52 Ind Cas 174=12 Bur L T 211, 52 Ind Cas 818=15 N L R 40, 49 Ind Cas 359 Court may award interest while refunding purchase money when sale is set aside 48 I A 24=19 A L J 101=25 C W N 376=59 Ind Cas 782 P C, see also 40 M 1009=45 Ind Cas 100, 57 C 676=A I R 1020 Cal 631 A I R 1919 Lah 617=30

on account of Cis 218, see 5=79 Ind Cas 628, 43 A 80 B) 401 There

92 A I R 1926 Cal 971=53 C 758=43 C L J 418=96 Ind Cas 64 Right to refund of purchase money arises only after sale is set aside 54 A 948=A I R 1933

=4 N. L. J  
 auction sale  
 R 1926 Nag

160=89 Ind Cas 18

94 [S. 316.]. Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute

N B—For local amendments in C P and, Rangoon, vide *infra*

Ind Cas 911 Sale certificate is only evidence of title, but does not create any  
 24 C W N 1011=47 C 1103=31 C L J 463, see also 45 B 1186=23 Bom L R.  
 514=63 Ind Cas 248 Plain meaning of sale certificate should not be re-  
 versed by different interpretation of docum  
 A. I R 1922 P. C 252=24 Bom L R  
 63 Ind Cas 708 In subsequent proced  
 sale certificate A I R 1927 Mad 311=  
 cure irregularities A I R 1927 Cal 82=9  
 being issued sale cannot be set aside for p  
 48=43 M L J 477=31 M L T 363=63 Ind C  
 be amended without notice to judgment debtor  
 722 Costs for proper stamps for sale cert  
 A I R 1930 Bom 392=32 Bom L R 1084 (F  
 certificate is issued Court may issue another without imposing penalty or purchaser  
 may apply  
 Cas 31 ( 1084=128 Ind  
 137 Ind C fresh litigation  
 date of sa. the passes from  
 136 Ind Cas  
 49=10 Pat 670=A I R 1932 Pat 80

95 [S. 318]. Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under title created by the judgment debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same

Scope—Possession in rule 95 means legal possession A I R 1928 Oudh  
 251=3 Luck. 506=5 O W N 372 In execution delivery of possession must be accord  
 ing to either rule 95 or 96 55 Ind Cas 946; see also A I R 1926 All 120=89 Ind  
 Cas 134 Court is not bound to see that delivery is actually effected A I R 1926  
 Mad 385=50 M L J 72=91 Ind Cas 485 The delivery of possession by beat  
 y can be considered as a valid  
 on under rule 95 is not pro  
 T 331, but see 53 C 781=30  
 Cas 952=51 M L J 106  
 judgment debtor's possession  
 is 817 Formal possession  
 44 Ind Cas 767 A I R 1926  
 3  
 3  
 Lah 823, 27 C W N  
 Cal 424, 65 Ind Cas

Purchaser A I R 1931 Pat

241 (F. B.)=10 Pat 670=12 P. L. T. 423 When actual possession is withheld after symbolical possession is granted fresh suit for possession lies A. I. R. 1929 Nag. 298=116 Ind. Cas. 70 Symbolical possession is equivalent to actual possession with respect to judgment debtor and mortgagee during pendency of suit A. I. R. 1930 Cal. 15=33 C. W. N. 953=56 C. 1135=121 Ind. Cas. 407

**96 [S. 319]** Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 91, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, that the interest of the judgment debtor has been transferred to the purchaser.

**Scope**—After ordering possession under rule 96 Court has no power to grant stay of warrant. A. I. R. 1927 Outh. 501=1 Luck. Cas. 24=103 Ind. Cas. 695 Omission to state period of lease does not entitle the purchaser to actual possession before expiry of lease. A. I. R. 1927 Rang. 1927=6 Bur. L. J. 7=100 Ind. Cas. 1014 This rule does not apply to property in the hands of a Receiver. 14 S. L. R. 81=63 Ind. Cas. 685 An order of possession to a purchaser under rule 96 is a judicial order. 45 Ind. Cas. 608 Symbolical possession has no effect against stranger. 21 O. C. 70=45 Ind. Cas. 606 3 Pat. L. W. 133=42 Ind. Cas. 449 Purchaser of undivided share if obstructed must sue for partition. 91 W. 81=25 M. L. T. 153=49 Ind. Cas. 69 Obstruction is ground for order under rule 96 for symbolical possession. 40 Ind. Cas. 609

*Resistance to delivery of possession to decree holder or purchaser.*

**97 [Ss. 328—334] (1)** Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

**Scope**—The locking of the house by the judgment debtor amounts to resistance or obstruction. A. I. R. 1930 B. 375=30 Bom. L. R. 619=54 B. 479=125 Ind. Cas. 703 Application under rule 97 by decree holder auction purchaser does not come under section 47. *Ibid* Order under r. 97 on application by stranger auction purchaser is not under s. 47 A. I. R. 1930 Pat. 311=11 Pat. L. T. 331=9 Pat. 775=126 Ind. Cas. 849 The 'resistance or obstruction' contemplated by rule 97 is some overt act by some person who is present at the time. A. I. R. 1924 Rang. 261=3 Bur. L. J. 71=82 Ind. Cas. 865 To such case alone Art. 11 A of the Limitation Act applies. *Ibid*, see A. I. R. 1924 All. 495 (F. B.)=22 A. L. J. 626=83 Ind. Cas. 923 There is nothing wrong in anticipating the obstruction and ordering any investigation under Order 21, r. 97. A. I. R. 1925 Rang. 374=4 Bur. L. J. 178=92 Ind. Cas. 667 Order under r. 97 on bailiff's report of obstruction without an application by decree holder and notice to other as 491 Court auction pending not apply to )=52 M. 899 as no inherent *ex parte* in an shown A. I. R. 1929 Mad. 757=57 M. L. J. 381 (F. B.)=30 L. W. 424=52 M. 899 Auction-purchaser has a right to sue for possession. 57 Ind. Cas. 177 Fresh warrant can be ordered where execution of first was obstructed. A. I. R. 1921 Mad. 559=66 Ind. Cas. 722=1921 M. W. N. 698, 4 P. L. J. 94=49 Ind. Cas. 150 (F. B.) An Order

against the judgment debtor under rule 97 is appealable A I R 1921 Mad 627=41 M L J 490=14 L W 449=70 Ind Cas 367 Rule 97 applies to decree under s 9 of the Specific Relief Act A I R 1926 Mad 353=23 L W 157=92 Ind Cas 61=1926 M W N 162 Subtenant cannot resist execution of warrant of possession against tenant A I R 1922 Bom 449=46 B 887=23 Bom L R 1316=65 Ind Cas 312, see also 64 Ind Cas 697=A I R 1922 Bom 273=46 B 526=23 Bom L R 125, but see 47 C 907=60 Ind Cas 969 No appeal lies where application under r 97 is rejected as under rule 99 53 Ind Cas 923 In this rule the duty of Court of resistance to delivery of possession is laid down A I R 1933 All 57=1932 A L J 1036=54 A 1031 Decree holder or auction purchaser can apply under this rule A I R 1931 Lah 686=132 Ind Cas 844 Oral application is sufficient A I R 1931 Lah 13

### 98. [Ss 329, 33.] Where the Court is satisfied that the resistance

Resistance or obstruction by judgment debtor or obstruction was occasioned without any just cause by the judgment debtor, or by some other person at his instigation, it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days

N B—For Local amendments in Allahabad, C P Lahore, Peshwar, and Rangoon, vide *infra*

Scope—This rule applies when judgement debtor obstructs possession 31 Ind

85 Ind Cas 1904, see also 12 Ind Cas 609 where the person obstructed is the judgment debtor 60 Ind Cas 969=12 Ind Cas 103 and no revision or appeal lies A I R 1928 Bom 375=31 Bom L R 619=1933 All 959 see also A I R 1933 Pat 604 Decree holder is not a party to proceedings under rule 98 A I R 1926 Cal 935=97 Ind Cas 544 Order under r 98 is appealable when purchaser is decree holder A I R 1925 Pat 478=6 P L T 351=88 Ind Cas 104 Rule 103 does not bar appeal if allowed by s 47 A I R 1921 Mad 559=66 Ind Cas 722

### 99 [Ss 331, 335] Where the Court is satisfied that the resistance

Resistance or obstruction by bona fide claimant or obstruction was occasioned by any person (other than the judgment debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment debtor, the Court shall make an order dismissing the application

N B—For local amendment in Allahabad C P, Oudh, Peshwar and Rangoon, vide *infra*

Scope—Resistance by person not bona fide cannot be allowed A I R 1928 Mad 909=108 Ind Cas 594, see also 46 B 887=23 Bom L R 1316=65 Ind Cas 212, A I R 1916 Oudh 610=2 Luck 269 Unmarried sisters under Hindu Law can successfully resist possession of partition of house to which they are entitled 43 M 635=38 M L J 433=56 Ind Cas 524 Question of possession is conclusive in favour of party other than judgment debtor if no suit is brought within one year by unsuccessful party 51 P W R 1919=51 Ind Cas 787 Order to decree holder in file suit against obstructors is not order under rule 99 and is not conclusive under s 614 see also 72 Ind Cas 335=58 C 808

=35 C W N 286=A I R 1931 Cal 574.

**100 [S 332] (r)** Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree by the purchaser thereof, he may make an application to the Court complaining of such dispossession

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same

**Scope**—This rule applies to cases of joint possession 144 Ind Cas 147 = A I R 1933 Pat. 132, A I R 1931 Cal 385 = 58 C 55 Party bound by mortgage decree cannot set up paramount title in execution 38 M L J 199 = A I R 1933 Mad 369 Events subsequent to delivery of possession must be considered 37 C W N 339 = 60 C 68 = A I R 1933 Cal 534 This rule includes auction purchaser's legal representatives 36 C W N 790 = A I R 1933 Cal 293 This rule does not apply where there has been only symbolical delivery of possession A I R 1933 Cal 144 = 142 Ind Cas 132 Applicant in possession even though as a trespasser is entitled to succeed under rule 101 A I R 1917 Cal 339 Auction purchaser in joint possession can apply A I R 1924 Pat 506 = 5 P L T 106 = 83 Ind Cas 599 Court cannot go into question of *benami* A I R 1924 Pat 506 = 83 Ind Cas 599 Usufructuary mortgage dispossessed by auction purchaser can apply A I R 1912 Pat 408 = 70 Ind Cas 306 Court cannot go behind order 100 A I R 1930 Pat 416 = 127 Ind under r 100 where question is between 41 M L J 54 = 63 Ind Cas 730 Civil Court to one party the only course for other party is to apply under r 100 A I R 1922 Pat 210 = 25 C L J 541 = 77 Ind Cas 1005

**101. [Ss 332, 335]** Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment debtor, it shall direct that the applicant be put into possession of the property.

**Scope**—Rule 101 does not apply to transferee *pendente lite* 42 Ind Cas 523 = 6 L W 368 Order under rule 101 does not affect party's right to possession upon redemption 17 N L R 33 = 54 Ind Cas 276 Court cannot determine title of exonerated party 40 M 964 = 38 Ind Cas 297 Under rule 103 no appeal lies from an order under rule 101 101 P L R 1917 = 41 Ind Cas 891 There is no warranty in court sale and hence no compensation can be demanded 25 C W N 756 = 63 Ind Cas 126 Court has no power to enquire as to equities of the case in favour of purchaser A I R 1926 Mad 1127 = 24 L W 389 = 97 Ind Cas 60, Court cannot pass declaratory order A I R 1927 Nag 500 = 103 Ind Cas 231 Where claim petition is dismissed it must be challenged within one year A I R 1924 Mad 111 = 45 M L J 690 = 77 Ind Cas 264 High Court can interfere in revision against an order under rule 101 to correct error or illegality A I R 1931 Cal 385 = 58 C 55

**102 [S 333]** Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

**Notes**—Vide 93 Ind Cas 219 = 2 Luck 269 = A I R 1916 Oudh 610, 97 Ind Cas 1031 = A I R 1926 Mad 968 = 51 M L J 255

**103 [S 332, fourth para, S 335 second para]** Any party not being a judgment debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he

Orders conclusive subject to regular suit

claims to the present possession of the property, but subject to the result of such suit (if any), the order shall be conclusive

N B—For additional rules in Allahabad Lahore, Oudh and Patna, vide *infra*

**Scope**—Suit under rule 103 though brought on title must be brought within one year 53 B 668=31 Bom. L R 765=A I R 1929 B 379, A I R 1928 Cal 179=47 C L J 87 Suit under rule 103 is to decide right to possession and not only actual possession A I R 1921 Mad 317=44 M 227=60 Ind Cas 109 Where auction purchaser applies for possession and his application is disallowed, his remedy is in suit under rule 103 and no revision or appeal lies A I R 1933 All 99, see also 35 C W N 286=38 C 808=A I R 1931 Cal 574 Where order falls under s 47 rule 103 does not prohibit second appeal 54 A 1031=A I R 1933 All 57 Where suit is within s 47 neither r 103 nor Art 11 of the Limitation Act applies A I R 1927 Mad 92=105 Ind. Cas 414 Procedure under rule 103 and section 47 is not cumulative 90 Ind Cas. 92=51 M L J 105 In a suit of possession under rule 103 cause of action must be adverse decision passed under rule 101 90 Ind Cas 575=50 C W N 163 Party out of possession must prove his title A I R 1925 Sind. 201=87 Ind. Cas 861 Order under rule 101 becomes final after one year 75 Ind Cas 814 19 L W 394 This rule applies only when order under one of the rules 98 99 or 101 has been passed A I R 1923 Lah 145=69 Ind Cas 327 Section 47 governs the case where persons concerned are parties to suit or their representative while rule 103 only applies when strangers to decree are involved, 41 M L J 54=63 Ind Cas 730 Suit under rule 103 is to decide right to possession and only actual possession 44 M 227=60 Ind Cas 109 Order under rule 101 must be on merits or else it will not bar a suit more than a year after order 45 Ind. Cas 102=14 N L R 66 Words "any party" in rule 103 refer to any party to petition and not to decree under execution. 43 M 695=39 M L J 456=38 Ind Cas 501 Special right to bring suit for declaration of present right to possession is not taken away by Specific Relief Act, s 42 proviso A I R 1924 Nag 169

## ORDER XXII

### *Death, Marriage and Insolvency of Parties.*

1 [S 361] The death of a plaintiff  
No abatement by party's death if right to sue survives or defendant shall not cause the suit to abate if the right to sue survives

**Scope of Order XXII**—Order 22 confined to questions of continuance of suit by devolution of deceased's right to sue on other persons during pendency of suit But there are cases where suit can be continued by others having independent right to sue on same cause of action A I R 1931 Lah 79=51 P L R 973=131 Ind Cas. 98. This order contemplates devolution of interest not by act of parties but by operation of law A I R 1927 Mad 693=53 M L J 142=102 Ind. Cas. 411 Order 22 does not apply to revision. A I R. 1933 Sind. 100=144 Ind. Cas.

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"	"	sots of
"	"	2 145
"	"	has no
"	"	Courts

Order is not necessary for abatement A I R 1935 All. 217=10 A 334 (F B)

**Scope of Rule 1**—Continuance of suit depends on whether cause of action is claimed to be representative of deceased but not where it is not 14 Ind. Cas 771=13 Lah 116=33 P L R 1079=A I R 1921 Lah 293, see also A I R 1925 Mad 244=47 M L J 745=53 Ind. Cas. 33. Represents a person does not abate by plaintiff's death 132 Ind. Cas. 100=54 M L J 64=A I R 1931 Mad 522 In case of death of one of three parties where heirs of the deceased plaintiff are the heirs of the remaining two parties the suit need not abate in spite of the fact the heirs of the deceased party are not brought on record 145 Ind. Cas. 123=A I R 1931 Lah 273, see also A I R 1933 Lah 64 "suit" means proceedings and not a suit in the sense of the Code of Procedure of a suit A I R 1927 Orls 165=2 L R 454=101 Ind. Cas. 174 Cause of



A I R 1927 Oudh 156=101 Ind Cas 170  
 M 1064=33 Ind Cas 45 Appeal abating  
 rest of all respondents are indivisible 4 Lah  
 L J 221=6, Ind Cas. 725 Right to an office is personal and ceases on death A I R  
 1930 Lah 703, see A I R 1929 Lah 807=31 P L R 134 Suit for damages for  
 malicious prosecution does not survive 48 A 630=A I R 1926 All 610, 31 Ind Cas  
 4, 52 Ind Cas 348, A I R 1926 Mad 243=49 M 208=50 M L J 54 In a suit under  
 s 92 for removing trustee for breach and framing scheme, cause of action regarding  
 scheme survives A I R 1926 Mad 162=48 M 688 If appeal abates regarding in-  
 junction it abates regarding costs incurred by appellant 80 Ind Cas 744=2 Rang 91  
 Suit does not abate by the death of a member of a committee The surviving  
 member can continue it A I R 1934 Cal 328, see also A I R 1934 All 315  
 Where plaintiff dies pending appeal, cross objection abates A I R 1934 Nag  
 119 Right to sue as pauper is personal and does not survive to his heirs 64 Ind  
 Cas 63 Suit for damages for breach of contract of marriage abates on plaintiff's  
 death 44 B 445=22 Bom L R 143=55 Ind Cas 624 Right to obtain grant  
 of administration belonging to residuary legatee does not survive to his heirs if  
 he dies pendency of application being personal 45 C 862=51 Ind Cas 76  
 Where one of three members of joint Hindu family in whose favour bond is  
 executed dies, survivor can sue on bond as they represent family sufficiently 14  
 A L J 255=33 Ind Cas 123

## 2 [s 362] Where there are more plaintiffs or defendants than one,

*Procedure where one of several plaintiffs or defendants dies and right to sue survives*

and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving the defendant or defendants

**Scope**—If the right to sue or be sued survives to one or more surviving plaintiffs or defendants only after death of one of them, the suit does not abate Court must make entry to the effect without any application A I R 1929 All 347=1929 A L J 618, see also A I R 1929 Sind 225=119 Ind Cas 537, A I R 1926 Lah 607=27 P L R 688=98 Ind Cas 760, A I R 1930 Bom 367=32 Bom L R 698, A I R 1925 Mad 244=47 M L J 745=85 Ind Cas 666, A I R 1921 Oudh 209=24 O C 374=66 Ind Cas 24, 59 Ind Cas 238=11 P L R 1921 Cases where right to sue survives against surviving defendant in his own capacity and not as the legal representative of deceased are contemplated by rule 2 A I R 1931 Pat 164=12 P L T 28=132 Ind Cas 100, A I R 1933 P t 464=12 Pat 778 This rule applies to appeal 84 Ind Cas 170=3 Bur L J 171=2 Rang 486 Where one of the joint debtors sued jointly dies during the pendency of suit his legal representatives need not be added A I R 1921 Pat 164=12 P L T 28=132 Ind Cas 100, A I R 1933 P t 464=12 Pat 778 Joint tortfeasors a hence cause of action survives as against other P R 1915=32 Ind Cas 18 Where the legal respondents are already on record but in who should be made in accordance with rule 2 rule 4 not being applicable A I R 1920 Oudh 209=24 O C 374=66 Ind Cas 24, see also A I R 1933, Nag 95=29 N L R 1

## 3 [Ss 363, 365, 366] (1) Where one of two or more plaintiffs dies

*Procedure in case of death of one of several plaintiffs or of sole plaintiff*

and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit

(2) Where within the time limited by law no application is made under sub rule (1), the suit shall abate so far as the deceased plaintiff is concerned and, on the application of the defendant the Court may award to him

costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff

representative character 88 Ind  
 at takes place *ipso facto* if an  
 party is not made within  
 time A I R 1925 Lah 598=7 Lah L J 117=80 Ind Cas 478 Where in case  
 of death of some plaintiffs or defendants pending appeal legal representatives are  
 not brought on record appeal does not abate as a whole A I R 1933 All 291  
 Where sole plaintiff dies and the legal representatives are not brought on record,  
 abatement of suit is automatic and no formal order is necessary 129 Ind Cas  
 1931 All 154 Where decree holder  
 can be substituted in his place and  
 67=57 B 616=A I R 1933 Bom

R 1933 Cal 498, see 37 C W N 67  
 appealed against may operate as one  
 N 1028=A I R 1932 Cal 206, A I  
 899 Appeal does not abate as a  
 A I R 1932 Cal 134=58 C 134  
 ufts are not brought on record no a  
 or separate suits could be brought A I R 1933 All 938, see also A I R 1933  
 Lah 179=34 P L R 149 Pauper plaintiff dying legal representative can continue  
 as pauper only on fresh application that he is pauper or on payment of Court fee  
 146 Ind Cas 235=A I R 1933 Nag 334 Where a party dies before hearing by  
 Privy Council and legal representatives are not brought on record the decree is  
 valid 13 P L T 719=A I R 1933 Pat 261 After decree has been made, suit  
 it 57=11 P L  
 parties takes  
 here can be no  
 =11 P L T  
 796, A I R 1928 Mad 914 (F B)=51 M 701=55 M L J 253 Where one of  
 several appellants dies during the pendency of appeal appeal abates only so far as  
 deceased appellant is concerned A I R 1930 All 211=125 Ind Cas 591, 33  
 C W N 359=54 C 622=A I R 1929 Cal 519

**Legal representatives**—The expression legal representatives means one  
 or several persons holding the interest of the deceased person A I R 1927 Lah  
 94=28 P L R 3=100 Ind Cas 418 Legal representatives means not only legal  
 representative or legal representatives of the deceased plaintiff but also all the

applying knew or ought to have known A I  
 son and not brother is a legal representative  
 'ag 17 Only the successor of the manager of  
 A I R 1930 Lah 561=31 P L R 706

**Benamdar** cannot be substituted by parties A I R 1930 Mad 221=58 M L J  
 57 The words 'legal representative' mean the representatives to whom the right  
 to sue survives A I R 1923 Nag 101=18 V L R 21=65 Ind Cas 542 The  
 substitution of a legal representative at one stage of the suit is effective for all subse  
 quent stages 45 C

P R 1917=22 C W  
 certain legal represe  
 tation Act, Court can permit others to be joined as co plaintiffs even though their  
 application is made after period of limitation 145 Ind Cas 693=A I R 1933  
 Rang 234 In case of death of plaintiff after assignment of interest, assignee must  
 be substituted as legal representative A I R 1925 Cal 467=82 Ind Cas 991  
 Executor can not be testator's representative with regard to portion of the property  
 not disposed of by will A I R 1929 Lah 546=116 Ind Cas 558

**Limitation**—Article 176 Sch I of the Limitation Act governs an application  
 to Bur L T  
 of Order XVII  
 not exhaustive  
 ed by Art. 181

' aside abatement passed cannot  
 38=A. I R 1933 Cal 498 Order  
 deceased plaintiff under Order  
 22 rule 3 is not appealable 1932 A L J 303=A I R 1932 All 466 Order  
 bringing a certain person on the record as the legal representative of the deceased  
 the decree is not appealable  
 A L J 1113, 64 Ind Cas  
 legal representative to be  
 7 Ind Cas 137

4. [S 368]. (1) Where one of two or more defendants dies and the right  
 to sue does not survive against the surviving  
 Procedure in case of death of defendant or defendants alone or a sole defen-  
 dant or sole surviving defendant dies and the  
 sole defendant right to sue survives, the Court, on an application  
 made in that behalf, shall cause the legal representative of the deceased defen-  
 dant to be made a party and shall proceed with the suit

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant

N B—For local amendment in Madras vide *infra*

Scope—This rule reproduces in principle s 368 of the old Code as amended  
 in 1888 A I R 1930 Mad 930=62 M I J 97=54 M 12=129 Ind Cas 469  
 This rule applies in proceedings after preliminary decree in a mortgage suit 33  
 C L J 115=25 C W N 595=59 Ind Cas 177 This rule is applicable where a  
 defendant dies before a decree 28 M 361 Where a suit or appeal abates on  
 some of defendants being dead and their representatives not being brought on  
 record the suit or appeal abates as a whole A I R 1931 Pat 17=128 Ind Cas 119  
 Where no application to bring representatives of deceased defendant on record is  
 made within time the decree passed during that time has no effect and suit abates  
 A I R 1931 Lah 73 Death of defendant disowning any interest in suit does not  
 cause the whole suit to abate A I R 1927 Lah 418=28 P L R 330=102 Ind  
 Cas 280 On death of a defendant during the pendency of a suit, the question  
 whether whole suit abates, or it abates only as to that defendant would depend  
 upon whether the deceased person was such a necessary party that  
 his absence from the record should lead to dismissal of the suit itself A I R 1926  
 L R 720 Rule of  
 unless it must be  
 in the death of one of  
 suit does not fail

even partially 56 C W N 1138=60 C 87=A I R 1933 Cal 32, If a suit for  
 partition of property by heirs of deceased Mahomedan abates against one of  
 defendants it does not abate as a whole A I R 1933 Sind 384 Order declaring  
 suit to have abated for failure to bring legal representatives of sole defendant  
 dying after preliminary decree on record in time is a decree and is appealable  
 and no reference lies under Civil Procedure, Order 46 Rule 1 133 Ind Cas  
 767=10 Pat 471=12 P L T 209=A I R 1931 Pat 353 The test of abatement  
 in case of not bringing on record the representatives of a deceased defendant is  
 that if suit without impleading such defendant when alive was properly constituted,  
 suit does not abate as a whole A I R 1933 Sind 384 For setting aside abate-  
 ment vide, A I R 1933 Sind 36=26 S L R 81, A I R 1933 Lah 224, A I R  
 1933 Lah 556=146 Ind Cas 154

Representative suits—Where under Order I rule 11 persons out of 237 are  
 allowed to represent the rest, death of some of these persons other than the re-  
 presentatives and consequent failure to bring their legal representatives does not  
 abate suit A I R 1930 Lah 18=120 Ind Cas 794, see also A I R 1933 Lah-  
 682=34 P L R 814, A I R 1932 Lah 334=13 Lah 92=33 P L R 929 33  
 P L R 302=A I R 1931 Lah 610=13 Lah 195 Successor in management of an  
 endowed property may be considered as a legal representative of the prior  
 of the same endowed property A I R 1930 All 48=1930 A L 856, see

costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff

time A I R 1925 Lih 598=7 Lah L J 517=88 Ind Cas 478 Where in case of death of some plaintiffs or defendants pending appeal legal representatives are not brought on record appeal does not abate as a whole A I R 1933 All 291 Where sole plaintiff dies and the legal representatives are not brought on record, abatement of suit is automatic and no formal order is necessary 129 Ind Cas 345=1931 A L J 153=53 A 374=A I R 1931 All 154 Where decree holder dies pending execution legal representative can be substituted in his place and allowed to continue execution 35 Bom L R 767=57 B 616=A I R 1933 Bom 358, A I R 1932 Mad 73 (F B)=62 M L J 1=55 M 352 (F B) Suit does not abate where all the heirs are not R 1933 Cal 498, see 37 C W N 67 appealed against may operate as one N 1028=A I R 1932 Cal 206, A I 899 Appeal does not abate as a A I R 1932 Cal 134=58 C 134

deceased appellant is concerned A I R 1930 All 211=125 Ind Cas 591, 33 C W N 359=54 C 622=A I R 1929 Cal 519

**Legal representatives**—The expression legal representatives means one or several persons holding the interest of the deceased person A I R 1927 Lah 94=28 P L R 3=100 Ind. Cas 418 Legal representatives means not only legal representative or legal representatives of the deceased plaintiff but also all the representatives of the representatives R 1929 Cal 26=32 C W N 1070 A 120 Ind Cas 218=A I R 1930 N the joint Hindu family should be added A I R 1930 Lah 561=31 P L R 706 *Benamdar* cannot be substituted by parties A I R 1930 Mad 221=58 M L J 57 The words 'legal representative' mean the representatives to whom the right to sue survives A I R 1923 Nag 101=18 N L R 21=65 Ind Cas 542 The substitution of a legal representative at one stage of the suit is effective for all subsequent stages 45 C 94=33 M L J 486=15 A L J 777=19 Bom L R 866=10 P R 1917=22 C W N 169=44 A 218 (P C)=42 Ind Cas 43 (P C.) Where certain legal representatives apply under rule 3 within time allowed by Art 176, Limitation Act, Court can permit others to be joined as co plaintiffs even though their application is made after period of limitation 145 Ind Cas 693=A I R 1933 Rang 234 In case of death of plaintiff after assignment of interest assignee must be substituted as legal representative A I R 1925 Cal 467=82 Ind Cas 991 Executor can not be testator's representative with regard to portion of the property not disposed of by will A I R 1929 Lah 546=116 Ind Cas 558

**Limitation**—Article 176 Sch I of the Limitation Act governs an application under rule 3 to bring on record the legal representative of a deceased to Bur L T s 3, 4 and 11 of Order XVII respondent is not exhaustive period prescribed by Art. 181 Cas 148



A I R 1929 Mad 451=1928 M W N 867 Death of partner suing on behalf of firm consisting of two or more partners, does not give rise to question of abatement  
 A I R 142=7 where capacity in the appellate stage, not be substituted 60 Ind Cas 111=3 Lah 762, see also 4 Lah L J 511=A I R 1921 Lah 390, 55 Ind Cas 210, but see 86 Ind Cas 592=A I R 1925 Lah 124=6 Lah L J 360, 89 Ind Cas 378=A I R 1926 Lah 31, A I R 1928 Lah 869, A I R 1926 Lah 216=91 Ind Cas 558

or appeal abates against a  
 he was alive at the time  
 and not if he died before

the institution of the suit or appeal and was continuously impleaded as a party  
 A I R 1928 Lah 359=29 P L R 626, see also A I R 1929 Lah 440=30 P L R 259, 16 P R 1922=64 Ind Cas 359 Decree against dead person is nullity A I R 1924 Lah 33=5 L L J 187=74 Ind Cas 682, see also 67 Ind Cas 465=43 M L J 293, see also 87 Ind Cas 47=4 Pat 187, A I R 1926 Cal 1053=43 C L J 606, A I R 1927 Lah 200=8 Lah 54, 33 P L R 735=138 Ind Cas 444

**Distinct interest**—The fact that interest in subject matter of suit are defined and separate is one which may be of vital importance in deciding whether suit abates as a whole when it abates as against one of the defendants A I R 1932 Lah 624=14 Lah 234=33 P L R 919, see also A I R 1931 All 235=1931 A L J 902, 79 Ind Cas 462=5 Lah L J 14, 77 Ind Cas 393=1 Rang 618, A I R 1925 Nag 299=21 N L R 38, 85 Ind Cas 678=A I R 1926 Cal 193, 86 Ind Cas 1=26 P L R 100=6 Lah 233, A I R 1930 All 369, A I R 1928 All 172 (F B)=57 A 559=26 A L J 217, A I R 1930 Lah 33=124 Ind Cas 338

are separable, the  
 cased defendant or  
 regards the whole

see also 85 Ind Cas  
 164, 68 Ind Cas

553, 82 Ind Cas 20=24 A L J 533=4 A I R 1933 Lah 805, A I R 1933 Lah 194, 72 Ind Cas 2, 73 Ind Cas 604, A I R 1933 Lah 805, A I R 1933 Lah 556, 74 Ind Cas 14, 57 Ind Cas 199=1 Lah 225, 85 Ind Cas 197=26 Bom L R 1217, 51 A 267=A I R 1929 (P C) 58=33 C W N 318=56 M L J 304=114 Ind Cas 701 (P C), 1930 A L J 999=130 Ind Cas 289, 112 Ind Cas 605, A I R 1927 Lah 800=28 P L R 9, A I R 1927 All 776, A I R 1927 Lah 87=8 Lah L J 575, A I R 1927 Lah 435=8 Lah 617, 85 Ind Cas 397=47 M L J 571, 85 Ind Cas 553=A I R 1926 Cal 252, 94 Ind Cas 253, A I R 1926 Cal 667, A I R 1926 All 152=23 A L J 935, 89 Ind Cas 236=7 P L T 124=4 Pat 53, 88 Ind Cas 939=A I R 1925 Pat 517, 85 Ind Cas 563, A I R 1928 Lah 947=111 Ind Cas 692, A I R 1930 Cal 346, A I R 1930 Lah 353, 52 Ind Cas 510=67 P R 1919 41 Ind Cas 730=96 P R 1917, 58 Ind Cas 815=A I R 1922 Lah 182, 67 Ind Cas 290=A I R 1923 Cal 289, 65 Ind Cas 121=14 P W R 1923, 45 Ind Cas 911, 32 Ind Cas 829=260 P W R 1915, 56 Ind Cas 927, A I R 1921 Lah 160 But where liability is joint and several, the whole suit does not abate A I R 1921 Pat 350=2 P L T 239=60 Ind Cas 722, A I R 1926 All 128=48 A 81, 89 Ind Cas 238, 72 Ind Cas 670

**Death after preliminary decree**—This rule does not apply to a case in which the death of the defendant occurs between the passing of the preliminary and final decree of a suit A I R 1929 Nag 142 (F B)=116 Ind Cas 657, see also 120 Ind Cas 77, 122 Ind Cas 447=A I R 1929 Nag 206, A I R 1929 Cal 648, A I R 1933 Rang 318, A I R 1933 Pat 27=13 P L T 692, A I R 1927 Oudh 561=4 O W N 1002, 64 Ind Cas 307=17 N L R 81, but see 130 Ind Cas 209=(1930) A L J 977, 87 Ind Cas 918=A I R 1926 Cal 308, 50 Ind Cas 529=4 P L J 240 (F B) Where one out of the several defendants dies after the preliminary decree but before the final decree and his legal representative is not brought on record within the time allowed by law the suit abates as regards that defendant A I R 1930 All 779=1930 A L J 82=126 Ind Cas 20

**Death of party pending appeal**—Where some respondents die pending appeal and their representatives are not on record the appeal does not abate in toto A I R 1924 Lah 93, 5 Lah L J 203=69 Ind Cas 497, see also A I R 1921 Lah

390=4 Lah L J 511, 38 M 1064=33 Ind Cas 45, A I R 1928 Lah 572 (Γ B)=  
10 Lah 7=30 P L R 453; 7 P L T 186=4 Pat 320=89 Ind Cas 280 If the  
result of non joinder of some defendants in appeal would be that if the appeal is  
decided there " " sistent decrees, the non joinder is fatal to the appeal.  
Cas 616 Test to determine if appeal abated if  
it be not brought on record is could suit *ab initio*  
be decided with the deceased being left out" A I R 1924  
Nag 123=75 Ind. Cas 820, see also 41 Ind Cas 430, 50 Ind Cas 935=41 A 283=  
17 A. L. J 306, 3 Lah L J 252, A I R 1927 M 110, 12 M 110, 13 M 110, 14 M 110, 15 M 110,  
16 M 110, 17 M 110, 18 M 110, 19 M 110, 20 M 110, 21 M 110, 22 M 110, 23 M 110, 24 M 110,  
25 M 110, 26 M 110, 27 M 110, 28 M 110, 29 M 110, 30 M 110, 31 M 110, 32 M 110, 33 M 110,  
34 M 110, 35 M 110, 36 M 110, 37 M 110, 38 M 110, 39 M 110, 40 M 110, 41 M 110, 42 M 110,  
43 M 110, 44 M 110, 45 M 110, 46 M 110, 47 M 110, 48 M 110, 49 M 110, 50 M 110, 51 M 110,  
52 M 110, 53 M 110, 54 M 110, 55 M 110, 56 M 110, 57 M 110, 58 M 110, 59 M 110, 60 M 110,  
61 M 110, 62 M 110, 63 M 110, 64 M 110, 65 M 110, 66 M 110, 67 M 110, 68 M 110, 69 M 110,  
70 M 110, 71 M 110, 72 M 110, 73 M 110, 74 M 110, 75 M 110, 76 M 110, 77 M 110, 78 M 110,  
79 M 110, 80 M 110, 81 M 110, 82 M 110, 83 M 110, 84 M 110, 85 M 110, 86 M 110, 87 M 110,  
88 M 110, 89 M 110, 90 M 110, 91 M 110, 92 M 110, 93 M 110, 94 M 110, 95 M 110, 96 M 110,  
97 M 110, 98 M 110, 99 M 110, 100 M 110, 101 M 110, 102 M 110, 103 M 110, 104 M 110,  
105 M 110, 106 M 110, 107 M 110, 108 M 110, 109 M 110, 110 M 110, 111 M 110, 112 M 110,  
113 M 110, 114 M 110, 115 M 110, 116 M 110, 117 M 110, 118 M 110, 119 M 110, 120 M 110,  
121 M 110, 122 M 110, 123 M 110, 124 M 110, 125 M 110, 126 M 110, 127 M 110, 128 M 110,  
129 M 110, 130 M 110, 131 M 110, 132 M 110, 133 M 110, 134 M 110, 135 M 110, 136 M 110,  
137 M 110, 138 M 110, 139 M 110, 140 M 110, 141 M 110, 142 M 110, 143 M 110, 144 M 110,  
145 M 110, 146 M 110, 147 M 110, 148 M 110, 149 M 110, 150 M 110, 151 M 110, 152 M 110,  
153 M 110, 154 M 110, 155 M 110, 156 M 110, 157 M 110, 158 M 110, 159 M 110, 160 M 110,  
161 M 110, 162 M 110, 163 M 110, 164 M 110, 165 M 110, 166 M 110, 167 M 110, 168 M 110,  
169 M 110, 170 M 110, 171 M 110, 172 M 110, 173 M 110, 174 M 110, 175 M 110, 176 M 110,  
177 M 110, 178 M 110, 179 M 110, 180 M 110, 181 M 110, 182 M 110, 183 M 110, 184 M 110,  
185 M 110, 186 M 110, 187 M 110, 188 M 110, 189 M 110, 190 M 110, 191 M 110, 192 M 110,  
193 M 110, 194 M 110, 195 M 110, 196 M 110, 197 M 110, 198 M 110, 199 M 110, 200 M 110,  
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217 M 110, 218 M 110, 219 M 110, 220 M 110, 221 M 110, 222 M 110, 223 M 110, 224 M 110,  
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369 M 110, 370 M 110, 371 M 110, 372 M 110, 373 M 110, 374 M 110, 375 M 110, 376 M 110,  
377 M 110, 378 M 110, 379 M 110, 380 M 110, 381 M 110, 382 M 110, 383 M 110, 384 M 110,  
385 M 110, 386 M 110, 387 M 110, 388 M 110, 389 M 110, 390 M 110, 391 M 110, 392 M 110,  
393 M 110, 394 M 110, 395 M 110, 396 M 110, 397 M 110

Nag 123=75 Ind. Cas 820, see also 41 Ind Cas 430, 50 Ind Cas 935=41 A 283=

482, see also A I R 1926 Lah 474=94 Ind Cas 320

Legal representatives - "r"

representatives of the deceased debtor  
Ind Cas 551 A I R 1933 Lah  
1933 11 1933 are all persons on whom  
1933 11 2=76 Ind Cas 311 Leg 11  
All 25 Persons other than representatives of deceased defendant cannot be  
impleaded 42 A 497=18 A L J 613=61 Ind Cas 947 Substituting representa-  
tive in memorandum of cross objections is tantamount to bringing him on record  
in appeal 34 M L J 177=45 Ind Cas 949=23 M L T 280 Legal representa-  
tive is barred from putting forth contentions inconsistent with his predecessors  
A I R 1924 Mad 245=73 Ind Cas 376 see also 46 Ind Cas 469=27 C L J  
576 Representative can raise plea of co defendant's death before decree A I R  
1924 Pat 339=75 Ind Cas 321 Legal representative is at liberty to take any  
defence which may be appropriate to his character as the legal representative of  
the deceased defendant A I R 1930 All 348=1930 A L J 836=123 Ind Cas  
376 For abatement of suit or appeal for not bringing legal representatives of  
parties on record, vide 49 C 524=69 Ind Cas 885, 90 Ind Cas 41=26 P L R  
832, 85 Ind Cas 25=6 P L T 313 A I R 1933 Pat 646, A I R 1933 Pat  
57=13 P L T 717 For cases where it does not abate vide A I R 1931 All  
235=132 Ind Cas 31, A I R 1930 Mad 579=126 Ind Cas 486, 71 Ind Cas  
321=45 A 286, 65 Ind Cas 542=18 N L R 21, A I R 1930 Lah 709, A I R  
1928 Mad 1199, A I R 1925 Pat 765=7 P L T 431 A decree obtained against  
a person who is not a legal representative of the deceased is not binding on the  
estate and on persons rightly entitled to the estate A I R 1927 Bom 63=50 B  
802=28 Bom L R 1382, 53 C L J 421=A I R 1931 Cal 782, A I R 1933  
Cal 43, but see A I R 1930 Mad 930=60 M L J 97=54 M 212 (where the mistake  
was *bona fide*), see also A I R 1933 Nag 73=29 N L R 89 Failure by  
defendant to take objection to non joinder of some of the legal representative at  
proper time estops him from taking it at subsequent stage A I R 1930 Sind 147

**Procedure**—The introduction of a party for one stage of a suit is an introduction for all stages. A I R 1927 Oudh 531=101 Ind Cas 826. Where the legal representatives of a deceased defendant or respondent are on record, it is sufficient if the plaintiff or appellant at some time or other before the hearing of the suit or appeal states the facts and gets it noted on the record. A I R 1929 Mad 152=51 M 347=54 M L J 675=109 Ind Cas 372, see also 96 Ind Cas 41=26 P L R. 832. A I R 1933 Lah 765=34 P L R 778, A I R 1933 Lah 710. Where a party to a suit dies and an application intimating his death has taken place in the rank of the opposite party is made the applicant would be quite within his rights to give exact information as to the names, addresses and the other particulars of the persons supposed to be the legal representatives of the deceased party within a reasonable period of time without causing the suit to abate. A I R 1927 Oudh.

170=4 O W N 329=100 Ind C1s 802 Not  
but plaint also should be amended showing how  
for claim A I R 1933 Cal 314=56 C L J  
legal representatives must be brought on record A I R 1933 Lah 765=34 P L R  
778 Objection as to proper representative must be brought at earliest opportunity  
36 C W N 1 38=60 C 87=A I R 1933 Cal 325

**Limitation**—If no representative is brought on record with limitation, time  
should not be extended A I R 1972 Lah 30=5 Lah L J 119 Art 177 of the  
Limitation Act governs the case Where judgment debtor dies his representative  
must be brought on record within 90 days 26 Ind Cas 52 see also 40 Ind Cas  
1006=39 A 550 Originally the period was six months but now it is ninety days  
Vide 23 Ind Cas 7, 40 Ind Cas 1006 26 Ind Cas 52, 70 Ind Cas 8 2 No applica-

A I R 1923 Mad 96=16 L W 721=73  
or substitution is made within period of  
had no knowledge of the death of the  
defendant till within three months of the date on which he applies for substitution  
of the legal representative of the deceased defendant A I R 1930 All 779=1930  
A I J 825=126 Ind Cas 20, see also A I R 1928 Mad 404=54 M L J  
234=108 Ind Cas 288, 87 Ind C1s 632=A I R 1925 Lah 599, A I R 1932  
Lah 426=33 P L R 501=14 Lah 78

5 [S 267] Where a question arises as to whether any person is  
or is not the legal representative of a deceased  
Determination of question plaintiff or a deceased defendant, such question  
as to legal representative shall be determined by the Court

see L J 632=49 Ind Cas 1,  
Col. 02, 44 Ind Cas 937 Trial  
failure, Appellate Court can  
decide 4 Lah I J 314, 39 Ind Cas 893; see also A I R 1922 Pat 197=3  
Pat L T 380=6, Ind Cas 131, 42 B 535=46 Ind Cas 750 Rejudication of  
question under rule 5 in regular suit is not allowed 48 A 422=94 Ind Cas 157,  
A I R 1933 Oudh 707 When objection is not raised in Court below Privy  
Council will not entertain it 49 Ind C1s 704 (P C) decision under rule 5 does not  
work as *res judicata* A I R 1934 Lah 465 No appeal lies against order under  
rule 5 A I R 1931 Lah 735, 49 M 450=A I R 1976 Mad 486, A I R  
1926 Lah 181 58 Ind Cas 498=43 M 812, 57 Ind. Cas 137=1 Lah 493, 38  
Ind Cas 833=13 N L R 37 91 Ind Cas 366=A I R 1926 Oudh 158, A I  
R 1931 Lah 23=131 Ind C1s 294 When lower Court omitted to take evidence  
the order can be revised A I R 1925 Mad 426=21 L W 21=86 Ind C1s 178

6 [New] Notwithstanding anything contained in the foregoing rules,  
No abatement by reason of whether the cause of action survives or not,  
of death after hearing there shall be no abatement by reason of the  
death of either party between the conclusion  
of the hearing and the pronouncing of the judgment, but judgment may in  
such case be pronounced notwithstanding the death and shall have the same  
force and effect as if it had been pronounced before the death took place

**Scope**—Where party dies after conclusion of trial but before decree, decree must  
be taken to have been passed in his life time 1932 A L J 1069=A I R 1933 All  
112 see also A I R 1933 Lah 710=144 Ind C1s 618 3 Ind C1s 18=106  
P R 1915=187 P W R 1915 If death occurs during arguments, and if no  
substitution is made see 48 Ind Cas 829, 43 Ind C1s  
abate in case of death after preliminary  
1927 Oudh 661=4 O W N 1002, but  
if hearing takes place after plaintiff's death  
A I R 1930 Sind 234=23 S L R 107 55 Ind Cas 498=7 O L J 20, 53 Ind,  
Cas 548, 2 Lab L J 144

7. [S. 369] (1) The marriage of a female plaintiff or defendant shall  
Suit not abated by marriage not cause the suit to abate, but the suit may  
of female party notwithstanding be proceeded with to judgment,  
and, where the decree is against a female  
defendant, it may be executed against her alone



(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also, and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree

8 [S 370] (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit or abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct

(2) Where the assignee or receiver neglects or refuses to continue the the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate

Scope—In case of insolvency of the plaintiff after institution of suit Court should not dismiss suit without notice to Receiver 12 L W 551=61 Ind Cas 300, see also 31 C W N 27 Receiver can continue suit 16 A L J 440=47 Ind Cas 577, 109 Ind Cas 589 A I R 19 8 Lah 596=10 Lah 708 Insolvent can continue appeal after annulment A I R 1929 Bom 202=31 Bom L R 357 Party adjudicated insolvent can appeal under Provincial Insolvency Act but not under Presidency Towns Insolvency Act 62 Ind Cas 854=1921 M W N 535, 97 Ind Cas 486=A I R 19 1926 M 1145=24 L W 38 such A I R 1930 Lah 205 insolvency is liable to furnish security for costs already incurred A I R 1926 Bom 533=28 Bom L R, 1074, see also A I R 1927 Mad 511=110 Ind Cas 440

9. [Ss 371, 372] (1) Where a suit abates or is dismissed under this Effect of abatement or dismissal Order, no fresh suit shall be brought on the same cause of action

(2) The plaintiff or the person claiming to be the legal representative of a receiver in the case of an insolvent the abatement or dismissal, and sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit

(3) The provisions of section 5 of the \* Indian Limitation Act 1877, shall apply to applications under sub rule (2)

Scope—Rule 9 must be strictly construed 1931 Lah 79=31 P L R 973

No fresh suit shall be brought—This rule does not apply to cases where cause of action was restricted to deceased 31 Ind Cas 4, A I R 1908 Nag 220, A I R 1933 Lah 752 This rule does not bar fresh suit on dissimilar causes of action A I R 1933 Lah 109=34 P L R 156, see also A I R 1929 All 306=1929 A L J 492

Apply to set aside the abatement—In case of abatement, remedy is applicable under rule 9 A I R 1930 All 379=127 Ind Cas 419, A I R 1927 Lah 865=26 P L R 659 Application for substitution after limitation should be treated as under rule 9 A I R 1908 Lah 746=112 Ind Cas 5 Applicant should satisfy Court that there was sufficient cause for continuing suit A I R 1928 Lah. 746.

\* See now the Indian Limitation Act 1908 (IX of 1908) ss 4 and 5

If error genuine and unintentional and damage to other side can be repaired, application must be granted A I R 1928 Mad 401=54 M. L. J 234=108 Ind Cas 288, see also 97 Ind Cas 142 Ignorance of death is no ground for abatement if appellant has not been guilty of delay 85 Ind Cas 1010 Misconstruction of amended I . . . . . , 75 Ind Cas 283

83 Ind C Deceased . . . . . in applying under rule 9 80 . . . . . it residence separa- 80 Ind Cas 694=

ted by disa. . . . . Ignorance of opposite party's death is no ground to set aside 6 Lah L J. 192 Abatement A I R 1923 Lah 475=83 Ind Cas 807, see also 75 Ind Cas 909, 79 Ind Cas 414=4 P L T 567, 67 Ind Cas 596=4 Lah L J 171, but see 72 Ind Cas 137=44 M L J 409 Suit cannot be restored without express petition for time is made A I R 1924 Mad 713=57 M L J 235=80 Ind Cas 397 In case of automatic abatement after 90 days it must be set aside within 60 days

or according to section . . . . . 3 Delay caused in obtain . . . . .

Ind Cas 215 Illiteracy . . . . . "Bonafide mistake of pleader is good A. I R 1923 Lah 230=71 Ind Cas 587 20 A L J 801=45 A 66=70 Ind Cas ground to set aside order of abatement 805, 41 M L J 65=62 Ind Cas 795 Sufficient cause must be shown to restore suit abated A I R 1922 Cal 325=49 C 62=63 Ind Cas 917 Mistake of Court is sufficient cause for delay 67 Ind Cas 306=77 P L R 1922 Order XXII, rule 9(2) applies to application made for first time only 62 Ind Cas 303=17 N L R 45 Bonafide mistake about customary law is justifiable 55 Ind Cas 883=1 Lah 481 Fraud of agent of representatives of deceased precluding him to apply in time is sufficient cause 53 Ind Cas 585 Unawareness of respondents death due to appellant's residence in another district is sufficient cause 44 Ind Cas 9=24 P L R 1918 see also A I R 1912 Lah 148=32 P L R 822 Ignorance of law . . . . .

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Ignorance of death due to negligence is no sufficient cause of delay in applying to set aside abater 34 Order of abatement A I R . . . . . cases other

1922 All 209=44, 44, than not applying in time for substitution of appealable A I R. 1925 Lah 208=78 Ind Cas of legal representative may be made within time to knowledge 6 P L T 313=85 Ind Cas 25 under Order XXII, r 9 A I R 192, Cal 473=40 C L J 588=85 Ind Cas 100

10. [S. 370.] (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Scope — For applicability of rule 10 devolution of interest is necessary A I R. 1930 Cal 113=57 C 170=50 C L J 203=123 Ind Cas. 250 Plaintiff is not bound to apply for substitution of assignee or trustee Court may not allow such application

36 C W N 816=A I R 1932 Cal 73 Execution cannot issue against transferee from judgment-deb or merely because he takes up position of representation A I R 1932 Cal 423=36 C W N 93 It is doubtful whether rule 10 is applicable to execution proceedings *Ibid*, but see 44 M 919=69 Ind Cas 337, A I R 1926 Bom 406=28 Bom L R 761

This rule is not applicable to devolution of interest by death A I R 1933 Sind 371 Mortgagee of deceased plain and to bear full costs of it 64 M L J 48 insolvency official assignee is not entitled R. 1933 Nag 6=28 N L R 340 Real

owner A I R 1930 Oudh 51 Decree holder is not precluded from prosecuting proceedings to completion even if decree pending appeal is assigned A I R 1930 All 380=122 Ind Cas 189 Right to institute suit means interest under rule 9 A I R 1928 Mad 946. Order is applicable to transfer *inter vivos* 69 Ind Cas 337=44 M 919 (F B) New manager can claim substitution in place of old A I R 1928 Cal 651=114 Ind Cas 413 In suit for foreclosure subsequent mortgagee paying off prior mortgagee can claim substitution A I R 1928 Nag 145=74 N L R 119 Removal of trustee does not preclude him to conduct suit A I R 1928 Mad 697 but see A I R 1928 Mad 746 This rule is applicable where the defendant's interest devolves on Government during suit A I R 1926 All 585=74 A L J 726 Companies though going into liquidation continues as plaintiff A I R 1927 All 272=49 A 310 Attaching A I R 196 Nag 67 Rule 10 is not brought on record 87 Ind Cas

and *mesne profits*, against interest 27 C W N 29= Ind Cas 973 (P C) Pre 25 O C 319=70 Ind C.

pos humous son A I R 1926 All 285=24 A L J 281 New trustee can come on record Limitation Act has no effect A I R 1927 Mad 540, A I R 1927 Oudh 156=2 Luck 464 Court must enquire into validity of assignment when disputed A I R 1925 Oudh 143=80 Ind Cas 631 In case of assignment during pendency of suit, appellate Court cannot implead assignee as party under rule 10. A I R 1934 All 442, see also A I R 1934 Lah 190 Suit is not confined to cases of undisputed assignment creation or devolution of interest A I R 1934 Mad 337

**Appeal and Revision**—Exercise of discretion by lower Court cannot be easily interfered with in revision A I R 1934 Mad 337 Order on application by mortgagee to be added as party to part on suit is appealable 35 C W N 296=A I R 1931 Cal 594 Order of rejection of application under rule is appealable A I R 1927 Nag 307=103 Ind Cas 643, 44 M 919=41 M L J 316=69 Ind Cas 337

**Limitation**—Right to apply under Order XXII, r 10 arises from day to day and hence is not affected by Limitation A I R 1924 Cal 90=27 C W N 710=75 Ind Cas 255

11 [S 582, First para] In the application of this Order to appeals,

Application of Order to appeals so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal

N B—For local amendment in Calcutta and Madras, vide *infra*

If error genuine and unintentional and damage to other side can be repaired, application must be granted A I R 1928 Mad 401=54 M L J 234=108 Ind Cas 288; see also 97 Ind Cas 143 Ignorance of death is no ground for abatement if appellant has not been guilty of delay 85 Ind Cas. 1010 Misconstruction of amended law is good ground for restoration of suit abated A I R 1913 Lah 475=83 Ind Cas. 807; 70 Ind Cas 832=A I R 1913 Bom 40; 75 Ind Cas 283 Deceased's residence, in applying under rule 9 80 Ind Cas 63 at residence separate 80 Ind Cas. 694=ted by distance is no ground to set aside 6 Lah L J 192 Ignorance of opposite party's death is no ground to set aside abatement A I R 1923 Lah 475=83 Ind Cas 807, see also 75 Ind Cas 909, 79 Ind Cas 414=4 P L T 567, 67 Ind Cas 596=4 Lah L J 171, but see 72 Ind Cas 137=44 M L J 407 Suit cannot be restored without express petition for same is made A I R 1924 Mad 713=57 M L J 235=80 Ind Cas 307

A I R 1923 Lah 230=71 Ind Cas 587 *Bona fide* mistake of pleader is good ground to set aside order of abatement 20 A L J 801=45 A 66=70 Ind Cas 805 41 M L J 65=62 Ind Cas 795 Sufficient cause must be shown to restore Cas 917 Mistake of Court P L R 1922 Order XXII, 62 Ind Cas 303=17 N L R 45 *Bona fide* mistake about customary law is justifiable 55 Ind Cas 883=1 Lah 481 Fraud of agent of representatives of deceased precluding him to apply in time is sufficient cause 53 Ind Cas 585 Unawareness of respondent's death due to appellant's residence in another district is sufficient cause 44 Ind Cas 9=24 P. L R 1918, see also A I R 1932 Lah 148=32 P L R 822 Ignorance of law or death of respondent is not sufficient cause A I R 1933 Lah 356=34 P L R 11; but see A I R 1932 All 459=54 A 280, 32 Ind Cas 829 Application for setting aside abatement may be made long after the case has actually abated and is governed by Limitation Act, s 5 1932 A L J 883=A I R 1932 All 698 In case of ignorance of party's death an extension of 4 days' time is proper A I R 1933 Lah 916 Where no reason for delay is offered delay cannot be condoned and affidavit A I R 1933 Pat 765=34 on 1933 Pat 765=34 P I of deceased 1934 Lah 27- par 315 If owing to ignorance of death appeal is heard and accepted application by legal representative b 442. Ignorance of ( ) ying to set aside abatement Order of abatement. A I R 1922 All 209=49 A 449=66 Ind. Cas 554 Order of abatement for causes other than not applying in time for substitution of legal representative is decree and appealable A I R. 1925 Lah 208=78 Ind Cas 22 Application for substitution of legal representative may be made within time after respondent's death coming to knowledge 6 P L T 313=85 Ind Cas 25 No appeal lies against abatement under Order XXII, r 9 A I R 192, Cal 473=40 C L J 588=85 Ind Cas 100.

# 10. [S. 370] (1) In other cases of an assignment, creation or devolution

Procedure in case of assignment of any interest during the pendency of a suit, before final order in suit the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)

Scope—For applicability of rule to devolution 1930 Cal 113=57 C 170=50 C L J. 203=123 L to apply for substitution of assignee or trustee. C

A I R 1930 Cal 388=34 C W N 53 Mortgagor may be substituted for his unusufructuary mortgagee if during pendency of suit against mortgagee he released mortgagor A I R 1930 Pat 145=122 Ind Cas 255 After decree and before execution no substitution can be made A I R 1931 Cal 51=57 C 1143 see also 20 O

36 C W N 816=A I R 1932 Cal 73 Execution cannot issue against transferee from judgment-deb or merely because he takes up position of representation A I R 1932 Cal 423=36 C W N 93 It is doubtful whether rule 10 is applicable to execution proceedings *Id.* but see 44 M 919=69 Ind Cas 337, A I R 1926 Bom 406=28 Bom L R 761

This rule is not applicable to devolution of interest by death A I R 1933 Sind 371 Mortgagee of deceased pl and to bear full costs of it 64 M L J 4

holder is not precluded from prosecuting pending appeal is assigned A I R 1930 All 380=122 Ind Cas 189 Right to institute suit means interest under rule 9 A I R 1928 Mad 946 Order is applicable to transfer *inter vivos* 69 Ind Cas 137=44 M 919 (F B) New manager can claim substitution in place of old A I R 1928 Cal 651=114 Ind Cas 413 In suit for foreclosure subsequent mortgagee paying off prior mortgagee can claim substitution A I R 1928 Nag 145=74 N L R 119 Removal of trustee does not preclude him from co-defendant A I R 1928 Mad 697 but see A I R 1928 Mad 46 This rule is applicable where the defendant's interest devolves on Government during suit A I R 1926 All 585=24 A L J

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Appeal and Revision—Exercise of discretion by lower Court cannot be easily by

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Limitation—Right to apply under Order XXII r 10 arises from day to day and hence is not affected by Limitation A I R 1924 Cal 90=27 C W N 710=75 Ind Cas 255

11 [S 582, First para] In the application of this Order to appeals,

Application of Order to appeals so far as may be, the word "plaintiff" shall be held to include an appellant the word "defendant" a respondent, and the word "suit" a appeal

N B—For local amendment in Calcutta and Madras vide *infra*

**Scope—Appeal abate**

not substituted in time in  
against decree for possession

72 Ind Cas 479 Heirs being brought on record on appellant's death during High Court appeal are deemed to be on record of suit A I R 927 Bom 136=29 Bur L J 244 Application to substitute legal representative of respondent dying after decree and before preferring appeal does not lie A I R 1926 Lah 329=93 Ind Cas 367 In case of joint decree holders, abatement of appeal against one operates as abatement against all A I R 1932 Mad 212=35 M L W 105, see also 36 C W N 1007=56 C L J 365=A I R 1933 Cal 61

Application of Order to 12 [New] Nothing in rules 3, 4 and 8 proceedings shall apply to proceedings in execution of a decree or order

N B—For local amendment in Allahabad vide *infra*

**Scope—Rule 12 does not introduce new rule of procedure** 55 M 352=62

M L J 1=A I R 1932 M 73 (F B) Rule 12 does not apply to appeals against orders in execution and hence Art 181 Limitation Act, also does not apply 55 M 1006=A I R 1932 Mad 574=63 M L J 827 see also 33 Bom L R 858=A I R 1931 Bom 425, 65 Ind Cas 122=3 Pat L J 445 Legal representative upon decree holder's death cannot apply for substitut on but should apply for conducting execution or for fresh execution A I R 1926 Cal 957=30 C W N 735=96 Ind Cas 378, see also A I R 1927 All 165 (F B)=49 A 509=25 A L J 249, A I R 1925 Oudh 448=87 Ind Cas 21, 30 C W N 361=88 Ind Cas 21 (P C), but see A I R 1931 Mad 303=60 M L J 628=131 Ind Cas 610 Execution proceedings in Court of transfer is only suspended where judgment debtor dies before decree holder is completely satisfied A I R 1930 Sind 16=118 Ind Cas 221 Application to join legal representatives after preliminary and before final decree is not execution proceedings and is therefore controlled by Order XXII, rules 12 and 4 only A I R 1926 Sind 20, see also 82 Ind Cas 604

**ORDER XXIII*****Withdrawal and Adjustment of Suits***

1 [S 373] (1) At any time after the institution of a suit the plaintiff

Withdrawal of suit or abandonment of part of claim may, as against all or any of the defendants, withdraw his suit or abandon part of his claim

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect,  
or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim

(3) Where the plaintiff withdraws from a suit or abandons part of a claim, without the permission referred to in sub rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others

**Scope—Order under order 23, rule 1, is not to be lightly passed and when passed**

are not to be lightly set aside A I R 1931 All 19=132 Ind Cas 36 Cause of action is equivalent to phrase 'subject matter' A I R 1930 Lah 937=130 Ind Cas 513 An order for the withdrawal with leave under order 23, r 1, (2) restores the parties to the position in which they would have stood if the suit had not been filed and, there-

of claim in the new suit though omitted in the first suit is different from that in second suit A. I R. 1933 Lah 343=34 P L R 805 The test of subject matter is whether cause of action or transaction is same in both suits A I R 1932 Lah 138, see also A. I R 1933 Lah 943, A I R 1932 Lah 130, A. I R 1933 Mad 3=63 M L J 446.

**Formal defect.**—If formal defects exist and if it would be fatal to suit must be considered by court when allowing withdrawal of suit 35 C W N 112=131 Ind Cas 863, see also 32 C W N 1244 The expression "formal defect" connotes defect of various kinds not affecting the merits of the case on substantial questions (including equities and estopples) reasonably arising between the parties 81 Ind Cas 465=2 Rang 66, see also A I R 1925 Mad 617=88 Ind Cas 665, A I R 1929 Nag 72 A suit failing by reason of the cause of action can not be said to fail by reason of some formal defect. A I R 1925 Oudh 291=27 O C 231=79 Ind Cas 1033 Objections by defendant do not prove that there are formal defects Court must be satisfied that there are such defects 11 O L J 351=79 Ind Cas 1031, see also 64 Ind Cas 556, 48 Ind Cas 97=3 P L J 651, 43 Ind Cas 985=7 L W 131, 43 Ind Cas 346 Objections to jurisdiction and Court fees are formal defects 41 M 701=35 M L J 27=46 Ind Cas 265 Formal defects need not be in pleadings 34 C W N 578=127 Ind Cas 549 Institution of suit against insolvent without permission of Court is formal defect. A I R 1925 Rang 105=2 Rang 643=84 Ind Cas 909 Where neither application, nor order made upon it, stating formal defect, order is bad for material irregularity A I R 1931 Cal 107=34 C W N 912=130 Ind Cas 142 34 C W N 912=A I R 1931 Cal 107 Some necessary parties are not impleaded is not formal defect A I R 1934 Cal 59 In such a case no withdrawal is allowed Ibid

**Grounds for withdrawal**—Court should state grounds for allowing the suit to be withdrawn with leave to bring fresh suit. A I R 1931 All 19=132 Ind Cas 36 Order granting withdrawal with right to file fresh suit made in absence of formal defect or sufficient cause is absolutely without jurisdiction A I R 1930 Lah 175=124 Ind Cas 686, see also A I R 1928 Oudh 482=5 O W N 61, 48 Ind Cas 1005, A I R 1927 All 522=49 A 459=25 A L J 484, 90 Ind Cas 217=A I R 1926 Pat 128, 21 L W 282=88 Ind Cas 665, 39 C L J 371=84 Ind Cas 372, 20 A L J 90=64 Ind Cas 948 For an Appellate Court to act under Order XXIII, r 1 clause (2) there must be either some formal defect or something in the nature of a formal defect *ejusdem generis* under clause (b) Other wise the Court can not act under the order A I R 1922 Cal 58=76 Ind Cas 484 Sufficient grounds must be of the nature of formal defect A I R 1928 Mad 1085=112 Ind Cas 312, see also 46 Ind Cas 181=117 P W R 1918, 25 C L J 454=39 Ind Cas 963, A I R 1930 Lah 75, A I R 1926 Bom 315=50 B 192=28 Bom L R 440, A I R 1925 Mad 1268=22 L W 535=91 Ind Cas 292, 79 Ind Cas 1033=27 O C 231 "Other sufficient grounds in sub cl (b) should be *ejusdem generis* with formal defect in sub clause (a) 21 L W 282=88 Ind Cas 665, A I R 1929 A 683, but see 46 Ind Cas 265=41 M 701 Inability to produce important evidence is not sufficient ground 61 Ind Cas 639=2 P L T 634, see also A I R 1927 All 704=25 A L J 870,

L R 909=47 B 92=75 Ind Cas 283 Where the plaintiff for fear of failure in his case desires to withdraw to be able to bring another suit on completely different allegations this rule does not apply 81 Ind Cas 276 Withdrawal should be granted only where suit would fail due to defect not for plaintiff's default and such withdrawal would not harass defendant 34 C W N 912=A I R 1931 Cal 107 Permission must be given where plaintiff desires to submit formal proof of document necessary to his success A I R 1929 All 133=50 A 835 The words 'subject

" 4 Ind Cas  
used in the  
in clause  
34 C W

**Leave to withdraw**—Withdrawal must be one with permission of Court A I R 1928 Rang 273=6 Rang 494 Order granting withdrawal of suit or appeal must be a sufficient ground and supported on sound reasons A I R 1931 Cal 336=35 C W N 112, 34 C W N 912 Application to withdraw suit should not be granted in the absence of other parties interested A I R 1930 Nag 151=13 N L J 93 Withdrawal of suit or appeal does not amount to decree A I R 1918 Mad 416=51 M 654, see also A I R 1928 All 679=50 A 608 Court on its own motion can pass an order and an application by plaintiff is not necessary A I R 1927 Nag 307=10 N L J 142 see also A I R 1926 Mad 594=23 L W 357 Order granting permission under this rule is tantamount to leave to withdraw with liberty to institute fresh suit on the same cause of action A I R 1926 Pat 259=7 P L T 49, see also A I R 1934 All 292 Effect of conditional order is that the suit is deemed to be pending in Court till the condition is fulfilled A I R 1926 Pat 409=5 Pat 306 A plaintiff should not be allowed to withdraw suit with liberty to bring a fresh suit after an appeal has been filed against the appellate decree 45 Ind Cas 913 Permission to withdraw suit does not mean recognition of maintainability of suit nor can a Court provide to the effect in the order A I R 1922 Mad 447=45 M 90=41 M L J 594=70 Ind Cas 432 Application to withdraw suit can itself be withdrawn 71 Ind Cas 288=44 M L J 77 Where the Court is not satisfied that the circumstances contemplated in the rule exist, then it cannot make the order for withdrawal with liberty 64 Ind Cas 337=3 Pat L T 80, see also 61 Ind Cas 584=18 N L R 30 Leave can be granted to withdraw a part of the claim with liberty to bring a fresh suit on the ground of misjoinder of causes of action and parties 64 Ind Cas 82 On an application for permission to withdraw a suit with liberty to bring a fresh suit the Court cannot merely grant such permission without granting also leave to bring a fresh suit A I R 1921 Pat 360=56 Ind Cas 286 Where a Court in dismissing a suit remarks that the plaintiffs are at liberty to file a fresh suit, but there was no formal application under Order 23 rule 1 for withdrawal the remark does not amount to a permission to bring a fresh suit under Order XXIII rule 1 A I R 1925 P C 55=739=91 Ind Cas 280 Application whole 1931 A L J 966=135 Ind defect was not due to any fault of appellate Court 34 C W N 912=1er 23 rule (2) must be treated as 316 Where suit for permission plaintiff was allowed to withdraw claim in respect of one of plots as number having been wrongly entered instead of another number 145 Ind Cas 222=A I R 1933 Oudh 225=10 O W N 311 Where plaintiff is suing in representative character, he can not put an end to it by merely withdrawing from suit does not end the suit such application A I R 1934 All 137 the defendant's case it is n . . . . . A I R 1934

**Withdrawal without leave**—This rule extends to fresh suit only and not to applications A I R 1928 Mad 1165 Where a Court allows withdrawal without liberty to bring a fresh suit a fresh suit in respect of the same matter cannot be brought. 40 M L J 126=62 Ind Cas 833, see also 46 Ind Cas 913, 40 Ind Cas 408=29 C L J 1, A I R 1926 Mad. 490, A I R 1930 Lah 755=31 P L R 383, A I R 1930 Lah 592=129 Ind Cas 215, A I R 1929 All 692, A I R 1928 All 698=1929 A L J 229, 39 Ind Cas 276=1 P L W 741, 53 Ind Cas 478=136 P R 1919

**Form of order**—Where an application under Order XXIII rule 1 contains a prayer for permis, on to bring a fresh suit but the order of the Court on the application only says "withdrawn—file", the permission prayed for is granted A I R 1927 Oudh 360=130 Ind Cas 510, see also 67 Ind Cas 1002=21 Lah L J 242, 44 Ind Cas 189=34 M L J 515 The Court can impose the limitation of time for institution of the subsequent suit at a time of withdrawal of the first. 44 B 939=22 Bom. L R 939=38 Ind Cas. 45 Where a plaintiff applies for a withdrawal of suit with permission to bring a fresh suit, the Court has no power to decide the application allowing, the suit to be withdrawn and refusing, the permission to bring a fresh suit 56 Ind Cas 286=1 Pat L T 292, see also 1 Pat L T 292=56 Ind



**Cas 756.** Where there is no appeal and the suit is dismissed 10 O L J 132=74 Ind Cas 543. A permission for fresh suit must be expressly given 9 P R 1916=37 Ind Cas 123. An order recorded after the withdrawal of a claim petition under order 21, rule 62 that "the proceedings are dropped" is equivalent to an order under this rule 79 Ind Cas 1002=20 N L R 106, but see 74 Ind Cas 543=10 O L J 132.

**Effect of order**—Where a suit is allowed to be withdrawn with leave to bring a fresh suit it should be regarded as never brought. It does not give fresh cause of action nor starts fresh limitation 2) C W. N 755=41 C L J 456=52 Cal 84 (F B)=83 Ind Cas 637. Section 14 does not apply to cases where the suit is withdrawn under Order 23 rule 1. A I R 1923 All 402.

**Appellate Court**—Appellate Court can also grant withdrawal of a suit. A I R 1926 Nag 444, 40 A L J 27=15 B 206, 57 Ind Cas 530=44 B 126=74 Ind Cas 894. An appellate suit to be withdrawn in appeal as liberty to institute a fresh suit as that 51 Ind Cas 577=18 S L R 72, see also 46 Ind Cas 592=3 P L J 404, A I R 1934 All 214. The Court can in appeal allow under Order 23, C P Code to withdraw a suit with liberty to bring in a case where the Appellate Court discovers a defect and by reason of a decree of the trial Court ought to be reversed. A I R 1925 Cal 711=41 C L J 186=86 Ind Cas 102, see also 60 Ind Cas 899=19 A L J 47. An appellate Court should not allow a suit to be withdrawn with leave to bring a fresh suit, by more successful plaintiff 61 Ind Cas 584, but see 74 Ind Cas 894. Rule 1 does not apply to the case of a plaintiff respondent 45 M L J 212=46 M 811=74 Ind Cas 4. Effect of Appellate Courts leave to withdraw suit with liberty to file fresh suit is to wipe out lower Courts decree 37 Ind Cas 414=44 M 259.

**Execution proceedings**—Order 23 does not apply to the execution proceedings A I R 1922 Pat 523=1 Pat 232=65 Ind Cas 122.

**Power of co plaintiffs**—One of several plaintiffs cannot withdraw a suit without obtaining the consent of all 2 U P L R (B R) 33=55 Ind Cas 916, see also 52 Ind Cas 183=1 U P L R (B R) 14, 60 Ind Cas 593=2 U P L R (B R) 105, A I R 1928 Mad 496, 1 Pat 228=A I R 1922 Pat 489, A I R 1933 Mad 824=65 M L J 693. An appellant can withdraw from an appeal under sub-rule (1) of r 1, order XXIII without the consent of the co appellants. Sub-rule (4) of r 1 does not govern rule 1 A I R 1927 Bom 241=29 Bom L R 277=101 Ind Cas 348.

**Minor**—Court should jealously guard the interest of minors and should not allow a suit to be instituted on a minor's behalf to be withdrawn without being satisfied that it is for his benefit 47 Ind Cas 508=59 P R 1919.

**Late stage**—A plaintiff has no absolute right to withdraw his suit in appeal 74, see also 46 M 811=45 M L J 212=A I R 1916 All 548=24 A L J 721. A suit should not be granted in appeal where A I R 1929 Cal 88=55 C 1067=113 Ind Cas 845, 41 C L J 168=86 Ind Cas 1029. Plaintiff can withdraw part of his claim to give jurisdiction even after evidence and arguments are heard 116 Ind Cas 823. Evidence being made is no ground to allow withdrawal of the suit under Order XXIII, rule 1 or under s 151 A I R 1919 Bom 320=31 Bom L R 613=119 Ind Cas 773, see also 85 Ind Cas 324, A I R 1916 Mad 126. Withdrawal of suit, after reaching Letters Patent appeal cannot be granted unless defendant's consent to it A I R 1930 Pat 410=12 P L T 280=129 Ind Cas 543.

**Order as to costs**—Where suit was allowed to be withdrawn on payment of costs, cost may be paid after filing second suit A I R 1929 Nag 135=25 N L R, 171. Where leave to withdraw suit with liberty is granted, court must follow the event 25 Bom L R 242=47 B 559=72 Ind Cas 324. When permission is granted to withdraw a suit on payment of costs, the payment of costs is not condition precedent to the institution of the suit and non payment will not debar plaintiff from filing a fresh suit 45 Ind Cas 969=7 L W 557. See also A 1927 Lab 159=99 Ind Cas 420, A I R 1933 All 810=1933 A L J 135.

R 1926 Pat 472=95 Ind Cas 875, 64 Ind Cas 738 (Cal), 44 Ind Cas 79=3 Pat L J 63=4 Pat L W 134, but see 38 Ind Cas 476, 83 Ind Cas 958=39 C. L J 367, A I R 1931 Bom 257=33 Bom L R 278 Cost should ordinarily be allowed to the defendant A I R 1932 Mad 714=36 M L W 646

**Finality of order**—An appeal does not lie from an order passed under order XXIII rule 1 allowing a suit to be withdrawn with liberty to bring a fresh suit A I R 1926 Oudh 185=88 Ind Cas 1029 The mere fact that the Court may have exercised a wrong discretion is not sufficient to bring the case within the purview of s 115 A I R 1927 All 750=25 A L J 838=103 Ind Cas 372, see also A I R 1931 All 19 The Court trying the subsequent suit cannot enquire whether the Court which granted the plaintiff's permission to withdraw the first suit had properly made such order 65 Ind Cas 704, 58 Ind Cas 806=48 C 138=24 C W N 723 (F B) An order under this rule beyond the competency of the Court is an order passed in irregular exercise of jurisdiction as not a nullity 40 Ind Cas 611=32 M L J 434=(1917) M W N 234

**Mortgage suit**—*Vide* (1916) 1 M W N 171=32 Ind Cas 624

compromise the plaintiff cannot =89 Ind Cas 984 In a partition position of a plaintiff and one plaintiff according to Order 23, rule 1(4)

*Ibid*, see also A I R 1926 All 582=24 A L J 694, 16 A L J 584=47 Ind Cas 905 Where a member of a family withdraws a suit for partition, he can bring another suit for the possession of his share of the property by reason of Order 23, rule 1 20 L W 540=83 Ind Cas 84

**Probate Proceedings**—Order XXIII rule 1 does not apply to probate proceedings 67 Ind Cas 1002=2 Lah L J 242, see also 40 Ind Cas 345=2 Pat L J 535=5 Pat L W 210 Where probate application being incomplete was allowed to be withdrawn, a fresh application for letters of administration is not barred A I R 1932 Lah 290=132 Ind Cas 224

**Public trust**—Where in a scheme suit under s 92 of the Code, the plaintiff applies to withdraw the suit to prevent the Court from deciding the suit on merits, the Court can transpose some of the defendants as plaintiffs and proceed with the suit notwithstanding the withdrawal of the plaintiff 12 L W 25=59 Ind Cas 233

**Revision**—The High Court can revise an order passed under this rule if that order proceeds on grounds other than those laid down in rule 1 90 Ind Cas 632=26 P L R 319=7 Lah L J 290, see also 92 Ind Cas 1030, 107 Ind Cas 887=5 O W N 61=A I R 1928 Oudh 482=3 Luck 403=5 O W N 61, A I R 1927 All 704=25 A L J 870, 95 Ind Cas 843, .. .. . 47 A 329=87 Ind Cas 175, 35 Ind Cas 969, 5 Pat L W 104=3 Pat L J 460=46 L Ind Cas 484, 63 Ind Cas 753, 64 Ind Cas 3), 61 Ind Cas 584=18 N L R 30 Where a Co .. .. . discretion an order under this rule J 351 Order under this rule passed being complied with, is without juris 78 Ind Cas 121, see also 40 Ind Cas Order XXIII, rule 1 has exercised its 48=24 A L J 721=96 Ind Cas 480 d, the High Court cannot interfere,

merely on the ground that had the matter come before that Court as a substantive application, or by way of appeal it might not have taken the same view of the facts of the case in their application to the provisions of Order XXIII r 1, commended itself to the Court below 60 Ind Cas 899=19 A L J 47, see also 1930 A L J 1207=125 Ind Cas 380, A I R 1934 All 214 It is material irregularity to grant permission of withdrawal without recording reasons A I R 1928 All 98=50 A 199=106 Ind Cas 431, see also 35 C W N 112=A I R 1931 Cal 336 Entering plaintiff's application to withdraw suit and bringing fresh one owing to defect in plaintiff's application to exercising jurisdiction A I R 1932 Lah 360=136 Ind Cas 1=33 P L R 275 Where Court acts with material irregularity, mistake can be corrected under ss 151 and 152 A I R 1934 Rang 103

2. [S. 374] In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Limitation law not affected by first suit

Scope—The rule contained in this rule *vis* that when a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought does not apply to execution proceedings 10 B 62, see also 17 A 106 As regards whether section 14 of the Limitation Act applies *vide* 29 B 219, 35 C 924

3 [S 375] Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit

N. B.—For local amendment in Rangoon *vide infra*

Scope—A decree dismissing the suit on the ground that a plea in bar of the suit on the basis of an alleged compromise is established is not one made under Order XXII, rule 3 46 Ind Cas 77, Suit in rule 3 includes appellate stages and execution proceedings that follow a decree 62 Ind Cas 608=6 Pat L J 253=2 Pat L T 273 Under rule 1 the Court deals with plaintiff alone, but under rule 3 it deals with plaintiff and defendant and finds out if there is any agreement between them for compromise 37 Ind Cas 471 Injunction can be passed with the consent of the parties but it must be by order of Court A I R 1934 Cal 402 Where party has no interest his consent to compromise is not necessary A I R 1934 Cal 402

ule 3 is still agreement Party on challenging its binding nature ect cases where parties, having

frame an additional issue as to its existence,

19 M 419=4 M L J 263 This rule applies only to a case in which the adjustment or satisfaction is made in Court and cannot and ought not to be extended so 24 C 908=1 C W N

the compromise arrived at nging it about. A I R 1927 Bom 565 (F B)=51 B 908=29 Bom 1254=105 Ind Cas 516 Rule 3 of Order XXIII refers to cases where the parties themselves come to an agreement In reference to arbitration it is the unity of the minds of the parties that constitutes the adjustment A I R 1927 All 614=25 A L J 787=102 Ind Cas 608, see also A I R 1929 Lah 806, A I R 1930 All 162=(1930) A L J 597=52 A. 735 "So far as it relates to the suit" mean "so far as it relates to the adjustment or settlement of matters litigated in the suit," the settlement may take any form which is lawful and fair and which satisfies the parties 64 Ind Cas 391=A I R 1922 L B 22 A contract of parties is none the less a contract because there is super-added to it the command of the Judge A I R 1924 Pat 231=81 Ind Cas 298 Rule 3 is applicable to suits, but under s 141 the procedure applicable to suits, so far as it can, should be applicable to in miscellaneous proceedings A I R 1926 Oudh 311=13 O L J 138=92 Ind Cas 732. The provisions contained in rule 3 of Order 23, are applicable to execution proceedings 44 Ind Cas 164, 80 Ind Cas 454, but see A I R 1927 Nag 31=97 Ind Cas 768 Once a compromise decree has been passed with reference to the rights of the parties to a suit no suit but execution is the remedy of the parties 52 Ind Cas 188=151 P R, 1919 Where a decree includes matters covered by the suit and also matters outside it, the decree can be executed only to the extent of the matters included in the suit and not in respect of the matters outside it A I R 1925 Cal 286=78 Ind Cas 317 Where portion of the compromise is valid and the rest is invalid, valid portion can be executed A I R 1925 Cal 286=78 Ind Cas 317

Lah 792=112 Ind Cas 695 Rule 3 gives speedier remedy than suit A I R 1933 Pat 306=12 Pat 356

Any other law in s 89 include Order 23, rule 3 A I R 1931 Oudh 127=6 Lah 591=131 Ind Cas 443, see also A I R 1927 Bom 565=29 Bom L R 1254=51 B 908=105 Ind Cas 516 A consent decree does not come within the rule of resjudicata as contained in s 11 It, however, raises an estoppel as much as a decree is passed in invitum A I R 1926 Cal 672=43 C L J 116=94 Ind Cas 844 Where parties to a suit arrive at a compromise, a Court does not make declarations based on such compromise, because Court not having proved the case cannot form its own opinion as to the merits of the case A I R 1929 Bom 350=31 Bom L R 621=119 Ind Cas 663 Consent decree requiring personal skill can be passed A I R 1933 Pat 306=12 Pat 359 Duty of Court is to see what party was in the right before thrusting compromise on one party or other 34 C W N 1068=A I R 1931 Cal 20, A party in whose favour a decree or order is passed can set it aside by adjustment or compromise under this rule 47 Ind Cas 817

**Adjustment**—Adjustment cannot be refused if lawful 12 Pat 359=A I R 1933 Pat 306 Question whether compromise amounts to adjustment depends on intention of parties and not on question whether terms are to be performed in future or in present A I R 1933 Lah 732 Valid award even without intervention of Court can be given effect to adjustment A I R 1931 Nag 66=13 N L J 237, 9, 67 Ind Cas 123=3 Lah L 25 In a full Bench of the

Giving the words of r 3

R 1441, see also A I R 1928 Cal 108=46 C L J 353 A compromise under  
d  
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is

of a decree A I R 1930 Mad 105=30 L W 551=1929 M W N 867 Where a decision of Court of Justice depends on an agreement depending upon contingencies beyond the control of parties, it is not an adjustment A I R 1927 Oudh 222=102 Ind Cas 470, see also 78 Ind Cas 540=27 O C 157=110 L J 306 An agreement between the parties to a suit to abide by the decision which may be made in another proceeding is tantamount to an adjustment of the suit when that decision is actually passed 51 Ind Cas 540=8 L W 470, see also 80 Ind Cas 16=A I R 1914 All 570 A I R 1930 Bom 431=32 Bom L R 389=54 B 696 Courts will not allow an agreement entered into by parties prior to decree to treat the decree to be passed as in part inexecutable 43 M 725=39 M L J 222=56 Ind Cas 976

**Arbitration**—If the parties in a suit have referred their differences to arbitration without an order of the Court the award can be recorded under order XXIII, rule 3 A I R 1931 Oudh 127=8 O W N 71, see also A I R 1931 Rang 58=9 Rang 39=131 Ind Cas 57, A I R 1931 Nag 66=13 N L J 237, A I R 1927 Bom 565=51 B 908=29 Bom L R 1254, A I R 1927 M L J 1176=53 M L J 444=55, A I R 1928 Mad 3 N L J 237, A I R L R 100, A I R A I R 1932 Pat 205 922 Oudh 189=25 O 808; 88 Ind Cas 768  
arbitration in pending suit

is subject to the control of the Court Parties cannot deprive the Court of its juris

d Cas 360, see  
a suit refer to  
order supersed  
432=83 Ind Cas  
606, but see A I R 1927 Lah 156=99 Ind Cas 1002 If after the award has been  
given there is any dispute between the parties as regards the validity of it, the  
Court has to determine the objections raised against the award just in the same way  
as it has to determine the objections raised against the validity of a compromise  
simpliciter filed before it A I R 1931 Oudh 127=8 O W N 71=131 Ind  
Cas 443

**Lawful agreement**—The Court before it records a compromise, must be  
satisfied that the suit has been adjus ed wholly or in part by any lawful agreement  
or compromise 83 Ind Cas 606=51 C 432 53 Ind Cas 833=4 P L J 580, 55  
Ind. Cas 504, A I R 1924 Cal 159=38 C L J 272=80 Ind Cas 307 Where  
all parties do not assent to a compromise the compromise is not lawful 86 Ind Cas  
361=6 Lah L J 604, see also 69 Ind Cas 395 Where the claim is beyond the  
jurisdiction of the trial Court, it cannot pass a compromise decree (1922) M W N  
83=16 L W 155=66 Ind Cas 837 Compromise between plaintiff and one defendant  
cannot be accepted as prejudicial to other defendants A I R 1923 Oudh 252=77  
Ind Cas 874 Lawful agreements may include agreements which are voidable  
1932 A L J 509—A I R 1932 All 478 A I R 1928 All 494=50 A 748  
Strength and weakness of case is irrelevant to decide fact and lawfulness of com  
promise A I R 1933 Pat 306=17 Pat 359=14 P L T up 1=A I R 1933 Pat  
306 Lawful means legally enforceable and not necessary specifically enforceable  
*Ibid* Repudiating party can not insist on trial of suit to decide lawfulness of  
compromise *Ibid* A compromise is not illegal only because among its terms  
there is withdrawal of certain criminal prosecutions, compoundable by law A I R  
1930 Lah 860=31 P L R 225 Where a compromise decree is attached on the  
ground that the compromise is brought about by undue influence, coercion, and  
compulsion, a regular suit will lie 85 Ind Cas 557=A I R 1925 All 266 As  
regards what compromise is not lawful vide A I R 1927 Lah 546=103 Ind Cas  
80, 106 Ind Cas 645=9 P L T 214 (mohant exceeding his power), A I R  
1930 Mad 305=53 M 805 Where an agreement to compromise is inchoate it should  
be proved by evidence that after the date the agreement was completed and in  
the absence of such proof the agreement can not be given effect to A I R 1930 Sind  
217=123 Ind Cas 693 Where a compromise is filed in Court but repudiated by  
some of the parties to it, the Court must hold an enquiry under order 23, rule 3  
A I R 1929 Pat 102=116 Ind Cas 524 For instances of lawful agreement,  
vide, A I R 1929 Oudh 63=5 O W N 1081, A I R 1929 Pat 495, A I R  
1927 P C 204=32 C W N 93=24 Bom L R 1376 (P C), A I R 1927 P C  
57=51 B 442=52 M L J 466=31 C W N 649 (P C), A I R 1926 All 278=  
24 A L J 210, A I R 1924 P C 202=26 Bom L R 772=45 M L J 136 (P C)  
=83 Ind Cas 380, 55 Ind Cas 716

**Duty of Court**—If a compromise is alleged it is a question of fact for investi  
gation 39 C L J 526=83 Ind Cas 948 Court has no discretion in recording  
a compromise and passing decree according to it where the suit has been adjusted  
either wholly or in part by a lawful compromise It is the duty of the Court to  
do in accordance therewith A I R 1930  
R 645=51 C L J 309=123 Ind Cas  
Ind Cas 311=A I R 1926 Mad 341 A  
ompromise on one party or the other 34  
C W N 1068=A I R 1931 Cal 20=131 Ind Cas 257 In the case of private  
individual a Court should see that there is in fact a compromise and the adjust  
ment is a lawful one A I R 1930 Mad 629=58 M L J 410=53 M 393=124  
Ind Cas 602, see also 25 C W N 806=34 C L J 96=66 Ind. Cas. 273, 52  
Ind Cas 105, 61 Ind Cas 118=14 S. L R 245, 50 Ind Cas 363 Court can  
not permit parties to divide the testator's property under a compromise before the  
will is proved 20 C W N 986=1 Pat. L J 377=37 Ind Cas. 12 The Court  
can decide the fact of settlement of a pending suit where plaintiff denies



some only of the parties to the suit join in a petition of compromise the other parties can object to the compromise being recorded, and if they show good cause the Court can refuse to grant a decree in terms of the compromise A I R 1926 Cal 193=85 Ind Cas 678 Wrong order of Court passed through mistake can be amended

a decree in terms of compromise after it has been recorded, the passing of the decree need not be simultaneous with the recording of the compromise and Court may postpone the passing of a decree in a proper case A I R 1930 Pat 395=125 Ind Cas 521 For a compromise two things are required (1) that the Court shall order such compromise to be recorded, and (2) that it shall pass a decree in accordance therewith so far as it relates to the suit There should be an enquiry as to the terms being lawful or not and the Court should direct formally a compromise to be recorded after its satisfaction that it was a lawful compromise The omission to comply with the requirements of the rule goes to the root of the jurisdiction of the Court to pass a decree in accordance with the compromise A I R 1927 Pat 354=6 Pat 108=105 Ind Cas 271, see also A I R 1929 Sind 1.

is acting illegally o

declaratory suits a

the other party can be allowed by the Court and such a provision can be included in an operative part of the decree A I R 1928 Nag 73 24 N L R 55

**Who can compromise**—A guardian of a minor cannot enter into a compromise on behalf of the minor without the leave of the court 62 Ind Cas 688, see also A I R 1929 Bom 350 31 Bom L R 621 A compromise entered into with a minor is entirely void and cannot be given effect to by a court of law A I R 1927 Pat 271=8 P I T 730=102 Ind Cas 449 Where a stranger applies to be made a party and objects to acceptance of compromise, application should be rejected 1932 A L J 509=A I R 1932 All 478 Where suit has been instituted in the name of a firm, one partner alone has no power to compromise A I R 1933 Lah 618=144 Ind. Cas 1

**Binding on parties**—A consent decree binds the parties thereto as a decree after a contentious trial It cannot have a greater validity than the compromise itself A I R 1921 Cal 356=33 C L J 244=60 Ind Cas 864, see also 29 C W. N 597=88 Ind Cas

Ind Cas 22

aside A I R

not to carry or

389=54 B 696

23 C L J 82=33 Ind Cas 273 A consent decree wrongly passed owing to some legal or technical defect is not a nullity 51 Ind Cas 439 The Court can set aside an order made by consent not in the nature of final order or judgment but merely an interlocutory order in the suit, provided proper grounds are made out 32 Bom L R 667=A I R 1930 Bom 302

**Compromise in Partition Suit**—A compromise of a partition suit is not in effectual only because every party to the action does not join in it Each case must depend upon its own facts A I R 1928 Mad 594=108 Ind Cas 221

**Mortgage**

mortgage suit.

XXXIV rule 4

I R 1921 Pat 320=2 P L T 38=60 Ind Cas 652, see also 89 Ind Cas 889=27 Bom L R 943

**Public trust**—No compromise can be said to be lawful which sacrifices its interest in the case of public trust A I R 1930 Mad 629=58 M L J 410=53 M 398, see also 60 Ind Cas 22=12 L W 562

**Preliminary decree**—Order XXIII rule 3 does not necessitate two decrees, one a preliminary and a final, but only one decree 29 O C 26=94 Ind Cas 317

**Pleader's authority to compromise**—Express authority is not needed for counsel to enter into a compromise within the scope of the suit Where there is

defendant affirms it and grant a decree in accordance therewith, if it is established 21 C W N 366=36 Ind Cas 375

**Effect of Compromise—Decree—**Consent decree has no greater validity than compromise itself A I R 1931 Lah 628=134 Ind Cas 827=32 P L R 936=12 Lah 403 Court has no power to grant extension of time for payment of instalments A I R 1933 Pat 677 A consent decree is binding on parties to the suit until it is set aside after contest 40 M 177=30 M L J 274=34 Ind Cas 57, 3 Ind Cas 21 A I R 1928 Oudh 48=4 O W N 1119 Where consent decree is set aside, Court can proceed with the original suit 6 P L T 150=8 Ind Cas 181 A compromise having merged in a decree does not become extinct when that decree is set aside Where a decree is based on agreement of compromise the Court must be deemed to adopt the agreement with all its incidents A I R 1930 Lah 937=12 Lah L J 203=130 Ind Cas 513 Court is not bound to pass a formal decree in the exact terms of a compromise but the decree should be passed in accordance with it A I R 1929 Bom 350=31 Bom L R 621=119 Ind Cas 663, see also 65 Ind Cas 47=38 C L J, 72, 89 Ind Cas 926=A I R 1926 Nag 20, A I R 1928 Nag 51=23 N L R 124, A I R 1928 Rang 43=5 Rang 662=106 Ind Cas 163, A I R 1926 Cal 666=30 C W N 307 Compromise made under undue influence, coercion or compulsion is good so long as it has not been avoided The Court can pass a decree on such compromise 85 Ind Cas 557=A I R 1925 All 266 Where there is no allegation of fraud or collusion, a compromise decree is as effective as one after contest 80 Ind Cas 447=10 O L J 252

**Matters outside suit—**A compromise decree in so far as it deals with other matters cannot operate as *res judicata* 48 C 1059=25 C W N 990=66 Ind also A I R 1921 Pat 320=2 P I T on includes matters not in suit the Court can only and not reject the petition entirely 40 Ind Cas 675=112 P L R 1917 Though it relates to matters outside the suit a compromise decree constitutes an estoppel by matter of record between the parties to the com, see also 3 Pat L J 4 I W N 751=6 L W 635, Ind Cas 20, 46 li 82 4 Pat L J 667=52 relating to suit is sy 53 Ind Cas 354 Matters 145 Ind Cas 441=14 P L T 23=A I R 1933 Pat 176 or not collateral to suit clause relates to suit or not is a question of fact 33 Bom L R 463=A I R 1931 Bom 295 Where part of compromise does *ultra vires* A I R 1933 All 649 (F B)=1933 Bom 466, A I R 1932 Mad 557=1933 M W I 1932 Bom 47=33 Bom L R 1457 subject matter in suit should be determined

**Partial compromise—**Where a plaintiff compounds his difference with some of the defendants and prays for withdrawal of suit, the Court should dismiss the suit 186 but see 2 Pat L T person who is not a party to it compromise is recorded in 30 P L R 112=11 Lah L J 50=117 Ind Cas 240 A I R 1929 Lah 291= lawful A I R 1933 Pat 306=12 Pat 359=14 P L T Sup 1 Compromise with some is

to law con 1931 Rang 58=9 Rang 39=131 Ind Cas 57 A joint petition by both the parties to a suit requesting the Court to adjourn the case for enabling the parties to arrive at the terms of a contemplated settlement does not by itself amount to a compromise when nothing further has been done by the parties in furtherance of their original intention A decree based on the original petition itself as if it were a compromise is without jurisdiction 34 C W N 1068=131 Ind Cas 257=A I R 1931 Cal 203 Under rule 3 a decree can be passed only after an order of compromise be recorded 43 C 83=3, Ind Cas 769 Where a case is set for want of a delivered judgment the Court can receive evidence for and pass necessary orders on it 41 M L J 383=65 In a



some only of the parties to the suit join in a petition of compromise the other parties can object to the compromise being recorded, and if they show good cause the Court can refuse to grant a decree in terms of the compromise A I R 1926 Cal 193=

a decree in terms of compromise after it has been recorded, the passing of the decree need not be simultaneous with the recording of the compromise and Court may postpone the passing of a decree in a proper case A I R 1930 Pat 395=125 Ind Cas 521 For a Court shall order such compromise decree in accordance therewith enquiry as to the terms being compromise to be recorded after its satisfaction that it was a lawful compromise The omission to comply with the requirements of the rule goes to the root of the jurisdiction of the Court to pass a decree in accordance with the compromise A I R 1927 Pat 354=6 Pat 108=105 Ind Cas 271, see also A I R 1929 Sind. 1. is acting illegally declaratory suits a the other party can in an operative part of the decree A I R 1928 Nag 73=24 N L R 55

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**Binding** . . . thereto as a decree after a consent the compromise itself A I R 1921 C 120 29 C W. N 597 =88 Ind Cas Ind Cas 611, 60 Ind Cas 22, no suit lies to set it aside A I R 1927 Lah 602 If a right compromise is doubtful, an agreement not to carry on any dispute about it is valid A I R 1930 Bom 43=32 Bom L R 389=54 B 696 A compromise in probate case is binding only upon the parties to it 23 C L J 82=33 Ind Cas 273 A consent decree wrongly passed owing to some legal or technical defect is not a nullity 51 Ind Cas 439 The Court can set aside an order made by consent not in the nature of final order or judgment but merely an interlocutory order in the suit, provided proper grounds are made out 32 Bom L R 667=A I R 1930 Bom 362

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**Mortgage** . . . preliminary decree in mortgage suit t L T 38 Order XXXIV, rule 4 XXIII, rule 3 A I R 1921 Pat 320=2 P L T 38=60 Ind Cas 652, see also 89 Ind Cas 889=27 Bom L R 943

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**Partial compromise—**Where a plaintiff compounds his difference with some of the defendants and prays for withdrawal of suit, the Court should dismiss the suit 156, but see 2 Pat L T erson who is not a party to it compromise is recorded in ed A I R 1929 Lah 291= 30 P L R 112=11 Lah L J 50=117 Ind Cas 240 Compromise with some is lawful A I R 1933 Pat 306=12 L T 359=14 P L T Sup 1

record compromise so far as it relates L R 463=132 Ind Cas 434 Policy of Ibid Court in its inherent powers can be parties appearing before it A I R 1931 Rang 58=9 Rang 37=131 Ind Cas 57 A joint petition by both the parties to a suit requesting the Court to adjourn the case for enabling the parties to arrive at the terms of a contemplated settlement does not by itself amount to a compromise when nothing further has been done by the parties in furtherance of their or the original petition itself as if it were a 34 C W N 1068=131 Ind Cas 257=A I R decree can be passed only after an order that the 33 Ind Cas 767 Where a case is still pending for want of a delivered judgment, the Court can receive a petition for compromise and pass necessary orders on it 41 M L J 38, 6, Ind Cas 82 In a case where

Notes—Interest ceases running only if admitted amount is deposited in Court A I R 1928 Cal 874=32 C W N 1082=117 Ind Cas 687 This rule does not apply to execute proceedings A I R 1927 Cal 72

4 [S 379.] (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance, and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation

### Illustrations

(a) A owes payment and would place him into Court B allow him any costs the litigation being, presumably groundless on his part

(b) B sues A under the circumstances mentioned in illustration (a) On the plaint being filed A disputes the claim Afterwards A pays the money into Court B accepts it in full satisfaction of his claim The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary

(c) A owes B Rs 100, and is willing to pay him that sum without suit B claims Rs 150 and sues A for that amount On the plaint being filed A pays Rs 100 into Court and disputes only his liability to pay the remaining Rs 50 B accepts the Rs 100 in full satisfaction of his claim The Court should order him to pay A's costs

Notes—Vide 26 C, 13 Ind Cas 188

## ORDER XXV

### Security for costs.

1 [Ss 380, 382] (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time it, to give security for the payment of all costs incurred and to be incurred by any defendant

(2) Whoever leaves British India under such circumstances as to give rise to a reasonable probability of his not being forthcoming whenever he is called upon to pay costs shall be deemed to have left India out of British India within the meaning of sub-section (1)

(3) On the application of any defendant in a suit for recovery of money, in which the plaintiff is a woman, the

limitation of authority and that limitation is communicated to the other side, consent by counsel outside the limits of his authority would be of no effect 3 Pat L T 371=A I R 1922 Pat 232=67 Ind Cas 96, see also 29 C W N 566=52 C 386=A I R 1925 Cal 696=88 Ind Cas 413, A I R 1927 Cal 714=55 C 113=31 C W N 953, A I R 1929 Oudh 211, 19 A L J 63=60 Ind Cas 912, 60 Ind Cas 22 An agreement to compromise a suit must be established by general principles governing formation of contracts, though there are special rules governing intrinsic nature If the agreement is on behalf of one or both of the parties by their legal advisers, the first two questions that arise are (1) Had the agent, the actual authority of his principal express or implied, to conclude the contract, (2) If no actual authority, had he ostensible authority so as to bind his principal against the other party, relying on ostensible authority A I R 1930 P C 158=34 C W N 453=1930 A L J 489=58 M L J 551=32 Bom L R 645 (P C)

Appeal—Appeal lies from order recording compromise A I R 1929 Lah 472, see also A I R 1929 Nag 275=12 N L J 124, A I R 1929 Pat 318=8 Pat 528=10 P L T 293, A I R 1929 Sind 32, A I R 1933 Cal 94=36 C W N. 1013=57 C L J 26, A I R 1929 Sind 32, A I R 1926 Cal 412=29 C W N 928=87 Ind Cas 248, 80 Ind Cas 696=6 Lah L J 187 Where Court holds that the compromise is invalid and not binding on the parties and refuses to record the same, an appeal lies under Order 43, rule (1) (m) assailing the grounds for refusal so A I R 1928 Lah 39=28 P L R 580 A I R 1926 Bom 39=27 Bom L R 206 An order finding that there has been no compromise is not an order under rule 3 and is not appealable 73 Ind Cas 177

Proceedings in execution of decrees not affected 4. [S. 375A] Nothing in this Order shall apply to any proceedings in execution of a decree or order

Sub section (2)—Vide 13 Ind Cas 188

## ORDER XXIV.

### *Payment into Court*

1. [S. 376.] The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim

Deposit by defendant of amount in satisfaction of claim. - - - XIV must be unconditional so as to be the to withdraw it A I R 1927 Cal 72, see 753 Rules 1 and 3 do not apply to execution from costs of original suit A I R 1927 Cal 72=97 Ind Cas 479 On analogy of these rules judgment-debtor can be relieved from the payment of interest on amount deposited by him and immediately payable to judgment debtor 40 A 125=16 A L J 15=43 Ind 520.

2 [S 377] Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application

Notes.—Vide 45 Ind Cas 633=35 M L J 439

3 [S 378.] No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Interest on deposit not allowed to plaintiff after notice.

confronting accusers 45 M L J 363=28 C W N 327=39 C L J 165=73  
 Ind Cas 391 (P. C.) Issue of commission is a question of exercise of  
 jurisdiction and not of mere discretion Grounds alleged and objection raised  
 by parties or witnesses as also advantages and risk of issue or non issue  
 of commission should be carefully examined A I R 1924 Cal 971=39  
 C L J 598=84 Ind Cas 9 But the court has no power to take away  
*pardanashin* ladies' privilege under s 132 to be examined on commission A  
 I R 1928 Cal 814=114 Ind Cas 95; see also 1933 A L J 1384=A I R 1933 All  
 551. Where *pardanashin* lady while being examined on commission tutored by  
 some body, Court may exclude evidence but cannot insist on personal attendance

Parties even if women

L J 707=141 Ind Cas

examination by com-

missioner at her own choice 64 Ind Cas 228=48 C 448=A I R 1921 Cal 229  
 Plaintiff who is *ghos* lady with n s 132, should be allowed to examine herself on  
 commission 86 Ind Cas 513=A I R 1925 Mad 905 It is not for court to decide  
 whether party will be benefited or not by issue of commission as it is a matter entirely  
 for the party Worc . 46 M 574

44 M L J 202=71

sickness or infirmity

evidence normally 55 C 748=32 C W N 128=A I R 1928 Cal 421 Order  
 issuing commission by Judge exercising discretion as to its issue or non issue after  
 being satisfied that witness was ill, unable to attend is not although incomplete, open  
 to revision 55 C 748=32 C W N 128=A I R 1928 Cal 421 Witness living at  
 a distance specified in order XVI, r 19 (b) and not under party's control should be  
 allowed to be examined on commission as it is an abuse of process of court and court's  
 wrongful refusal to open to correct on revision 46 M 574=44 M L J 202  
 =71 Ind Cas 530 Commissioner to examine witness can stop proceedings to  
 consult Court on finding cross examining pleader abusing his position and exceed-  
 ing limits of his propriety A I R 1924 Pat 284=7 Ind Cas 748 Commission

within 200 miles

N 677 Essen-

on of the hearing

vision lies from an

27 Sind 264, A

2 of time A I R

1934 All 37

2. [S 384] An order for the issue of a commission for the examination  
 of a witness may be made by the Court either of  
 Order for commission its own motion or on the application, supported  
 by affidavit or otherwise, of any party to the suit or of the witness to be examined.

sion is to be

A I R 1927

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not try issue

932 All 264

Order 26 does not prevent Court from accepting evidence on debatable point though  
 Commissioner is appointed to inspect accounts 53 A 54=A I R 1932 All 128  
 As regards examination of experts on commission by interrogatories, vide A I R  
 1934 Pat 60

3. [S 385] A commission for the examination of a person who resides  
 within the local limits of the jurisdiction of  
 Where witness resides within the Court's jurisdiction the Court issuing the same may be issued to  
 any person whom the Court thinks fit to  
 execute it.

Notes—Vide A I R 1934 Mad 399.

Persons for whose examina-  
 tion commission may issue

4 [S 386] (1) Any Court may in  
 any suit issue a commission for the examina-  
 tion of—

(a) any person resident beyond the local limits of its jurisdiction,

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suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within British India

N B—For local amendments on Allahabad, Madras and Rangoon *vide infra*.

Notes—Circumstances should be considered for requiring security under wide provision of order XXV A I R 192  
*prima facie* good cause on appeal,  
1933 Mad 519=56 M 523=64 M L

on 151 will apply even in cases when  
Sind 127=6 Luck 591=8 O W N 71  
ia does not save him from the rule  
A I R 1922 Bom 299=28 Bom L R 1253=46 B 589=64 Ind Cas 703, see also  
32 Bom L R 411=A I R 1930 Bom 220 Ground of pauper plaintiffs being assisted  
by relation is absurd and security cannot be asked in the absence of very special  
grounds 75 Ind Cas 309=2 Bur L J 78, 1928 Lah 960 There is no inflexible  
rule that only if plaintiff appellant is mere puppet for other's litigation security for  
cost can be demanded 32 Ind Cas 786 As regards what are suits for money,  
*vide* 68 Ind Cas 607, 89 Ind Cas 620 Costs can be taken from plaintiff only  
under this rule 50 C 853=A I R 1924 Cal 251=79 Ind Cas 298

2 [S 381] (1) In the event of such security not being furnished  
Effect of failure to furnish within the time fixed, the Court shall make an  
security order dismissing the suit unless the plaintiff  
or plaintiffs are permitted to withdraw  
therefrom

(2) Where a suit is dismissed  
an order to set the dismissal aside,  
Court that he was prevented by any such  
within the time allowed, the Court shall set aside the dismissal upon such  
terms as to security, costs or otherwise as it thinks fit, and shall appoint a day  
for proceeding with the suit

(3) The dismissal shall not be set aside unless notice of such application  
has been served on the defendant.

N B—For local amendments in Bombay and Rangoon, *vide infra*

Notes—*Vide* A I R 1928 Mad 964=55 M L J 30

## ORDER XXVI.

### Commissions.

#### Commissions to examine witnesses.

1 [S 383] Any Court may in any suit issue a commission for the  
Cases in which Court may issue commission to examine witness.  
Code from attending the Court or who is from  
sickness or infirmity unable to attend it

Scope.—Witnesses should not be allowed to be examined on commission with  
out adequate reason The grounds for the issue of commission are ordinarily those  
specified in rule 1 43 Ind Cas 729=42 B 136=20 Bom L R 1 Commission  
cannot be issued simply because witnesses are old unless court is satisfied of their  
inability to attend from sickness or infirmity A I R 1927 Mad 524=1927  
M W N 218 Evidence of plaintiff ought not to be generally taken on commission  
unless very strong reasons. Mere inconvenience or great distance from Court to  
the plaintiff's residence is not sufficient ground 13 Bur L T 33=57 Ind Cas  
955 Evidence on commission should be allowed only if witness is too ill to give  
evidence in court or is about or for other sufficient reason, and it is improper to  
allow principal defendant charged with fraud to be examined on commission before  
opening of plaintiff's case so as to conceal his bad meanour from court and himself from

confronting accusers 45 M L J 363=28 C W N 327=39 C L J 165=73 Ind Cas 391 (P C) Issue of commission is a question of exercise of jurisdiction and not of mere discretion Grounds alleged and objection raised by parties or witnesses as also advantages and risk of issue or non issue of commission should be carefully examined A I R 1924 Cal 971=39 C L J 598=84 Ind Cas 9 But the court has no power to take away *pardanashin* ladies' privilege under s 132 to be examined on commission A I R 1928 Cal 814=114 Ind Cas 95, see also 1933 A L J 1384=A I R 1933 All 551 Where *pardanashin* lady while being examined on commission tutored by 1st on personal attendance 34 Parties even if women M L J 707=141 Ind Cas her examination by commissioner at her own choice 64 Ind Cas 228=48 C 448=A I R 1921 Cal 229 Plaintiff who is *ghos* lady within s 132, should be allowed to examine herself on commission 86 Ind Cas 513=A I R 1925 Mad 905 It is not for court to decide whether party will be benefited or not by issue of commission as it is a matter entirely for the party Word "may" in rules, 1 and 4 means "is given authority to" 46 M 574 44 M L J 202=71 Ind Cas 530 Facts of commission being ordered for witness' sickness or infirmity is useless unless witness is on that account prevented from giving 28=A I R 1928 Cal 421 Order as to its issue or non issue after is not although incomplete, open to revision 55 C 748=32 C W N 128=A I R 1928 Cal 421 Witness living at a distance specified in order XVI, r 19 (b) and not under party's control should be allowed to be examined on commission as it is an abuse of process of court and court's wrongful refusal to open to correction on revision 46 M 574=44 M L J 202 can stop proceedings to his position and exceed- id Cas 748 Commission although within 200 miles from Court A I R 1933 Mad 366=65 M L J 334=1933 M W N 677 Essential witness can be examined on commission even after the conclusion of the hearing 35 C W N 703=54 C L J 516=A I R 1932 Cal 236 No revision lies from an order refusing commission for examination of witness A I R 1927 Sind 264, A I R 1934 All 37 Application cannot be refused for mere lapse of time A I R 1934 All 37

2. [S 384] An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Scope—Rule 2 only says that application for the issue of commission is to be supported by affidavit or otherwise and not that it must be accompanied A I R 1927 Rang 175=5 Bur L J 242=103 Ind Cas 141 Court has discretion to issue commission 11 L B R 65=64 Ind Cas 65 Commissioner can not try issue with aid of assessors 139 Ind Cas 804=1932 A L J 117=A I R 1932 All 264 Order 26 does not prevent Court from accepting evidence on debatable point though Commissioner is appointed to inspect accounts 53 A 54=A I R 1932 All 128 As regards examination of experts on commission by interrogatories, vide A I R 1934 Pat 60

3. [S 385] A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Notes—Vide A I R 1934 Mad 399

Persons for whose examination commission may issue 4 [S 386] (1) Any Court may in any suit issue a commission for the examination of—

(a) any person resident beyond the local limits of its jurisdiction,

- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
- (c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any Subordinate Court

**Court may issue a commission.**—The issue of commission to examine a witness or witnesses in a suit is a matter of judicial discretion. An application for the examination of a witness by satisfied *first* that the applicant respects of which the evidence is thirdly, that the witness to be and fourthly there are some good reasons why the witness cannot be examined in Court. 23 Ind Cas 643, see also 84 Ind Cas 9-39 C L J 598, A I R 1929 All 44, 103 Ind Cas 141=A I R 1927 Rang 175=5 Bur L J 242. Commission can be issued on the ground of illness of a witness when it is based on medical certificate. A I R 1929 Mad 192=114 Ind Cas 843. Defendant living outside the jurisdiction of the Court should be allowed to be examined on commission. 723=A I Plaintiff

if he has not commission should be issued. A I R 1926 Pat 277=7 P L T 677=94 Ind Cas 229. Witness material to the case residing outside the Court's jurisdiction can be examined on commission. A I R 1926 Mad 345=23 L W 219=93 Ind Cas 446. Order refusing commission is not judgment and hence not appealable, under Letters Patent (Bombay) Cl 15. A I R 1934 Bom 168. Interlocutory order fixing a certain place where a witness is to be brought for examination on commission can be revised by the High Court. 85 Ind Cas 619=A I R 1925 Cal 1118

**5 [S 387]** Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request

**Notes**—Vide 30 C 934=7 C W N 806 15 B 209, 84 Ind Cas 993=6 Pat I T 520

**6 [S 388]** Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto

Court to examine witness pursuant to commission

**7. [S 389]** Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order, and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit

Return of commission with depositions of witnesses.

**Notes**—Vide 35 C 28



8. [S 390.] Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

**Scope**—A commissioner is entitled by law to note his observations as to the death of the defendant is the commissioner the trial of any material issue which it is bound to try itself 63 Ind Cas 802=1 Lh 209. Court has the power under clause (b) of rule 8 to dispense with the proof of any of the circumstances mentioned in clause (a) but the exercise of that discretion must appear from the record 44 C L J 288 A I R 1927 Cal 43, see also A I R 1930 Sind 89, 47 C L J 467=A I R 1908 Cal 341. When the witness is ill, vide A I R 1929 Cal 591. Objection to commissioner's report should be considered even though commissioner is dead A I R 1933 Sind 327=27 S L R 194. Evidence taken on commission does not *ipso facto* become evidence in case. It has to be accepted by court after hearing opposite party A I R 1934 Cal 116, see also 44 C L J 288=A I R 1927 Cal 43, 90 Ind Cas 64=A I R 1926 Sind 34.

### *Commissions for local investigations.*

9 [S 392] In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules

**Notes**—This rule does not give power to a Court to itself hold a local inspection. 15 Ind Cas 241. Local inspection if made by a Judge, it must be to understand the evidence and not for the purposes of basing decisions 35 Ind Cas 344. Judge cannot delegate any of his functions to the commissioner and ask him to take evidence and try an issue A I R 1930 Pat 557=11 Pat L T 456. After evidence is closed and the case is ready for judgment, commission for local inspection cannot be issued 51 Ind Cas 399. The commission may be issued in any case the Judge deems fit to do so 44 M 640=40 M L J 554=13 L W 520=62 Ind. Cas 790. C P Code does not contemplate the issue of a succession of commissioners to value improvements all covering the same ground A I R 1909 Mad 661=118 Ind Cas 296, see also A I R 1933 All 65. Determination of the L. R. 2 A.

issued under Order 39, rule 7 and not under rule 26 A I R 1933 Cal 47, N 143. Wrong exercise of discretion in not issuing Commission cannot

first time in second appeal A I R 1933 Pat 542 A commissioner for local investigation is to throw light upon matters in dispute A I R 1930 Cal 764= 53 C L J 229

10. [S 393] (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit

Scope—No second commission should be issued unless first Commissioner's report is unsatisfactory in which case earlier commission should be wiped out altogether Judge balancing one commissioner's report against that of other acts with great impropriety and contrary to what is contemplated by rule 10 (3) 54 M 220—60 M 1 I 150=A I R 1931 Mad 73, see also A I R 1930 7 Pat L J 795 Where the court thinks not accurate, Court should not reject the report opportunity to substantiate his case 38 Ind Parties who were present before the commissioner can object to his report and prove these objections 16 P W R 1917= 42 Ind Cas 221, see also 60 Ind Cas 434, A I R 1929 Lah 782=30 P L R 501; A I R 1927 Pat 135=7 Pat L T 739, 60 Ind Cas 434 Appellate court if it refuses the report, may rely upon other evidence 28 C L J 203=47 Ind Cas 630 Careful report of the commissioner should not be lightly interfered with A I R 1924 Cal 620=28 C W N 318=80 Ind Cas 755 Commissioner for ascertainment of mesne profits may base his report on local inspection as well as crop experiment conducted by him A I R 1925 Mid 145=47 M 800=48 M L J 89

#### *Commissions to examine accounts*

11. [S 394] In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a Commission to examine or commission to such person as it thinks fit directing him to make such examination or adjustment

Scope—In a suit for accounts between principal and agent, the commissioner can determine the extent of the liability A I R 1929 Cal 418=49 C L J 245, see also 90 Ind Cas 944=52 C 766 Commissioner can take accounts from guardian of property A I R 1929 Pat 626=11 Pat L T 561 Commissioner must himself examine the account books and must not have it examined by his munim A I R 1927 Lah 736=9 Lah L J 359=104 Ind Cas 60 n r terms of the order to the commissioner should be 91 Ind Cas 766 Court cannot delegate all his

whether certain contracts are to decide and not a question which under rule 11 The proceeding of the Court and not a I R 1926 Cal 349=87 Ind it to examine accounts and

to give findings on question of mixed fact and law is irregular. The proper course is to frame issue and to refer it to trial Court under order 41 rule 25. A I R 1931 P C 136=53 A 190=61 M L J 665=35 C W N 841=1931 A L J 458=33 Bom L R 988 (P C)

**12. [S 395] (1)** The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

**(2)** The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

**Scope**—If it is found that the Commissioner's report is unsatisfactory, the proper procedure is to appoint another Commissioner who would carry out the work more satisfactorily. A I R 1926 Pat. 156=90 Ind Cas 834. Court can decide objections against Commissioner's report in open Court. 68 Ind Cas 469=45 M 79=14 L W 620. Appellate Court can consider whether the Commissioner acted within his jurisdiction. A I R 1929 Mad 492=114 Ind Cas 232.

#### *Commissions to make partitions*

**13 [S 396 first para]** Where a preliminary decree for partition has been passed the Court may in any case not provided for by section 54 issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

**Notes**—Vide A I R 1931 Cal 170=34 C W N 909, 53 Ind Cas 614.

**14 [S 396, second and third Paras] (1)** The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the Court.

**(2)** The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare the share of each party and the said order by metes and bounds. The Commissioner's report and the order shall be transmitted to the Court, and the Court, after hearing any objections which the parties may make to the report or reports shall confirm, vary or set aside the same.

report or reports it shall pass or varied but where the her issue a new commission or

make such other order as it shall think fit

**Scope**—The duty of the Commissioner is to allot properties according to shares and not to decide shares. A I R 1934 Pat 32. A party cannot be heard in the Appellate Court unless he had filed his objections to the report of the Commissioner in the original Court. 12 Bur L T 228=56 Ind. Cas 972. Order by a Commissioner confirming or varying a report of a commissioner to make a partition passed under rule 14 (3) is not appealable. A I R 1926 Oudh. 195=91 Ind. Cas 317.

first time in second appeal A I R 1933 Pat 542 A commissioner for local investigation is to throw light upon matters in dispute A I R 1930 Cal 764=53 C L J 129

10 [S 393] (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit

Scope—No second commission should be issued unless first Commissioner's report is unsatisfactory, in which case earlier commission should be wiped out altogether Judge balancing one commissioner's report against that of other acts with great impropriety and contrary to what is contemplated by rule 10 (3) I R 1931 Mad 73 see also A I R 1930 7 Pat L J 795 Where the court thinks not accurate, Court should not reject the report opportunity to substantiate his case 38 Ind Parties who were present before the commissioner can object to his report and prove these objections 16 P W R 1917=42 Ind Cas 221, see also 60 Ind Cas 434, A I R 1929 Lah 782=30 P L R 501, A I R 1927 Pat 135=7 Pal L T 739 60 Ind Cas 434 Appellate court if it refuses the report may rely upon other evidence 28 C L J 203=47 Ind Cas 60 Careful report of the commissioner should not be lightly interfered with Cas 755 Commissioner for local inspection as well as crop 47 M Soco=48 M L J 89

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information of the Court and not a trial 17 S L R 316=75 Ind Cas 1014, see also A I R 1916 Cal 349=87 Ind Cas 764. Appointment of commission by appellate Court to examine accounts and

to give findings on question of mixed fact and law is irregular. The proper course is to frame issue and to refer it to trial Court under order 41, rule 25. A. I. R. 1931 P. C. 136=53 A. 190=61 M. L. J. 665=35 C. W. N. 841=1931 A. L. J. 458=33 Bom. L. R. 988 (P. C.)

**12. [S 395] (1)** The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

**(2)** The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

**Scope**—If it is found that the Commissioner's report is unsatisfactory, the proper procedure is to appoint another Commissioner who would carry out the work more satisfactorily. A. I. R. 1926 Pat. 136=90 Ind. Cas. 834. Court can decide objections against Commissioner's report in open Court. 68 Ind. Cas. 469=45 M. L. J. 79=14 L. W. 620. Appellate Court can consider whether the Commissioner acted within his jurisdiction. A. I. R. 1929 Mad. 492=114 Ind. Cas. 232.

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**Notes**—Vide A. I. R. 1931 Cal. 170=34 C. W. N. 909, 52 Ind. Cas. 614.

**14. [S 396, second and third Paras]** (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed, issued, and shall by the said order, of the shares.

**(2)** The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court, and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

**(3)** Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

**Scope**—The duty of the Commissioner is to allot properties according to shares and not to decide shares. A. I. R. 1934 Pat. 32. A party cannot be heard in the Appellate Court unless he had filed his objections to the report of the commissioner in the original Court. 12 Bur. L. T. 228=56 Ind. Cas. 972. Order by a Court confirming or varying a report of a commissioner to make a partition passed under rule 14 (3) is not appealable. A. I. R. 1926 Oudh. 195=91 Ind. Cas. 317.

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(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit

Scope—No second commission should be issued unless first Commissioner's report is unsatisfactory, in which case earlier commission should be wiped out altogether Judge balancing one commissioner's report against that of other acts with great impropriety and contrary to what is contemplated by rule 10 (3) A I R 1931 Mad 73, see also A I R 1930 Pat L J 795 Where the court thinks not accurate, Court should not reject the report opportunity to substantiate his case 38 Ind Cas 491, see also 50 Ind Cas 301 Parties who were present before the commissioner can object to his report and prove these objections 16 P W R 1917=42 Ind Cas 221, see also 60 Ind Cas 434, A I R 1929 Lah 782=30 P L R 501, A I R 1927 Pat 135=7 Pal L T 739 60 Ind Cas 434 Appellate court if it refuses the report, may rely upon other evidence 28 C L J 203=47 Ind Cas 755 Commissioner for local inspection as well as crop 47 M 800=48 M L J 89

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11 [S 394] In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to examine or adjust accounts commission to such person as it thinks fit directing him to make such examination or adjustment

Scope—In a suit for accounts the commissioner can determine the extent of the liability see also 90 Ind Cas 944=52 C 766 of property A I R 1929 Pat 626=1 examine the account books and must not have it examined by his *mumun* A I R 369 Before issuing commission the settled A I R 1915 Sind 265= powers to the commissioner 89 Ind Cal Referee who is only a permanent

Cas 903 In a suit for accounts the question authorized or not is a question for the trying should be referred to a commissioner for takings of a commissioner are an enquiry for the information of the Court and not a trial 17 S L R 316=75 Ind Cas 1014, see also A I R 1926 Cal 349=87 Ind Cas 764 Appointment of commission by appellate Court to examine accounts and

18. [S. 400.] (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

N B.—For local amendments in Allahabad, Oudh and Bangalore, vide *infra*:

*"Commissions issued at the instance of Foreign Tribunals"*

19. (1) If a High Court is satisfied—

(a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a) (b) and (c) of sub rule (1)—

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Governor General in Council or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Governor General in Council or

(c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

20 The High Court may issue a commission under rule 19—

(a) upon application by a party to the proceeding before the foreign Court, or

(b) upon an application by a law officer of the Local Government acting under instructions from the Local Government.

21 A commission under rule 19 may be issued to any Court within the limits of the High Court, or where the High Court is not a Court of appeal, to the Government in the local limits of its jurisdiction, if the Court thinks fit to execute the commission.

22 The provisions of rules 6, 15, 16, 17 and 18 of this order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned together with the evidence taken under it to the High Court, which shall forward it to the Governor General in Council, along with the letter of request for transmission to the foreign Court."

## ORDER XXVII

*Suits by or against the Government or Public Officer in their official capacity*

1. [New] In any suit by or against the Secretary of State for India in Council, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Notes.—Vide A I R 1928 Mad 96=105 Ind Cas 84

2 [S 417] Persons being *ex officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government

3 [S 418] In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words 'The Secretary of State for India in Council.'

4 [S. 419] The Government pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court

5 [S 420] The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion

N B—For local amendment in Madras, *vide infra*.

6 [S 421] The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person

7 [S 423] (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary

8 [Ss 420, 427] ( ) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits

(2)  
pleader  
and ans

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree

N B—For additional rules in Allahabad, *vide infra*,



## ORDER XXVIII

*Suits by or against Military "or Naval" \* Men or "Airmen".*

1. [S 465] (1) Where any officer 'soldier, sailor or airman'† actually serving the Government in such 'airforce' capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

(2) The authority shall be in writing and shall be signed by the officer soldier 'sailor or' \* airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer \* soldier 'sailor' or airman† is serving in military 'Naval' \* or airforce staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer soldier 'sailor' \* or airman† by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation*—In this Order the expression 'commanding officer' means the officer in actual command for the time being of any regiment, corps, 'ship' \* detachment or depot to which the officer or soldier 'sailor' \* or airman† belongs.

- 2 [S 466] Any person authorized by an officer soldier 'sailor' \* or airman to prosecute or defend a suit in his stead

Person so authorized may act personally or appoint pleader

may prosecute or defend it in person in the same manner as the officer, sailor \* soldier or airman could do if present, or he may appoint a pleader

to prosecute or defend the suit on behalf of such soldier \* officer, or 'sailor \* airman' \*

- 3 [S 467] Processes served upon any person authorized by an officer or soldier sailor or airman" under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person

Service on person so authorized or on his pleader, to be good service

any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person

## ORDER XXIX

*Suits by or against Corporation*

1. [S. 435] In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation

Subscription and verification of pleading

by the secretary or by any director or other principal officer of the corporation who is able to

depose to the facts of the case

N B—For local amendment in Madras vide, *infra*

Notes—Rule 1 requires suit to be properly framed against company with proper description 43 C 441=22 C L J 241=31 Ind Cas 35 Defendants questioning competency of director to sign and verify plaint are entitled to cross examine him

A I R 1931 Rang 54=130 Ind  
sive and not mandatory and agent  
I R 1930 Bom 566=32 Bom L R  
263 Order XXIX deals with it  
R 1921 Pat 485=2 P L T 6-

Ind Cas 125 As regards when Register or joint stock company can the company v de, A I R 1929 Nag 185=116 Ind Cas 427 A company

\* Added by Act 33 of 1934

† Added by Act

enacted by Act 33 of 1934.

dation can sue in *forma pauperis* through its liquidator 41 M 624=45 Ind Cas 164  
 A pleading filed on behalf of a corporation must be supported by an affidavit to prove  
 that the person signing it is duly authorised to do so A I R 1927 Cal 780=31  
 C W N 1030=10, Ind Cas 563 Wherein a suit against the Railway Company,  
 the plaint describes the defendant as Agent of the Railway frame of the suit is  
 bad 52 C 783=29 C W N 614=90 Ind Cas 42 Where the description of the  
 defendant amounts to merely a misdescription, plaint should be allowed to be  
 amended 25 Bom L R 513=73 Ind Cas 1027=47 B 785 An unregistered body  
 can not sue or be sued as a corporation, all its numbers must be impleaded A I R  
 1925 All 337=23 A L J 37=47 A . . . 1927  
 All 780=103 Ind Cas 45, 32 P L . . . . . Lah  
 98 Defect of form is of no import . . . . . Pro  
 vision of Order 29 rule 1 are permiss . . . . . rule  
 14 in a proper case to a company 26 S L R 58=A I R 1931 Sind 178 As  
 regards what particulars which heading of plaint should contain in suits by or against  
 corporation or firm vide A I R 1933 Sind 102=26 S L R 436

2 [S 436] Subject to any statutory provisions regulating service of process,  
 Service on corporation where the suit is against a corporation, the sum-  
 mons may be served—

- (a) on the secretary, or on any director or other principal officer of the corporation, or
- (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business

Scope—Service of notice on a corporation should be according to this rule  
 43 C 411=22 C L J 241=31 Ind Cas 35, see also 90 Ind Cas 680=A I R 1926  
 Pat 40=5 Pat 128, A I R 1928 Sind 111=108 Ind Cas 660 The mode of  
 service provided by rule 2 should not be availed of where there is a mode of service  
 provided by another statute A I R 1928 Sind 111 Carries on business' means,  
 where it has got principal place of business in British India A I R 1928 Sind 111

3. [S 436, last para] The Court may, at any stage of the suit, require  
 the personal appearance of the secretary or of any  
 director, or other principal officer of the corpora-  
 tion who may be able to answer material questions  
 relating to the suit

Power to require personal  
 attendance of officer of cor-  
 poration

## ORDER XXX

*Suits by or against Firms and Persons carrying on business in names  
 other than their own*

1. [R. S. C O. 48A, r 1] (1) Any two or more persons claiming or  
 being liable as partners and carrying on business  
 Suing of partners in name of firm in British India may sue or be sued in the name  
 of the firm (if any) of which such persons were  
 partners at the time of the accruing of the cause of action, and any party to  
 a suit may in such case apply to the Court for a statement of the names and  
 addresses of the persons who were, at the time of the accruing of the cause of  
 action, partners in such firm, to be furnished and verified in such manner as the  
 Court may direct

3 in the name of their firm  
 pleading or other document  
 and or certified by the plaintiff  
 or the defendant suffice if such pleading or other document is signed, verified  
 or certified by any one of such persons

N B—For local amendment in Lahore vide, *infra*

Scope and Object—The committee have adopted with the necessary alterations  
 the English procedure in relation to suits against firms' *Report of the Special Com-  
 mittee* The suit is in effect a suit against the individual partners of the firm sued

fect of the provisions is merely to  
it the partners who compose the

The firm's name is not a legal

85, see also 77 Ind Cas

X relating to suits by or

) of order XI, r 50, 19 S

L R 1=86 Ind Cas 1013 Firm is materially different from registered company  
A I R 1933 All 523=1933 A. L. J 1264 Hindu joint family is not firm within

meaning of Order 30, rule 1 35 Bom L R 569=A I R 1933 Bom 304

One man can not constitute firm and hence cannot sue in firm's name

A I R 1932 Bom 516=34 Bom L R 1112, see also 32 Bom L R 212=127

Ind Cas 412, A I R 1934 Lah 157 Suit by individuals composing firm can sue

in firm name 56 C W N 439=A I R 1932 Cal 765 Order 30 Rule 1 does

not destroy the effect of the provisions of order 21, rule 5 and 15 A I R 1934 Mad

350 A plaintiff bringing a suit against a firm can implead all the members of the

firm as defendants in that suit A I R 1930 Pat 239=9 Pat 717=127 Ind Cas

575 Rule 1 does not apply to foreign firms A I R 1927 Bom 428=29 Bom L R

660=104 Ind Cas 94 The proper title of suit against defendant's firm is to des-

cribe the firm with partners therein 27 Bom L R 998=94 Ind Cas 950 Where

partner in business refuses to join as plaintiff, correct procedure is to make him a

defendant in the suit 92 Ind Cas 569=26 P L R 699=7 Lah L J 280 Rule 1,

sub-clause 2 does not empower one partner to refer the case to arbitration so as to

bind the other partners although the suit is against the firm A I R 1926 All

238=48 A 239=24 A L J 235=91 Ind Cas 930 One partner can receive payment

in satisfaction of decree and can certify payment A I R 1926 Sind 167=92 Ind

Cas 337 One partner of a firm can sue for a debt that is due to the firm A I R.

1929 Bom 177=53 Bom 110=30 Bom L R 1560 A suit is maintainable against

a firm even if one of its partners is dead at the date of the institution of the suit

27 A L J 73=112 Ind Cas 715 Decree in favour of partners individually can be

set off against a decree against the firm composed of same individuals A I R

1927 Bom 255=79 Bom L R 396 Payment to one partner is good even after disso-

lution A I R 1928 Sind 37=105 Ind Cas 89 A suit by a firm on a promise

in favour of one of the partners is maintainable 55 C 551=A I R 1928 Cal 148

In the case of change of partners the new firm cannot enforce the contract entered

into by the old 65 Ind Cas 26=15 S L R 152 It is permissible to sue only

the solvent members of a firm when a decree is sought against it 35 M L J 581=

48 Ind Cas 756 In a suit against a firm, name of the proper representative can be

corrected at any time A I R 1928 Nag 319=109 Ind Cas 785 Where a

suit is instituted against a firm in the firm's name, it is a suit filed against every

partner of the firm and a decree against the firm has the same effect as a decree

against all the partners A I R 1926 Sind 75=90 Ind Cas 242 Firm is

no artificial person distinct from the members composing it A I R 1924 Bom

109=25 Bom L R 7=85 Ind Cas 464 Non appearance of one of the partners of

a firm does not make a decree *ex parte* as against him 26 Bom L R 388=80 Ind

Cas 773 A firm may be sued in the name of the manager 25 Bom L R 1081=

77 Ind Cas 1055, see also 71 Ind Cas 734=5 Lah L J 5, A I R 1931 Sind

121=25 S L R 104, 68 Ind Cas 750 In a suit in the name of a shop one of the

partners can sue on behalf of others 68 Ind Cas 425 A bank being a limited

company can be sued only in its own corporate personality and not in the name of

its manager 40 Ind Cas 549 In a suit in firm name one partner can sign it

A I R 1932 Nag 137=28 N L R 116 Decree in favour of dissolved firm can be

executed by any one of the partners for the benefit of all A I R 1932 Lah

596=33 P L R 290 Persons carrying on business as firm in British India are liable

to be sued in British India irrespective of whether they are non resident foreigners.

A I R 1932 Nag 114=28 N L R 118

## 2 [R S C O 48A r 2] (1) Where a suit is instituted by partners

Disclosure of partners' names in the name of their firm, the plaintiffs

or their pleader shall, on demand in writing

by or on behalf of any defendant, forthwith declare in writing the

names and places of residence of all the persons constituting the firm on

whose behalf the suit is instituted

(2) Where the plaintiffs or their pleader fail to comply with any demand

made under sub-rule (1) all proceedings in the suit may, upon

**9 [R. S. C. O 48A. r 10]** This Order shall apply to suits between a firm and one or more of partners therein and Suits between co partners to suits between firms having one or more partners in common, but no execution shall be issued in suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

**Scope**—Suit by director against other directors is competent A I R 1920 Mad 1215=55 M L J 385 If two firms have common partners, an action can be maintained by one firm against the others A I R 1927 Mad 1095=52 M L J 303, see also A I R 1929 Sind 192, 44 Ind Cas 428 No suit lies as between partners or between firms having common partners for recovery of monies without asking for accounts 34 M L J 403=45 Ind Cas 86 A surety bond executed in a partnership suit enures for the benefit of all those who eventually get a decree 42 Ind Cas 435=157 P W R 1917

**10 [R S C O 48 A r 11]** Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all rules under this order shall apply

**Scope**—A person carrying on business in a firm's name is only a person who has got an *alias* and a person desiring to sue him can sue him in his own name A I R 1930 Cal 327=51 C L J 30=34 C W N 35=57 C 931, A I R 1934 Lah 147=149 Ind Cas 998 After the death of the sole proprietor, a suit can not be instituted under this rule in the old name of the firm 23 A L J 951=A I R 1926 All 161, see also 2, Bom L R 7=85 Ind Cas 464, A I R 1930 Cal 327=51 C L J 30=34 C W N 36=57 C 931 It is doubtful whether the words 'any person carrying on business' apply to person carrying on business as guardian or agent of another A I R 1934 Mad 386

## ORDER XXXI

### *Suits by or against Trustees, Executors and Administrators*

**1. [S 437]** In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit But the Court may, if it thinks fit, order them or any of them to be made parties.

**Scope**—This rule is confined when the contention is between persons beneficially interested and third person 39 Ind Cas 779=2 P L J 305, 18 M 266 Under this rule no one but the executor is competent to prosecute a suit as representative of the deceased 55 Ind Cas 504=2 U P L R (Pat) 31, see also 50 Ind Cas 509=11 Bur L T 249, A I R 1931 Cal 337=58 C 77 An administrator of an estate can maintain a suit to recover rent with the consent of the other administrators who are impleaded as *pro forma* defendants 53 Ind Cas 478, see also A I R 1924 Pat 343=4 Pat L T 731=2 Pat L R 27=80 Ind Cas 652

Joinder of trustees executors and administrators

**2 [S 438]** Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them :

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties

Scope—In a suit against a temple all the trustees are necessary parties A I R 1922 Mad 405=77 Ind. Cas. 942, see also A I R 1934 All 1

3. [S. 439.] Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Husband of married executrix not to join

### ORDER XXXII.

#### *Suits by or against Minors and Persons of Unsound Mind.*

1 [S. 440, first para] Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor

Minor to sue by next friend

N B—For local amendment in the Punjab, vide infra

Scope—Order XXXII has no direct application to proceedings in execution 103 Ind Cas 521, see also A I R 1927 Cal 930, 35 C L J 9=64 Ind Cas 25, A I R 1927 Cal 107=30 C W N 26 A minor must institute a suit through his next friend Cas 605—A I R 1921 Nag 152, 81 Ind Cas 4 The question of there being no decree in execution A I R 1918 Mad 1057 A minor plaintiff is bound by the result of the suit in the absence of fraud on the part of the next friend A I R 1926 All 36=48 A 44=23 A L J 901 6 Ind Cas 742 The Court in a proper case can order that the cost of the suit be paid by the next friend personally A I R 1927 Mad 1023 Appeal by minor without next friend is not nullity A I R 1927 Lah 663 A suit by minor with next friend for possession against a defendant claiming to be in possession as minor's guardian is not maintainable 21 N L R 75=89 Ind Cas 55 Demand of security from next friend for costs is outside court's jurisdiction A I R 1934 All 458 Minor can sue as a pauper 70 Ind Cas 919=37 C L J 394

2 [S. 442] (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

Scope—Where guardian of the minor of another minor the plaintiff appears in Court finds that the plaintiff is a minor, it should not dismiss the suit at once but should allow a reasonable time for a next friend to come on record and go on with the suit and it is only if no one comes forward that it should reject the plaint Such suit a minor can continue after attaining majority 44 M L J 515=74 Ind Cas 309, see also 69 Ind Cas 401, 26 C W N 631=60 Ind Cas 889, 46 Ind Cas 747=16 A L J 737, 75 Ind Cas 1028, 89 Ind Cas 870=3 King 239 Application for substitution by minor representative without next friend can be rejected 47 M L J 370=80 Ind Cas 942

3 [S. 443, first Para S. 446] (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor

Guardian for the suit to be appointed by Court for minor defendant

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where, there is no such guardian upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub rule

N B—For local amendments in Allahabad, Bombay, C P Lahore, Madras, Oudh and Rangoon vide *infra*

SCOPE—When minors are before the Court, the Court is bound to see that the minors are represented by a guardian *ad litem* A I R 1928 Mad 105 Where against him is a nullity A I R 1931 Mad proper person not appointed guardian, decree whether minor has been prejudiced by such

394 The object that his interests compromise not g on the minors see also 33 Ind Cas 941=9 Bur L T 158 aspect of whom proper guardian has already appointment is not known Court is competent to appoint an officer of the Court as a guardian *ad litem* 33 Ind Cas 481 A decree against a minor without a guardian *ad litem* at the time is void 31 M L J 39= 35 Ind Cas 154 see also 35 Ind 83 Ind Cas 913=17 S L R 211 55 C 1241=32 C W N 665 person guardian ed 11 31 Ind Cas 868 4 Pat L J natural f legal item e must Cas half of ed 2 Pat L T 617=63 Ind Cas 484 see also 44 B 202=22 Bom L R 266=56 Ind Cas 399 64 Ind Cas 90 65 Ind Cas 18=26 C W N 781=34 C L J 293, 66 Ind Cas 137=3 Pat L T 451, 3 Lah 417=69 Ind Cas 561

Guardianship enures for whole *vis* unless revoked 78 Ind Cas 780=7 N L J 110, see also 75 Ind Cas 457=44 A 619=20 A L J 599, A I R 1930 All 456=1930 A L J 771=52 A 594 Mere irregularity in the appointment of guardian will not be a ground for setting aside the decree in the absence of prejudice to minor A I R 1925 All 351=47 A 357=23 A L J 44=86 Ind Cas 86, see also 88 Ind Cas 293, 80 Ind Cas 541=40 M L J 363=19 L W 678 5 Lah 38=7, Ind Cas 449, 74 Ind Cas 821=A I R 1924 Oudh 178 74 Ind Cas 821=9 O & A L R 463, 71 Ind Cas 705=2 Pat 335=4 P L T 147, 71 Ind Cas 7, 9 O L J 141= W 272, 31 Ind Cas 45=61 P R 1915, (F B)=A I R 1926 All 545 Though whole family where a minor member is impleaded as such, but no attempt is made to get a guardian appointed for him decree in the suit cannot bind the minor A I R 1931 All 166=1931 A I J 167 Where the natural guardian does not wish to appoint another person as his guardian 30 P L J passed against a minor respondent represented appearance and defends appeal but dies during guardian being appointed is voidable only and 1 R 1930 Pat 473=11 P I T 361

Non appointment of guardian objected to during proceedings cannot be condoned A I R 1933 Pesh 63 Where guardian is not proper and negligent an *ex parte* decree against a minor can be set aside and a new can be appointed 1932 A L J 1128=55 A 136=A I R 1933 16, but see 59 C 1108=1932 Cal 888 Rule 3 applies to revenue

proceedings A I R 1931 All 656=1931 A. L. J 1152 Decree against minor can be set aside on the ground of fraud A I R 1932 All 293 (F B)=1932 A. L. J 437 Where defendant was minor at the time of the institution of the suit but attained majority with 3 months and no guardian was appointed, the suit does not fail in the absence of any prejudice to the minor A I R 1934 Lah 274, see also A I R 1934 Oudh 171 Rules under Order XXII do not expressly apply to execution proceedings and after passing of decree trial Court becomes *functus officio* for the purposes of removing the guardian and appointing a fresh guardian in his place. A I R 1930 All 456=1930 A. L. J 771=52 A 494, see also 84 Ind Cas 68=28 C W N 963=39 C L J 590, 35 C L J 9 Where there is a guardian appointed under the Guardians and Wards Act and another person is appointed as guardian *ad litem* decree obtained against the minor is a nullity A. I. R. 1929 Mad 213 (F B)=53 M 275=56 M L J 175 Costs cannot be awarded personally against a guardian *ad litem* A I R 1929 All 18=26 A L J Order XXII have also no application to Tenancy Act A I R 1927 Cal 374 The are mandatory L R 2 A 180 Rev, but see 435 The improper appointment of guardian appointment is made 45 A. 606=76 Ind Cas 765 If guardian *ad litem* is appointed when defendant is a major without giving any notice of such appointment decree is not binding on him 2 O L J 562 Ind Cas 380, see also 49 Ind Cas 627

Notice—It is not correct to order a substituted service on a person to show cause why he should not be appointed a guardian A I R 1930 All 609=1930 A. L. J 1020 Fraud in service of notice vitiates the proceedings against the minor A I R 1929 M W N 139 see also A I R 1912 Mad 485, A I R 1923 Mad 553. Where all the near relatives are parties to suit and having interest adverse to minor notice need not be issued against them A I R 1929 Snd 32 see also A I R 1934 Lah 132 Where appointment of guardian is properly made but no notice was served, upon the minor or his natural guardian the appointment is not irregular A I R 1934 Pat 111 No notice is necessary guardian in place of old one 14 P L T 441=A without notice to minor or the person appointed is not binding on the minor A I R 1932 Lah 53 A. 427=1931 A L J 152=A I R 1931 All 1 without notice to the minor merely amounts to an irregularity which will not justify setting a decree aside except upon proof of fraud or collusion on the part of the guardian A I R 1928 All 621=26 A L J 834, 109 Ind Cas 521, A I R 1923 Lah 575, see also A I R 1927 Bom 613=29 Bom L R 1357, A I R 1927 Cal 865=46 C L J 287 Notice to minor after appointment of guardian *ad litem* is not necessary 4 Pat L T 329=71 Ind Cas 341 see also 42 Ind Cas 421=6 L W 272 Notice under rule 3(4) for appointment of a guardian *ad litem* be served upon the natural guardian 45 Ind Cas 253=4 Pat L W 36 Ind Cas 253=4 Pat L W 373 see also 36 Ind Cas 794=4 L W 237=17 A L J 249=50 Ind Cas 101, 56 Ind Cas 313=7 O L J Cas 737, 59 Ind Cas 936, 59 Ind Cas 757, 70 Ind Cas 867, 73 Ind M L J 299

#### 4 [SS 443, 444, 445, 456, 457 and R S C O 65. r 13] (1)

Who may act as next friend son who is of sound mind and has attained or be appointed guardian for may act as next friend of a minor guardian for the suit

Provided that the interest of such person is not adverse to that minor and that he is not in the case of a next friend, a defendant, or, case of a guardian for the suit, a plaintiff

(2) Where a minor has a guardian appointed or declared by court authority, no person other than such guardian shall act as the next friend the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's well that another person be permitted to act or be appointed, as the may be.





not fail in the absence of any prejudice to the minor. A I R 1932 All 293 (F B)=1932 Cal 274. Rules under Order XXII do not expressly apply to execution proceedings and after passing of decree trial Court becomes *functus officio* for the purposes of removing the guardian and appointing a fresh guardian in his place. A I R 1930 All 456=1930 A L J 771=52 A 474, see also 84 Ind Cas 68=28 C W N 953=39 C L J 590 35 C L J 9. Where there is a guardian appointed under the Guardians and Wards Act and another person is appointed as guardian *ad litem* decree obtained against the minor is a nullity. A I R 1929 Mad 213 (F B)=53 M 275=56 M L J 175. Costs cannot be awarded personally against a guardian *ad litem*. A I R 1929 All 18=26 A L J 705=50 A 733. The provisions of Order XXII have also no application to proceedings under s 40 of the Bengal Tenancy Act. A I R 1927 Cal 374. The provisions of Order XXII, rule 3 are mandatory. L R 2 A 180 Rev, but see 93 Ind. Cas 848=A I R 1926 Lah 43. The improper appointment of guardian invalidates the proceedings in suit including decision, from the point that improper appointment is made. 45 A 606=76 Ind Cas 765. If guardian *ad litem* is appointed when defendant is a major without giving any notice of such appointment decree is not binding on him. 2 O L J 562 Ind Cas 380, see also 49 Ind Cas 627.

**Notice**—It is not correct to order a substituted service on a person to show cause why he should not be appointed a guardian. A I R 1930 All 609=1930 A L J 1020. Fraud in service of notice vitiates the proceedings against the minor. A I R 1929 M W N 139, see also A I R 1924 Mad 485, A I R 1923 Mad 485, having interest in the suit.

served upon the minor or his natural guardian. A I R 1934 Pat 111. No notice is necessary for appointment of new guardian in place of old one. 14 P L T 441=A I R 1933 Pat 473. Appointment without notice to minor or the person appointed guardian is irregular and the decree is not binding on the minor. A I R 1932 Lah 521=33 P L R 551, see also 13 A 427=1931 A L J 152=A I R 1931 All 136. The appointment of a guardian without notice to the minor merely amounts to an irregularity which will not justify setting a decree aside except upon proof of fraud or collusion on the part of the guardian. A I R 1928 All 621=26 A L J 834 109 Ind Cas 521, A I R 1923 Lah 575, see also A I R 1927 Bom 613=29 Bom L R 1357, A I R 1927 Cal 865=46 C L J 287. Notice to minor after appointment of guardian *ad litem* is not necessary. 4 Pat L T 329=71 Ind Cas 341, see also 42 Ind Cas 421=6 C W 272. Notice under rule 3(4) for appointment of a guardian *ad litem* must be served upon the natural guardian. 45 Ind Cas 253=4 Pat L W 373, see also 36 Ind Cas 253=4 Pat L W 373, see also 137=17 A L J 249=50 Ind Cas 101, 56 Ind Cas 794=4 L W 362, 41 A L J 219 59 Ind Cas 737, 59 Ind Cas 936, 59 Ind Cas 757, 70 Ind Cas 867, 73 Ind Cas 409=44 M L J 299.

4. [Ss 443, 444, 445, 456, 457 and R S C O 65, r 13] (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit.

Who may act as next friend of a minor or as his guardian for the suit. Provided that the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by authority, no person other than such guardian shall act as next friend of the minor or be appointed his guardian for the suit, unless the court considers for reasons to be recorded, that it is in the welfare of the minor that another person be permitted to act or be appointed next friend of the minor.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where, there is no such guardian upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub rule

N B—For local amendments in Allahabad, Bombay C P Lahore, Madras, Oudh and Rangoon vide *infra*

SCOPE—When minors are before the Court, the Court is bound to see that the minors are represented by a guardian *ad litem* A I R 1928 Mad 105 Where minor is represented, the decree against him is a nullity A I R 1931 Mad 674=34 M L W 317 Where proper person not appointed guardian, decree whether minor has been prejudiced by such irre 1933 Mad 170=145 Ind Cas 394 The object of be represented by fit person so that his interests will be properly guarded 56 Ind Cas 313=7 O L J 219 A compromise not expressly sanctioned by the Court though beneficial is not binding on the minors Cas 941=9 Bur L T 158 proper guardian has already known Court is competent 33 Ind Cas 481 A decree is void 31 M L J 39=, A I R 1929 Cal 586, A 714=22 A L J 665, appointing a person guardian nd Cas 868, 4 Pat L J 213=48 Ind Cas 245, 49 Ind Cas 954 There is no rule that only the natural or certificated guardian of a minor can act as his next friend for the purpose of legal *item* e must Cas half of

a minor in a suit it can not be held that the minor has been properly represented 2 Pat L T 617=63 Ind Cas 484 see also 44 B 202=22 Bom L R 266=56 Ind Cas 399 64 Ind Cas 90 65 Ind Cas 18=26 C W N 781=34 C L J 293, 66 Ind Cas 137=3 Pat L T 451, 3 Lah 417=69 Ind Cas 561

Guardianship enures for whole *lis* unless revoked 78 Ind Cas 780=7 N L J 110, see also 75 Ind Cas 457=44A 619=20 A L J 599, A I R 1930 All 456=1930 A L J 771=52 A 594 Mere irregularity in the appointment of guardian will not be a ground for setting aside the decree in the absence of prejudice to minor A I R 1925 All 351=47 A 357=23 A L J 44=86 Ind Cas 86, see also 88 Ind Cas 29, 80 Ind Cas 541=40 M L J 363=19 L W 678 5 Lah 38=75 Ind Cas 449, 74 Ind Cas 821=A I R 1924 Oudh 178, 74 Ind Cas 821=9 O & A L R Ind Cas 7, 9 O L J 141=1 Ind Cas 45=61 P R 1915, I R 1926 All 545 Though ify where a minor member is impleaded as such, but no attempt is made to get a guardian appointed for him decree in the suit cannot bind the minor A I R 1931 All 166=1931 A L J 152 Where the natural guardian does not wish to represent the minor, the court can appoint another person as his guardian 30 P L R 590=126 Ind Cas 565 Decree passed against a minor respondent represented by a guardian *ad litem* who enters appearance and defeats appeal but dies during pendency of appeal without fresh guardian being appointed is voidable only and is binding unless avoided A I R 1930 Pat 473=11 P L T 361

Non appointment of guardian objected to during proceedings cannot be condoned A I R 1933 Pesh 63 Where guardian is not proper and negligent, an *ex parte* decree against a minor can be set aside and a new guardian can be appointed 1932 A L J 1128=55 A 136=A I R 1933 All 116, but see 59 C 1108=1932 Cal 888 Rule 3 applies to revenue

Mad. 668, A I R 1927 Oudh 560=4 O W N 791, A I R 1931 Oudh 50=7 O W N 1109 Want of consent of guardian is not fatal unless prejudice is caused 2 P L J 390=40 Ind Cas 227

Sub section (4)—If the father is not a fit person, the Court is bound to protect the interest of the minor against the act of the father A I R 1929 Mad 738=52 M 845, see also A I R 1929 Mad 393=29 L W 393 A shebait is not a proper person to institute a suit on behalf of the idol, where he is actually a defendant in the case. A I R 1930 Pat 97=118 Ind Cas 279 Where the minor is not properly represented the Court can restore the case to its original number and file A I R 1930 All 644=1930 A L J 938 Where proposed guardian does not appear though served and the Court without enquiry if there was any other person willing to act appoints officer of Court, appointment is irregular but not null and void A I R 1929 Pat 360=10 P L J 79=8 Pat 558, see also 110 Ind Cas 346, A I R 1926 Mad 950=93 Ind Cas 84 Where natural guardian is unwilling to act appointment of clerk of Court is valid 46 M L J 12=77 Ind Cas 464 False affidavit of decree A I R 1923 Mad 553=44 L J 73 Ind Cas 409=44 M L J 299 A vakil is an officer of the Court for purposes of rule 4 45 A 395=71 Ind Cas 975 Order as to costs to be incurred by pleader as guardian can be made under the rule A I R 1923 All 298=71 Ind Cas 975, see also A I R 1933 Nag 329=16 N L J 206 As regards effect of non appearance of natural or certificated guardian on notice, vide 4 P L T 127=83 Ind Cas 290

Representation of minor by next friend or guardian for the suit 5 [Ss 441 444] (1) Every application to the Court on behalf of a minor other than an application under rule 10 sub rule (2) shall be made by his next friend or by his guardian

for the suit

(2) Every order made in a suit or on any application before the Court in or by which a minor is in any way concerned or affected without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader

Scope—Words every application 1930 Nag 185=26 N L R 173 minor can be made by person duty A I R 1930 Nag 185=26 is not tenable 3 P L T 61=6 P L J 171=62 Ind Cas 235 None but guardian *ad litem* can prefer appeal 44 A 619=20 A L J 599=75 Ind Cas 457 Award binds minors if properly represented in arbitration proceedings. A I R 1930 Mad 38=30 L W 868

No se representi Dec sion not bind i ed be made in execution if manager A I R 1929 Mad 275=50 L W 995 i his knowledge or permission does Cas 763

Receipt by next friend or guardian for the suit of property under decree for minor 6 [S 461] (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—

- (a) by way of compromise before decree or order, or
- (b) under a decree or order in favour of the minor

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application

(3) No person shall without his consent be appointed guardian for the suit

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require

N B—For local amendments in Allahabad Calcutta, C P, Lahore, Oudh and Patna, vide *infra*

Scope—This rule does not apply to non contentions probate proceedings 24 C W N 538=59 Ind Cas 435 Non representation of a minor by a guardian is fatal 25 C W N 525, see also 63 Ind Cas 484=2 P L T 617 Irregularity in appointment and prejudice to minor are factors to be considered in cases of setting aside decree against minors on the ground of improper appointment of guardian 83 Ind Cas 323 Consideration of minor's wishes is desirable 6 P L J 82=2 P L T 116=59 Ind Cas 936, A I R 1929 Lah 257= mother is preferable in the absence of mother appointed 6 P L J 82=59 Ind Cas 936 set aside decree against minor if not properly *Ex parte* decree against minor if properly represents him 37 Ind Cas 389 But defect in appointment 243=39 M L J 375=43 M 842=59 Ind Cas 3 not invalidate decree if within his knowledge 66 Ind Cas 433=34 C L J 302 An insolvent can be appointed as a guardian *ad litem* of an infant 88 Ind Cas 254 Question whether certain person should or should not be appointed next friend is ancillary to suit and the decision thereon is revisable A I R 1929 Lah 257=11 Lah L J 130=113 Ind Cas 901

Sub section (1)—In order to invalidate the appointment, adverse interest of the guardian must be proved A I R 1927 Mad 668=52 M L J 709 see also A I R 1926 Mad 1146=97 Ind Cas 703, A I R 1919 Mad 213 F B)=52 M 275 A I R 1925 All 214=83 Ind Cas 323 Guardian with adverse interest is no guardian 47 M 79=45 M L J 625 76 Ind Cas 108, 56 Ind Cas 97 Interest is not adverse because minor is *benamidar* for next friend 68 Ind Cas 191 In mortgage suit father cannot represent minor as he cannot plead illegality and irregularity 3 P L T 709=C 525=20 A L J 329 Minor is by adverse party 45 C 538= having adverse interest is appointed the appointment is not proper A I R 1934 All 212

Sub section (2)—Certified guardian alone can be guardian *ad litem* unless welfare of minor requires otherwise 46 Ind Cas 316=5 P L W 92, see also Ind Cas 290=2 Pat 296 is invalid and decree is not 65 Ind Cas 18 Under the old Code certified guardian's consent could be presumed 34 C L J 302=66 Ind Cas 433 If guardian is proper, reason under rule (2) may not be recorded 44 M L J 515=17 L W 558=74 Ind Cas 309

Sub section (3)—No person can be appointed without his consent 24 C W N 541, 43 Ind Cas 563, 40 Ind Cas 2, 72 Ind Cas 475=37 C L J 496 4 P L T 575=72 Ind Cas 637, 84 Ind Cas 68=28 C W N 963, 87 Ind Cas 238, 54 C 450=31 C W N 634, A I R 1931 Oudh 50=7 O W N 1109 Consent under rule 4 clause (3) need not be express, it is a pure question of fact to be decided on evidence A I R 1925 Mad 30=47 M 783=47 M L J 273=83 Ind Cas 312, see also A I R 1924 Lah 97=5 Lah L J 487=79 Ind Cas 572, 59 Ind Cas 671=43 A 104, 25 C W N 525=62 Ind Cas 464, 77 Ind Cas 628=47 M 476, 83 Ind Cas 323=A I R 1925 All 214, 47 M 783=47 M L J 273=83 Ind Cas 312, A I R 1927 Oudh 173, 52 M L J 709=A I R 1927

Mad. 668, A I R 1927 Oudh 560=4 O W N 791, A I R 1931 Oudh 50=7 O W N 1109 Want of consent of guardian is not fatal unless prejudice is caused 2 P. L. J. 390=40 Ind Cas 227

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1929 Pat 360=10 P L

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ment of clerk of Court is

absence of "person fit and

M L J 513=74 Ind

person fit and willing to act as guardian is immaterial 73 Ind Cas 409=44 M L J

299 A vakil is an officer of the Court for purposes of rule 4 45 A 395=71 Ind

Cas 975 Order as to costs to be incurred by pleader as guardian can be made

under the rule A I R 1923 All 298=71 Ind Cas 975, see also A I R 1933

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Scope—Words "ever 1930 Nag 185=26 N L R minor can be made by

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(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the property, require such sufficiently

N B—For local amendment in Madras, vide *infra*

Scope—Appointed guardian failing to furnish security cannot act for minor unless appointed guardian *ad litem* 54 Ind friends act *bona fide* for interest of minor and no

94 of Succ

1933 Cal 17, but see A I R 1927 Sind 187 not receive decretal amount without Court's s 588, 1930 M W N 1240 But where *Karta* leave of court is not necessary A I R 1927

Pat 329=8 Pat L T 708=103 Ind Cas 75 Next friend cannot draw money from Bank without the leave of the court A I R 1930 Lah 496=31 P L R 171=131 Ind Cas 282 Payment to next friend without court's leave being invalid cannot give cause of contribution among judgment debtors A I R 1924 Mad 279=19 L W 686=76 Ind Cas 905, see also A I R 1924 Lah 631=78 Ind Cas 285 Order XXXII applies to Succession Certificate Act 101 Ind Cas 166=A I R 1927 Sind 187 Provisions of Court fees Act and Stamp Act apply to security bonds under r 6 42 C L J 5=29 C W N 851=53 C 101 (F B) Refusal on demand by minor creditor without security of valid discharge would not make defendant liable for costs of suit 64 Ind Cas 385, see also 41 M 40=39 Ind Cas 928=1917 M W N 490

7 [S. 462] (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend

Agreement or compromise by next friend or guardian for the suit

or guardian

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor

N B—For local amendment in Madras vide *infra*

Scope—No next friend or guardian can compromise case for minor without leave of court expressly recorded (1917) Pat 77 35 Ind Cas 675 44 Ind Cas 164 Compromise effected after passing decree is governed by rule 7 31 M L J 207=35 Ind Cas 70 Mere recording a compromise and passing a decree according to it is no sanction 39 M 853=30 M L J 465=37 Ind Cas 881 see also A I R 1930 Cal 539=51 C L J 364 but see 39 Ind Cas 53=9 P L R 1917 Directions given in rule 7 are not formal but mandatory A I R 1933 All 149, A I R 1931 Bom 500=33 Bom L R 1033 Where sanction to compromise by a guardian is given by court after considering terms of compromise the decree is binding on minor

it is illegal if Court does not consider whether compromise would benefit or prejudice, A I R 1932 Lah 521=33 P L R 551 Order 32, rule 7 applies to execution proceedings A I R 1933 Mad 456 (F B)=56 M 430=64 M L J 437, 78 Ind Cas 291, 62 Ind Cas 234=5 P L T 379 Reference to arbitration by guardian without leave does not make decree based on award voidable at instance of parties other than minor 35 C W N 238=58 C 628=52 C L J 298=A I R 1931 Cal 211, see also A I R 1931 All 307=53 A 428=1931 A L J 170, A I R 1931 Cal 211=35 C W N 238=58 C 628, 52 Ind Cas 752, A I R 1930 Oudh 432=7 O W N 815 Compromise without leave is voidable Burden of proof of absence of benefit is on minor A I R 1927 Lah 687=10 Lah L J 23, A I R 1925 Nag 325=21 N L R 43=86 Ind Cas 375, 29 C W N 597=41 C L J 213=88 Ind Cas 369, 90 Ind Cas 1049=49 M L J 443, 72 Ind Cas 1039=4 P L T 311, 65 Ind Cas 50=15 S L R 165 62 Ind Cas 794=79 P L R 1922, 61 Ind Cas 118=14 S L R 245, 58 Ind Cas 178, 56 Ind Cas 878=1 Lah 341, 50 Ind Cas 752=17 A L J 789 Where minor seeks to avoid decree he can avoid it in  *toto*  and not in part 39 M 853=32 Ind Cas 881

A compromise of suit made on behalf of a minor without strict compliance with the provisions of this rule, though not enforceable against minor is enforceable against adult co obligees 39 M 409=43 I A 99=14 A L J 534=18 Bom L R 432=24 C L J 74=34 Ind Cas 213 (P C) Court of Wards can compromise without Court's leave. 44 C 829=37 Ind Cas 971, 123 Ind Cas 693=A I R 1930 Sind 217 Guardian can not agree to vary terms of decree without Court's leave 40 Ind Cas 820=1917 M W N 327 A minor is not bound where the next friend withdraws suit without any reason and without leave of the court 59 P R 1919= can enter into arbitration and for benefit of minor 44 150 43 B 258=48 Ind Cas is minor sanction of Court is not necessary 68 Ind Cas 750 Reference on minor's behalf without Court's leave is no ground of appeal A I R 1931 Cal 211=35 C W N 238=58 C 628 Compromise against recorded custom by which property belonging to minor is given to widow is not for benefit of minor A I R 1933 Lah 468=34 P L R 409 An attorney's authority to act ends even when guardian *ad litem* informs the Court that the suit has been settled out of Court A I R 1932 Bom 401=34 Bom L R 614 Where application is made to Court that Court should decide case as arbitrator signed by pleader duly authorized and stating that some defendants were minors, sanction of Court is presumed from adopting application A I R 1934 Lah 176

Guardian's offer to abide by special oath without leave not being compromise binds minor if not tainted with fraud or negligence A I R 1930 Cal 463=34 C W N 310=129 Ind Cas 408, see A I R 1934 Mad 260, but see 44 A 117=64 Ind Cas 646 All facts necessitating compromise must be placed before Court for obtaining leave either in evidence or by affidavit A I R 1930 Cal 539=51 C L J 364=127 Ind Cas 785 No particular formula is necessary to be used by the Court in order to grant the leave and when it is shown that an application was made by the guardian to the Court asking for leave to enter into the compromise and the Court makes a note of that application and passes a decree in terms of the compromise, it must be held that the leave of the Court was expressly recorded 72 Ind Cas 1049=4 P L R 311=1 P L R 217, (1931) A L J 76=125 Ind Cas 587, A I R 1928 Pat 40=104 Ind Cas 753, A I R 1928 All 534, A I R 1927 Cal 796=46 C L J 411, A I R 1927 Lah 320=28 P L R 184=9 Lah L J 141, A I R 1926 Bom 291=28 P L R 362=94 Ind Cas 101, A I R 1926 Sind 128=20 S L R 116=98 Ind Cas 550, but see 60 Inq Cas 980=2 P L T 325 Next friend giving up claim against one of the defendants sanction is necessary A I R 1926 Mad 119=22 L W 629=91 Ind Cas 727 Agreement to file award requires sanction 83 Ind Cas 913=17 S L R 211 Valid compromise under rule 7 cannot be set aside under s 29 Guardian and Wards Act A I R 1930 Lah 250=31 P L R 131=122 Ind Cas 103 Compromise by leave of Court should not be set aside unless fraud or misrepresentation is proved A I R 1930 Lah 250=31 P L R 131, A I R 1927 Bom 11=50 B 716, A I R 1927 Cal 796 Leave granted under misapprehension does not validate compromise A I R 1929 Lah 279=30 P L R 116=11 Lah L J 14 Fair compromise with leave honestly obtained cannot be set aside only because if turned out to be against minor's interest 51 C L J 364=A I R 1930 Cal 539 Compromise by guardian after defendant attains majority is not binding though with sanction A I R 1928 Mad 294=51 M 763=55 M L J 374=118 Ind Cas 294 Absence of sanction does not of itself invalidate a compromise between parties who are majors A I R 1925 Cal 866=29 C W N 597=40 C L J 213=88 Ind Cas 369, see also A I R 1927 Cal 870=55 C 210 Concealment of material facts by guardian vitiates court's sanction 12 O L J 366=88 Ind Cas 804 Assignment of decree in minor's favour require sanction A I R 1925 Mad 1287=49 M L J 443=99 Ind Cas 1049, see also 63 Ind Cas 285=41 M L J 75, but see 62 Ind Cas 255 Agreement by guardian to be bound by the statement of certain witnesses is not compromise as such requires no sanction A I R 1927 All 584=49 A 842=25 A L J 729 Agreement to refer to arbitration requires sanction A I R 1926 Lah 665=27 P L R 729=96 Ind Cas 748 Assignment of minor's rights under preliminary decree without court's sanction is not void but voidable by minor A I R 1927 Mad 560=38 M L T 148 Compromise beset aside when it was obtained by misrepresentation A I R 1929 Ma 1928 M W N 654

Permission to withdraw from compromise  
misrepresentation and the compromise is in  
Cal 247, see also 91 Ind Cas 521 But where  
of leave, and does not want compromise, compromise cannot be forced on minor  
47 A 782=23 A I J 523=88 Ind Cas 429, see also 76 Ind Cas 682=  
27 C W N 792, 35 Ind Cas 675 Leave to negotiate compromise need not  
be expressly recorded It is enough if Court sanctions terms of proposed  
compromise 76 Ind Cas 368=A I R 1924 Nag 180, see also 78  
Ind Cas 335=A I R 1925 Cal 475 Where appeal is pending before  
Privy Council application for approval of compromise on behalf of persons  
under disability should be moved before the High Court in the first instance  
26 C W N 105=48 C 994=66 Ind Cas 154 (P C) After appointment of  
guard an *ad litem*, the natural guardian's powers are suspended 44 B 574=22  
Bom L R 725=57 Ind Cas 417, see also 56 Ind Cas 313=7 O L J 219  
Where guardian of minor party to a suit wishes to refer to arbitration, Court ought  
to consider circumstances of the case and see if the reference would be for minor's  
benefit 59 Ind Cas 31=5 P W R 1921, A I R 1923 Bom 402=25 Bom L R  
443=47 B 721=73 Ind Cas 464, 55 Ind Cas 218 Compromise was allowed  
where counsel certified that it was for minor's benefit 55 Ind Cas 943, see also  
47 I A 88=38 M L J 431=22 Bom L R 552=18 A L J 489 (P C)=55 Ind  
Cas 943 Where a trustee who was a guardian *ad litem* compromised a suit without  
Court's sanction and in pursuance thereof effected a mortgage, the mortgage is  
invalid 23 C L J 337=18 Bom L R 360=14 A L J 153 (P C)=32 Ind  
Cas 258

8 [S 447] (1) Unless otherwise ordered by the Court, a next friend

Retirement of next friend shall not retire without first procuring a fit  
person to be put in his place and giving  
security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be  
supported by an affidavit showing the fitness of the person proposed, and  
also that he has no interest adverse to that of the minor

Scope—Once guard an *ad litem* is appointed, the appointment continues for  
whole life 45 A 623=21 A L J 691=75 Ind Cas 898 see also A I R 1931  
Lah 635 32 P L R 460 Such guardian cannot retire at his own sweet will It  
is the Court's discretion to allow him to withdraw A I R 1932 All 130=1931  
A L J 110

9 [S 446] (1) Where the interest of the next friend of a minor is

Removal of next friend adverse to that of the minor or where he is  
so connected with a defendant whose interest  
is adverse to that of the minor as to make it unlikely that the minor's  
interest will be properly protected by him, or where he does not do his  
duty or during the pendency of the suit, ceases to reside within British  
India or for any other sufficient cause, application may be made on behalf  
of the minor or by a defendant for his removal, and the Court, if satisfied  
of the sufficiency of the cause assigned, may order the next friend to be  
removed accordingly, and make such other order as to costs as it thinks fit

(2) Where the next friend is not a guardian appointed or declared by an  
authority competent in this behalf, and an application is made by a guardian  
so appointed or declared who desires to be himself appointed in the place  
of the next friend, the Court shall remove the next friend unless it considers,  
for reasons to be recorded by it, that the guardian ought not to be  
appointed the next friend of the minor, and shall thereupon appoint the  
applicant to be next friend in his place upon such terms as to the costs  
already incurred in the suit as it thinks fit

Scope—Next friend's failure to ascertain whether minor desired to continue  
proceedings amounts to failure of duty and Court can remove next friend on that  
ground A I R 1928 Nag 166=107 Ind Cas 668 If Court finds that next  
friend's interest is adverse to minor plaintiff it should proceed under this rule  
6 P L J 317=63 Ind Cas 736, see also 87 Ind Cas 42=48 M L J 417



10. [Ss 448, 449.] (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceeding on removal, etc., or next friend

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Notes—Vide A I R 1928 Pat 168=9 Pat L T 547, A I R 1933 Cal 508=37 C. W. N. 184

11. [Ss 458, 459.] (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

Retirement, removal or death of guardian for the suit

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Scope—Guardian appointed by Court cannot retire without Court's permission A I R 1926 All 437=94 Ind Cas 340, see also A I R 1918 Mad 980, A I R 1927 Mad 538=50 M 357=38 M L J 197, A I R 1926 Nag 40=88 Ind Cas 235. The power of Court under rule 11 to remove guardian for the suit of a minor defendant and appoint a new guardian instead may be exercised at any time 27 M L T 171=5, Ind Cas 945 27 C W N 792=75 Ind Cas 682, 87 Ind Cas 117=21 L W 325. Where guardian for suit dies Court shall appoint new one in his place 88 Ind Cas 235=A I R 1926 Nag 40. It is not necessary for Court to give notice to minor before making order under rule 11 A I R 1923 Pat 385=2 Pat 273=4 P L T 329=71 Ind Cas 341. Sale held in execution of decree after death of guardian *ad litem* of judgment debtor without appointing fresh guardian is not a nullity A I R 1927 Nag 198=10 N L J 27=23 N L R 146 Order XXXII, r 11 cannot be said to restrict provisions of s 35 so far as they relate to parties on record A I R 1928 Mad 590=1928 M W N 318. After Court decides the case it cannot remove guardian originally appointed by itself 22 Ind Cas 445. Where appointed guardian does not appear before the appellate Court, appellate Court can appoint fresh guardian in his place by recording the removal of the former guardian 37 C W N 921=A I R 1933 Cal 794.

12. [Ss 450 453.] (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on attaining majority

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus —

"A B, late a minor, by C D, his next friend, but now having attained majority"

(4) Where he elects sole plaintiff or sole application on repayment party or which may have been paid by his next friend he shall, if a minor, miss the suit or suit or opposite

(5) Any application under this rule may be made *ex parte*, but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

**Scope**—Where a minor defendant attains majority during proceedings, a duty lies on him to discharge his guardian *ad litem* and appear himself A I R 1926 Cal 1053=46 C L J 606=97 Ind Cas 209 Defendant attaining majority during pendency of suit but not electing to conduct suit himself is bound by decree passed in suit A I R 1928 Mad 294=27 L W 455=51 M 763=55 M L J 374, see also 88 Ind Cas 235, A I R 1929 Lah 555=30 P L R 273, A I R 1930 Lah 603 Minor is not to be deemed to be instituting fresh suit where he elects to continue suit conducted by next friend A I R 1925 Snd 220=88 Ind Cas 116 Rules 12 and 13 lay down the course that a plaintiff

has no jurisdiction to proceed with the case or that the decree passed by it is a nullity A I R 1928 Lah 371 Minor electing on attaining majority to abandon suit filed by next friend should pay full costs incurred by next friend unless he shows that suit was unreasonable or improperly instituted A I R 1934 Mad 73

**13 [S 454]** Where a minor desires to

Where minor co plaintiff repudiate suit  
 attaining majority desires to  
 have his name removed from the suit, and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit

(2) Notice of the application shall be served on the next friend, on any co plaintiff and on the defendant

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant

**14 [S 455]** (1) A minor on attaining majority may, if a sole plaintiff,

Unreasonable or improper suit  
 apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper

(2) Notice of the application shall be served on all the parties concerned and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit

**N B**—For additional rule in Madras, *vide infra*

to continue  
 his objection  
 r suit Court

can order next friend to pay Court fee A I R 1931 Mad 249=58 M L J 623=53 M 716

**15 [S 463]** The provisions contained in rules 1 to 14, so far as they

Application of rules to persons of unsound mind  
 are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when sued

**Scope**—This rule applies to lunatics absolutely deaf and dumb and unable to sue by this rule A I R 1930 All 425 Even person of weak mind can sue through next friend A I R 1925 Nag 245=83 Ind Cas 253, see also 31 C W N 1087=A I R 1927 P C 123 Where it is alleged that

y Act  
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defendant is of unsound mind but plaintiff denies that he is so it is desirable that there should be a judicial inquiry in the matter 70 Ind Cas 307 = A I R 1922 Cal 86, see also 62 Ind Cas 770, 45 Ind Cas 219, 17 A L J 257 = 50 Ind Cas 109 A I R 1913 All 149 Where application for enquiry under rule 15 is dismissed without holding enquiry required by law, High Court can interfere under s 131 A I R 1928 All 108 = 50 A 335 = 25 A L J 1082 = 108 Ind Cas 141 Where a suit is decreed & the lunatic subsequently dies, application for summons to legal representative to set aside C W N 989 = A I R 1931 Cal 168 Where can not be made liable for costs 5 O L J 106 = 20 O C 300 = 43 Ind Cas 257

**16. [S 484]** Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind

**N, B**—For additional rule in Madras vide *infra*

**Scope**—Where Prince attains majority according to his personal law guardian is unnecessary A I R 1925 Cal 513 = 29 C W N 287 = 80 Ind Cas 100

### ORDER XXXIII

#### *Suits by Pauper*

**1 [S 401]** Subject to the following provisions, any suit may be instituted by a pauper

Suits may be instituted in *forma pauperis*

**Explanation**—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject matter of the suit.

**N B**—For local amendment in Bombay, vide *infra*

**Order 33**—Time for redrafting order 33 is long over due A I R 1932 Rang 195 = 10 Rang 475

**Scope**—The word person in this rule including companies or firm 41 M 624 = 34 M L J 421 A I R 1930 Rang 272, A minor without sufficient means with the definition of pauperism for the purpose of Order XXXIII, should be allowed to sue in *forma pauperis* by a next friend although the next friend is not a pauper 37 C L J 594 = 70 Ind Cas 919, see also 80 Ind Cas 748 = 6 Bom L R 380, 11 B L R 373 Where proper plaintiff himself dies during the pendency of a suit, his legal representative can continue the suit A I R 1928 Mad 66 = 109 Ind Cas 258, see also A I R 1928 Mad 278 = 51 M 697, but see 88 Ind Cas 91 The word person means a natural person and not a judicial person such as a receiver A I R 1930 Rang 259 = 126 Ind Cas 650. There is a difference between Indian and English law According to Indian law, a person according to this rule, where no fees are prescribed pauper must show that he was not possessed of property worth more than Rs 100 77 Ind Cas 611 = 4 P L T 538 = 2 Pat 879 When pauper application is dismissed, time for payment of Court fees can be extended 13 M L T 18 = 46 M L J 254 = 76 Ind Cas 767 Immunity from Court fees to a pauper continues during whole course of proceeding If however applicant afterwards becomes possessed of sufficient means, the question of pauperism should be reconsidered 25 Bom L R 199 = 47 B 523 = 72 Ind Cas 274, see also 61 Ind Cas 97 = 13 L W 76, but see 56 C W N 567 = A I R 1932 Cal 685 Women

allowed to sue as pauper cannot be ordered to furnish security for costs 10 Bur L T 105=36 Ind Cas 820 Where plaintiff who has been permitted to sue as a pauper but his pauperism is challenged, dies during the pendency of a suit, his legal representatives brought on record must along with the deceased plaintiff be found to be paupers A I R 1927 Lah 605=104 Ind Cas 347, see also A I R 1933 Nag 334 Estate is not pauper, yet person representing such estate may file suit as pauper A I R 1933 Mad 883. Suit filed on payment of Court fee can be continued as pauper A I R 1933 Mad 495=64 M L J 720. Past carelessness is irrelevant for considering present poverty A I R 1934 Nag 104 Application should not be dismissed on the mere probability that he might have means A I R 1934 Nag 104 Two clauses in explanation are disjunctive A I R 1934 All 323 Court has no power to grant leave to apply for review in *forma pauperis* A I R 1930 Rang 285=8 Rang 423 Costs can be made condition precedent for allowing plaintiff an adjournment even though he was allowed to sue as pauper A I R 1928 Rang 306=3 Rang 561 Burden of proving that property does not exceed court fees is on petitioner A I R 1929 Lah 821=31 P L R 432 Order directing pauper to pay costs of amendment in cash and dismissing suit on failure to pay is not proper order 24 Bom L R 924=47 B 104=69 Ind Cas 207 Application for bringing legal representative of deceased opponent in application for permission to sue in *forma pauperis* is not governed by Art. 177 A I R 1929 Sind 136

**Sufficient means**—The words 'means' includes all forms of realisable assets which are capable of being converted into cash and as such capable of conducting litigation A I R 1928 Lah 271=1

A I R 1928 Lah 271=1 One who is entitled to proper party  
by wife = 119  
Ind Cas 821=821= into  
31 P L R 432 Cash in actual possession of women  
account A I R 1930 Cal 147=34 C W N 188=57 C 980 Ornaments of women  
which are of daily use are not to be taken into account A I R 1927 Cal 304=45 C L J 68 Minors share in the joint Hindu family property should be taken into account 23 A L J 512=88 Ind Cas 420 That the applicant's husband has property is no ground for rejection of an application to sue as a pauper by wife 3 P L J 178=44 Ind Cas 723 see also A I R 1930 Rang 324 While considering question of pauperism circumstances as they are at the date when the application was made should be considered A I R 1930 Cal 147=34 C 980 see also A I R 1928 Nag 24=10 N L J 177 L R 98 The  
burden of proof 340=104 Ind  
Cas 198 The excluded  
while cal  
Amount  
into con  
567=50  
Nag 431

wearing apparel  
no specific court fee is prescribed A I R 1926 Nag 273=92 Ind Cas 783 Rich relation capable of paying court fee is immaterial A I R 1933 All 556 Equity of redemption is not assets when money cannot be raised on it A I R 1933 Lah in applicant's possession can A I R 1933 Pat 203 When should be excluded in determining

whether plaintiff is pauper A I 967 Where suit is filed on continue suit as pauper 35 C V see also 1933 M W N 468 1934 Cal 25 Share in joint All 396

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"case" decided A I R 1931 Rang 318=135 Ind Cas 331 Order rejecting application to sue as pauper is subject to revision A I R 1927 Lah. 56=98 Ind Cas 879, see also 75 Ind Cas 933=19 N L R 165, but see A I R 1926

2. [S. 403] Every application for permission to sue as a pauper shall contain the particulars required in regard to  
 Contents of applications  
 complaints in suits, a schedule of any movable or  
 the estimated value thereof  
 verified in the manner pres-

Scope—This rule deals rather with form of application and not with the truth of its contents. Hence an omission of one item of property is not non-compliance with this rule A I R 1928 Pat 29=8 P L T 774 But where there is an entire omission of immovable property the application should be dismissed 74 Ind Cas 344, 9 O L J 615 see also A I R 1930 Pat 368=11 P L T 567 Where application to sue as pauper was presented in time, it is not time barred merely on the ground that it was signed and verified out of time A I R 1931 Bom 47=32 Bom L R 1343 Joint family property even of minor must be mentioned A I R 1934 All 395 It refers to application and not to schedule property A I R 1932 Lah 548=33 P L R 733 Rule 2 should not be meticulously interpreted A I R 1932 Lah 325=138 Ind Cas 33,

- 3 [S. 404] Notwithstanding anything contained in these rules, the

Presentation of application  
 application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court in which case the application may be presented by an authorized agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person

Scope—Where a petition was given to the officer of the Court and petitioner was present when the officer presented the petition to the Judge, petition should be presented to the Judge. If 58 Ind Cas 961=17 N L R 22, 768 Husband of *pardanashin* lady can sue as a pauper and no authority to appeal as a pauper and not to 1926 Oudh 13=90 Ind Cas 371 Where complaint was returned for presentation to proper Court and the memorandum submitted by parties for continuation of suit, objection that plaint should have been presented in person in order to entitle him to sue as a pauper cannot be maintained A I R 1931 Mad 418=1930 M W N 582 Court can reject application where the claim is doubtful 75 Ind Cas 744 Where original application is filed by the applicant, the amended application can be filed by pleader A I R 1933 Rang 410=11 Rang 414

4. [S. 406] (1) Where the application is in proper form and duly

Examination of applicant  
 presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant

If presented by agent, Court may order applicant to be examined by commission (2) Where the application is presented, the Court may, if it thinks fit, order by a commission when the examination of an absent witness may be taken

Scope—Court can examine applicant on merits of claim before and after issue of notice to opponent and may avail of help from latter though latter can not examine applicant A I R 1928 Sind 118=22 S L R 441=108 Ind Cas 657, 50 Ind Cas 676 Evidence except of applicant himself cannot be taken on merits of claim



"case" decided A I R 1931 Ring 318=135 Ind Cas 331 Order rejecting application to sue as proper is subject to revision A I R 1927 Lah. 56=98 Ind Cas 879, see also 75 Ind Cas 933=19 N L R 165, but see A I R 1926

[illegible]

**Scope**—This rule deals rather with form of application and not with the truth of its contents. Hence an omission of one item of property is not non compliance with this rule. A I R 1928 Pat 28=8 P L T 794. But where there is an entire omission of immovable property, the application should be dismissed. 74 Ind Cas 344, 9 O L J 610. see also A I R 1930 Pat 368=11 P L T 567. Where application to sue as proper was presented in time, it is not time barred merely on the ground that it was signed and verified out of time. A I R 1931 Bom 47=32 Bom L R 1343. Joint family property even of minor must be mentioned. A I R 1934 All 395. 'It' refers to application and not to schedule property. A I R 1932 Lah 548=33 P L R 733. Rule 2 should not be meticulously interpreted. A I R 1932 Lah 328=138 Ind Cas 33.

**3 [S 404]** Notwithstanding anything contained in these rules, the application shall be presented to the Court by the Presentation of application applicant in person unless he is exempted from appearing in Court in which case the application may be presented by an authorized agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

**Scope**—Where a petition was given to the officer of the Court and petitioner was present when the officer presented the petition to the Judge, petition should be regarded as presented to the Judge himself 58 Ind Cas 661=17 N L F 22, see also 47 M L J 522=84 Ind Cas 968 Husband of *pardanashin* lady can present the application of his wife for leave to sue as a pauper and no authority in writing is necessary A I R 1929 Pat 27=10 P L F 46=114 Ind Cas 210 This rule applies to presentation of application to appeal as a pauper and not to memorandum of appeal itself A I R 1926 Oudh 13=90 Ind Cas 371 Where plaint was returned for presentation to proper Court and the memorandum submitted by parties for continuation of suit, objection that plaint should have been presented in person in order to entitle him to sue as a pauper cannot be maintained A I R 1931 Mad 418=1930 M W N 582 Court can reject application where the claim is doubtful 75 Ind Cas 744 Where original application is filed by the applicant the amended application can be filed by pleader A I R 1933 Rang 410=11 Rang 414

4. [S 406] (1) Where the application is in proper form and duly examined, the applicant is allowed to appear by age of the applicant

If presented by agent, Court may order applicant to be examined by commission

absent witness may be taken





property Court cannot order the arrest of judgment debtor A I R 1930 Lah 103=31 P L R 143 Rules of Order 34 apply to mortgage suits relating to movables as well 36 C W N 263=A I R 1912 Cal 524=59 C 667 Interest is to be determined according to Order 34 and not according to s 34 A I R 1933 Oudh 128=8 Luck 315, see also A I R 1917 P C 1=54 C 161=31 C W N 390=54 I A 1 P C Interested party if not joined can claim redemption before foreclosure or sale. 47 C 924=24 C W N 954=56 Ind C1s 274 (P C) Where mortgagor transfers equity of redemption, decree against him does not bind transferee 45 Ind Cas 606=21 O C 70, see also 22 C W N 543=28 C L J 256, 34 Ind C1s 367, 36 Ind Cas 744

**Scope**—Object of rule 1 is that all claims affecting equity of redemption should be disposed of in the same suit 50 M 180=A I R 1927 P C 32=52 M L J 338=29 Bom L R 803=31 C W N 670 (P C) This rule is not intended to punish omission to join parties whose title deeds or existence is not known to plaintiff 5 N L J 157 (F B)=66 Ind C1s 631, see also 61 Ind C1s 412=19 A L J 185 Puisse mortgagee is not required to implead prior mortgagee as a party in a suit for foreclosure or sale The principle will be the same when the subsequent mortgagee and the prior mortgagee happen to be one and the same person 4 P L T 546=74 Ind Cas 820 see also 50 A 742=26 A L J 529=A I R 1928 All 378, 86 Ind Cas 748=12 O L J 127 Where it is possible for Court to do justice between the parties before it it should do so and should not make rule 1 a ground for dismissing the entire suit A I R 1929 A 941=52 A 134 Non compliance is not 87 Party knowingly omits to do what is equity 55 C L J 290=A I R 1932 Cal 561 s must be parties to the suit 37 C W N 478=60 C 777 If a proper party in mortgage suit omits to pursue his own remedy is not affected by that suit A I R 1937 Mad 115=62 M L J 272

**Proper parties**—Only a person having interest either in the mortgage security or in the right of redemption can be joined as a party 33 P L R 240=136 Ind Cas 728, A I R 1930 Mad 801 (F B) If necessary party is not pleaded within time the whole suit will be dismissed 36 Ind Cas 542=1 Pat L J 468

**Prior mortgagee**—In a suit by puisne mortgagee party A I R 1931 All 549=53 A 531=1931 All 76=1930 A L J 1222 In a suit by puisne joined, he can claim subrogation A I R 1929 mere fact that the prior mortgagee was impleaded by mistake does not affect the nature of the decree which should be passed A I R 1930 All 113=(1930) A L J 321=52 A 426, see also A I R 1931 Pat 33=9 Pat 816

**Puisse mortgagee**—If a subsequent mortgagee is not made a party to the prior mortgagee's suit the subsequent mortgagee gets the right to redeem the prior mortgagee and the amount of money to which the prior mortgagee is entitled is the amount of the mortgage loan with interest at the stipulated rate of interest and not the amount of decree passed on the prior mortgagee's suit A I R 1930

A I R 1930 Pat 435, but see 47 C 692=38 M L J 424=47 A 11=55 Ind C1s 99 P C Where in a suit by a prior mortgagee puisne mortgagee is not impleaded his right is not affected 33 Ind Cas 815=86 P R 1916, see also 33 Ind Cas 243=18 O C 347, A I R 1928 Lah 593, 38 Ind Cas 179, A I R 1932 Cal 561, 14 A L J 337=36 Ind Cas 703, 58 Ind Cas 795, 42 A 364=47 A 71=25 C W N 397=55 Ind Cas 969 (P C) 26 C W N 279=42 M L J 15=24 B m L R 170=48 I A 463=43 A 469 (P C) Where puisne mortgagee is not made parties prior mortgagee can after depositing in Court money due on puisne mortgagee, claim to redeem puisne mortgage 20 A L J 401=44 A 462=67 Ind Cas 241 Prior mortgagee cannot sue subsequent mortgagee for possession after limitation on prior mortgagee nor compel him to redeem his mortgage A I R 1926 All 420=24 A L J 61 Question of contribution between several subsequent mortgagees is foreign to mortgage suit A I R 1923 Pat 197=4 P L T 91=71 Ind Cas 940 First mortgagee in possession under prior sale may always shield himself under his mortgage and

purchase, though his right to possession is defective A I R 1923 Rang 107=1 Bur L J 217=74 Ind Cas 151 Not imploding subsequent mortgagee or other person interested in mortgaged property does not make whole proceeding null and void A I R 1931 All 466 (F B)=1931 A L J 729=53 A 1023

**Sub mortgagee**—In redemption suit relief against sub mortgagee can be given A I R 1927 Mad 703=101 Ind Cas 728. First mortgagor is not necessary party in redemption suit by mortgagee to redeem his sub-mortgage 24 Bom L R 911=68 Ind. Cas 741, see also 3 Lah L J 373=67 Ind. Cas 421 Mortgagor without notice of Sub-mortgage paying off mortgagee in redemption suit is not bound by sub mortgage 30 M L T 21=63 Ind Cas 192

**Paramount title**—Question of paramount title should not ordinarily be decided in mortgage suit 59 C 548=1932 Cal 512, see also 10 Pat. 234=A I R 1931 Pat 64 Person who claims title paramount to mortgagor and mortgagee is not a necessary party 80 Ind Cas 753=2 Rang 106, see also 73 Ind. Cas 428=10 O L J 263 70 C W N 1079=35 Ind Cas 959=14 A L J 1002 (P C), 47 Ind Cas 179 44 C 425=21 C W N 127, 54 Ind Cas 806, 63 Ind Cas 92=25

of litigating that in the mortgage suit A I R 1929 Cal. 672=33 C W N 659 see also A I R 1930 Nag 89=13 N L J 1 The mortgagee plaintiff should not be allowed in his suit on mortgage to raise a controversy as regards the title of a third person claiming a paramount title A L R 1930 Oudh 97=7 O W N 25=121 Ind Cas 277 In a suit to enforce mortgage, a person claiming paramount title is not necessary or proper party 100 Ind Cas 195=A I R 1927 Sind 265, See also A I R 1927 Mad 301=52 M L J 52, 1927 Oudh 607, A I R 1927 Pat 45=7 P L T 737 A I R 1928 Mad 764 but see A I R 1928 Mad. 2=53 M L J 647 Rule as to not joining person claiming adverse title is not inflexible A I R 1928 Mad 2=53 M L J 647

**Official Receiver**—The Official Receiver is not a necessary party in a suit by the mortgagee of an insolvent mortgagor to enforce the mortgage A I R 1930 Lah 791=31 P L R 506=16 Ind Cas 174 see also A I R 1925 Cal 785=29 C W N 771=86 Ind Cas 1042 A I R 1927 Mad 609

**Attaching creditor**—Attaching creditor has no right to be made party in mortgage suit A I R 1929 All 861=122 Ind Cas 766 89 Ind Cas 446, 62 Ind Cas 121 44 M 23=40 M L J 65 Attaching creditor under a money decree against mortgagor is entitled to redeem the mortgage 73 Ind Cas 8

**Co Mortgagee**—Failure to join co mortgagee's heirs vitiates suit by other mortgagee A I R 1926 Cal 416=89 Ind Cas 121

be maintained 56 Ind Cas 77

**Co-mortgagors**—Where all persons interested in the equity of redemption are not on record only the interest of the defendants joined in the suit can be sold 72 Ind Cas 458, see also 82 Ind Cas 638=29 C W N 51 In a redemption suit a necessary party A I R 19 All 46=48 A 171=24 one mortgagor appealed Cal 479=100 Ind Cas 521 The liability of mortgagor *inter se* can only be determined in separate suit A I R 1927 Pat. 117=8 P L T 255

**Joint Hindu family**—Where manager of joint Hindu family representing the s complied with A I R 1927 207=4 Pat 723, 80 Ind Cas, a joint Hindu family represents 1921) Pat 289, 39 Ind Cas 779=(1917) Pat 137, 45 Ind. Cas 76, 46 Ind Cas 727, 58 Ind Cas 489=1 P L T 582, 53 Ind. Cas 411=125 P R 1919, A I R 1930 Pat 293 50 Ind Cas 243,

40 Ind Cas 525, 37 Ind Cas 833, 36 Ind Cas 64 Where minor co-parcener is not joined the suit is not *ba'f*, but minor will not be bound A I R 1925 All 335=47 A 427=23 A L 7 246=87 Ind Cas 700

**Landlord.**—Landlord is not necessary party in a suit to enforce mortgage of non transferable occupancy holding 22 C W N 662 But if he is made a party, the rights of the parties should be determined in the same suit 8 Pat 439=A I R 1929 Pat 222

**Lessee.**—Vide A I R 1927 Pat 411=8 P L T 229, A I R 1926 Nag 496=23 A L R 128, A I R 1923 Nag 273=65 Ind Cas 503

**Mortgagee.**—Original mortgagee is not a necessary party in redemption suit against mortgagee's assignee 20 S L R 277=91 Ind Cas 87

**Tenant.**—In a suit for redemption alleged tenants of mortgagee setting up paramount title are proper parties A I R 1926 Bom 522=28 Bom L R 848, see also 78 Ind Cas 885=3 Pat 244

**Legal representatives.**—When the defendant dies after preliminary decree some of his

A. I. R 1930 "

representative

can A. I. R. 1930 Lah 1068=31 P L R 998 Heirs of intestate Parsi who intermeddle with his estate, are his legal representatives A I R 1927 Bom 474=51 B 771 Rights *inter se* between the legal representatives of a deceased plaintiff mortgagee need not be decided A I R 1927 Mad 1071

**Non joinder.**—The failure to bring on record one having equity of redemption does not necessarily entail dismissal of suit A I R 1931 Pat 164=12 P L T 28 Non joinder of necessary parties is not fatal 83 Ind Cas 262 but see A I R 1927 All 290 but see 35 C W N 100 66 Ind Cas 945 Where purchaser of equity of redemption is not made a party he is not bound by the mortgage decree 49 C 1048=28 C W N 32 24 Bom I R 741 69 Ind Cas 165 25 C W N 253 Non joinder of other co-mortgagees does not vitiate suit where mortgage bonds were in favour of one who sufficiently represents other 40 C L J 67-84 Ind. Cas 124 Suit for sale should not be dismissed though *pursue* mortgagee was not joined in it 21 A L J 701=74 Ind Cas 943 It is doubtful if mortgagee can sue purchaser of equity of redemption 25 C W N 253 A subsequent mortgagee is not bound by a decree obtained on the foot of a prior mortgage when he is not made a party thereto A I R 1929 Pat 94=11 P L T 41

**Preliminary decree in foreclosure suit** "2 (1) In a suit for foreclosure, if the plaintiff succeeds the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security, together with interest thereon, or

(b) declaring the amount so due at that date, and

(c) directing—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all docu

ments in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any persons claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(1) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons claiming under the rights of, any such mortgagees are parties to the suit, the preliminary decree shall provide for the adjudication of the rights of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

N.B.—For the amendments in Bombay and Raigoon, vide *infra*.

Notes.—Rules 2 to 8 have been added by Act 21 of 1929. The reason of the amendment has been thus stated by the Special Committee:—

This order relates to mortgage suits and its provisions were originally in the Transfer of Property Act (sections 85 to 90) but were transferred to the Code of Civil Procedure in 1908. The amendment of the Transfer of Property Act particularly the provisions relating to mortgages, necessitates the amendment of rules 2 to 8, 10, 11 and 15 of the Order.

We propose to make the following amendments in this rule, *viz.*—

(1) It should be expressly stated that the decree passed under this rule is "preliminary."

Under sections 73 and 76 of the Transfer of Property Act, a mortgagee is authorised to spend money for certain necessary purposes in connection with the mortgage security. Under section 63 A of the Transfer of Property Act, it is proposed to be added, a mortgagee is allowed to spend money for improvements in certain circumstances. The above provisions are intended to make it clear that in taking any necessary costs, charges and expenses in respect of the mortgage security, together with interest thereon, must be taken into account.

of the same due to the preliminary decree. Clause (b) of the rule should be amended so that the amount due to the plaintiff should be the amount found or declared due by the Court on or before the date of the preliminary decree. This is necessary in order to avoid any doubt as to the date of the declaration of the decree. This

seems anomalous. There is no reason why a mortgagee should lose subsequent costs charges and expenses where the Court declares the amount. The scheme of Order XXXIV of the Code of Civil Procedure, 1908, is to draw a clear distinction between a preliminary and a final decree, rule 2 is amended to make it clear that the amount to be declared or found due on taking accounts should be up to the date of the preliminary decree. The defendant will then be in a position to know what sum he has to pay in order to claim redemption. Care is taken to provide in clause (c) of sub rule (1) of the amended rule that after tendering the amount so declared or found to be due, the defendant has to pay the amount which the Court may adjudge for subsequent interest and subsequent costs, charges and expenses. Rules 10 and 11 have been amended to empower a Court to adjudge the amount due in respect of such interest and costs.

(4) Although clause (a) of this rule refers to the date fixed for payment of the amount found to be due on taking accounts, clause (c) refers the date within six months from the date of the declaration of the amount due by the Court under sub rule (1) of the amended rule. The amount due or, where an account is confirmed by the Court. Our amendment makes this clear.

(5) As the mortgagor or any other person seeking redemption has to bear all costs and expenses of the redemption, in clause (c) of sub rule (1) it is made clear that the cost of re conveyance or re transfer by the mortgagee on payment of the amount due by the mortgagor shall be borne by the mortgagor or such other person.

(6) The proviso to sub rule 2 to rule 3 provides for the extension of the time fixed for payment in the final decree. The power of the Court to extend the time fixed for payment is well recognised and is exercised at any time before a final decree for foreclosure is passed. The proper place for this provision is in the rule relating to the preliminary decree. The proviso is therefore, placed in rule 2 as sub rule (2). The expression 'postpone the day' in this proviso has been replaced by the words 'extend the time' to make it clear that the time can be extended even after the expiry of the period once fixed. Sub rule (2) also makes it clear that the extension of the time fixed for payment must be subject to such terms as the Court may fix. It is not fair that after the plaintiff has obtained a decree for payment of the amount due on the mortgage and when the payment has been already postponed for six months, the plaintiff should be made to wait for payment for a further period without getting compensation. A defendant who applies for an extension of time must be put on terms before his application is granted.

(7) As clauses (a) and (b) of sub rule (1) will provide for the adjudication of the amount due to a mortgagee till the date of the preliminary decree, in sub rule (1) clause (c) it is made clear that after the payment of that amount the defendant is bound to pay subsequent costs and subsequent interest due to the plaintiff till the date of actual payment, which may be on or before date fixed in the preliminary decree or such other date to which the time for payment may have been extended under sub rule (2). It has been well established that the mortgagee can add to mortgagee money the amount spent by him between the passing of the preliminary decree and the final decree. (I L R 44 Cal 448)

mortgagor to redeem the mortgaged  
passed (I L R 27 Cal 705)  
the preliminary decree for payment

or on the day to which the time for payment may have been extended by the Court does not *ipso facto* extinguish the mortgagor's right of redemption. It is open to a mortgagor to apply for extension of time till a final decree for foreclosure has been passed, and he can do so even after the expiry of the period once fixed (I L R 39 Mad 882, 28 Bom 102). Clause (d) of rule 2, as at present worded, is not consistent with the above rulings. It provides that if payment, as provided in the rule is not made, the defendant will be debarred from all right to redeem the property. In sub rule (2) of the amended rule therefore, it is made clear that on non payment of the amount due, the plaintiff will have to pay the amount due. We propose to make it clear that the amount due arises not only when the amount is not paid in full, but also if any subsequent interest remains to be paid.

(9) Rules 2 & 8 of Order XXXIV do not specifically provide for decrees in suits for foreclosure or sale in which, besides the mortgagor other persons who are entitled to redeem such as subsequent mortgagees or persons subrogated to their rights, are remedied by providing forms for annex D to the Code. Under Order 8, forms are not binding and can be varied by Order XXXIV itself is necessary of varied type and that in such cases forms given in the may require Pro-sub rule (3) of rule 4, consequential

In a redemption suit by a mortgagor such difficulties will not arise. Consequential amendments have been made in rules 7 and 8

made in rule 2. For the reasons payment by the sure is actually passed. It is also made clear that on payment of the amount decreed or found to be due in the preliminary decree together with the amount due for the subsequent costs of application of the mortgagor, property. The provisions to avoid difficulties which words to that article of limitation rule (3) of the duty of the defendant, not suit also is discharged and is to vest the mortgaged not only the debt due on the ought to enforce it. It is y, should extinguish in toto

arise effect

the whole of the liability of the mortgagor

We propose to amend this rule which relates to a preliminary decree for sale, on the lines of rule 7. As by the amendment in the Transfer of Property Act it is proposed to allow the remedy of foreclosure only in the case of a mortgage by conditional sale and an anomalous mortgage providing the remedy of foreclosure, the power of the Court to grant the alternative relief of sale can only be exercised in the case of such an anomalous mortgage. By the very nature of the mortgage by conditional sale the Court cannot order a sale of the property. We propose to amend clause (2) by stating clearly that it applies only to an anomalous mortgage which provides for foreclosure. Sub rule (3) is added to rule 4 on the same lines as rule 2 (3). It provides for a case where, besides the mortgagor, there are other parties in a suit for sale.

It should, however, be noted that in the case of a decree for sale there is no sale. Even after the sale is made before the confirmation of Courts to enlarge the time

words gave rise to the view that an order absolute under the section had the effect of extinguishing rights under

not extinguished by the mere passing  
Gulim Sifdar 48 I A 465 at p  
at the right of a mortgagor to redeem  
in execution of the decree passed

against him under rule 4 or rule 7. We have, however, made a provision for compensating the purchaser when a mortgagor seeks to redeem after the sale has taken place but before it is confirmed.

The words 'any such sale' in rule 6 and its position after rules 3 to 5 led to the view being taken that the personal decree for the balance of the amount due to a mortgagor after the sale can only be passed in a suit by a mortgagee for sale, and not in a redemption suit by a mortgagor, although in a redemption decree in default of payment by the mortgagor a sale of the mortgaged property can be ordered. In 1 L. R. 42 Cal. 294, it is held that as this rule does not require an application by a mortgagee for the passing of a personal decree for the balance of the mortgage money, no period of limitation applies for claiming such relief. This is not followed by other Courts (1 L. R. 40 All. 551). This point is made clear by introducing the words "on application by the plaintiff" in rule 6, and the words "on application by the defendant" in rule 8A—*Report of the Special Committee*.

**Report of the Select Committee.** "We are not convinced by the reasons given by the Special Committee for deciding not to insert a provision giving the Court power to extend the time for the payment of the amount due from a mortgagor after a preliminary decree for the sale of the mortgaged property has been passed. We think this is a power which the Court may well be trusted to exercise in proper cases and on proper terms. We have, therefore, inserted a new sub-rule as sub-rule (2) in this rule on the line of sub-clause (ii) of clause (c) in sub-rule (1) of rule 2. Sub-rules (2) and (3) of the present rule have therefore been renumbered as sub-rules (3) and (4). Abuse of such a provision is prevented by providing that the extension of time cannot be granted after the final decree for sale has been actually passed."

**Rule 5.**—We have added the words 'if a decree has been passed in order' after the words "pass a final decree" in sub-rule (1). As the sub-rule stands at present it contemplates the passing of another final decree in favour of a mortgagor who makes payment after a final decree for sale has been passed at the instance of the mortgagee,

or to retransfer the mortgaged property and orders in execution and there is no necessity for the Court to pass another decree—*Report of the Select Committee*.

**Rule (2).**—Rules framed under s. 43 of the Co-operative Societies Act depriving right of six months under order 34, Rule 2 are not *ultra vires*. A I R 1933 Nag 211=142 Ind. Cas. 487. Interest *pendente lite* in mortgage suit is governed by rules 2, 4 and 11 and not under s. 34. 14 N. L. J. 109=A I R 1931 Nag 161. Mortgagee paying Government revenue is entitled to recover from mortgagor. A I R 1933 Nag 112=144 Ind. Cas. 392. Future interest is within the discretion of trial Court. A I R 1932 Oudh 255=9 O. W. N. 253. Co-mortgagee defendant's costs should be provided for out of mortgage security. 33 C. W. N. 657.

3 (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property

(2) Where payment in accordance with sub-rule (1) has not been made by the plaintiff in this

final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property

(3) On the passing of a final decree under sub rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged

N B—For local amendment in Rangoon, vide *infra*

Notes—No discretion to Court to accept money after final decree 37 Ind Cas 779 Final decree can not be passed without application 1 Pat L. J 364=38 Ind Cas 385 Final decree extinguishes property and also right of redemption 23 O C 334=60 Ind Cas 213 Defendant is entitled to make payment before final decree is passed A I R 1931 Oudh 121=8 O W N 142=131 Ind Cas 435 Interest stops from the date of deposit and not from withdrawal A I R 1933 Lah 126

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a) (b) and (c) (1) of sub rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient of the sale (after deduction therefrom into Court and applied in payment of or by the preliminary decree due to it as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same

(2) The Court may, on good cause shown and upon terms to be fixed by the court from time to time at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs charges expenses and interest

(3) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds the Court may, at the instance of any party to the suit or of any other person interested in the mortgage security or the right of redemption pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No 9, Form No 10 or Form No 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require

N B—For local amendments in Allahabads, Bombay, Calcutta and Rangoon, vide *infra*

Notes—Court may direct in what order property may be sold A I R 1931 Nag 91=13 N L J 213 Under sub clause (4) subsequent mortgagee cannot request a particular order of sale of properties of other person than his mortgagor A I R 1930 Mad 178=1929 M W N 629 Specific mention of interest in final decree is not necessary to be made payable until realisation when there is a direction



in the preliminary decree A I R 1931 Oudh 47=7 O W N 1205 When appellate Court only extended time trial Court's direction to pay interest at bond rate for time fixed for payment applies also to this extension as it is time of grace A I R 1930 Pat 380=121 Ind Cas 906 In granting time interests of mortgagee should also be considered A I R 1933 Rang 323

5 Where on or before the day fixed or at any time before the confirmation of sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf pass a final decree or, if such decree has been passed, an order—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree, and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property

(2) Where the mortgaged property or part thereof has been sold in pursuance of this rule, the Court unless the defendant, in pursuance of sub-rule (1) of this rule, deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent thereof

Where such deposit has not been made, the plaintiff in this behalf, pass a decree for the sale of the property or a sufficient part thereof to be sold, and that the proceeds of the sale be dealt with in the manner provided in sub rule (1) of rule 4

N B —For local amendments in Bombay and Rangoon vide *infra*

Notes —Preparation of final decree is continuation of proceedings after preliminary decree A I R 1931 All 386 (F B)=53 A 283 Court has discretion to fix order in which properties should be put up for sale A I R 1932 All 85=9 has no retrospective effect 36 C W N 1205 s extinguished after confirmation of sale mortgage purchaser are not regulated by T P Act on Court to grant interest for period until realization of money by sale A I R 1932 Cal 689=59 C 722 Decree for cost cannot be executed separately as personal one A I R 1931 All 124 Where decree holder asks for sale of only one item of property, this can be refused if court thinks this as improper A I R 1932 All 85=53 A 391 Even compromise decree under rule 4 can not be executed without a final decree A I R 1929 All 881

6 Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance

Scope —Application under rule 6 for decree for balance due is governed by Art 181 and time begins to run only from date when sale becomes absolute under Order XXI, rule 92 A I R 1931 Cal 166=52 C L J 531=35 C W N 231=58 C

overment arising from mortgage and  
 d property at some other place does  
 A I R 1931 All 192 An application  
 intainable unless a sale in pursuance  
 of the preceding rule has as a matter of fact taken place A I R 1930 Oudh  
 377 (F B), see also 8 Rang 316=A I R 1930 Rang 25, A I R 1930 All  
 69=52A 363, 33 C W N 500, A I R 1934 Cal 476 Personal remedy can be  
 enforced on the basis of registered deed within six years under Art 116 A I R  
 1930 All 69 (F B)=52A 363=1929 A L J 1294, 36 C W N 117 In rule 6 the  
 expression "amount due" means the amount, to recover which a decree for sale has  
 been previously passed 26 A I R 1974=A I R 1929 All 15 Personal remedy  
 can be enforced only when all remi  
 N 109 P C see also 1932 A L J  
 792 14 I I T 189=A I R 1933  
 in Sch 1 App, D A I R 1933 Cal 251=60 C 19 Mortgagee is not entitled  
 to a personal decree against the mortgagor in the absence of a stipulation to that  
 effect A I R 1933 Lah 32=34 P L R 171 Mortgagee is not bound to ask in  
 mortgage suit itself relief under Order 34 rule 6 nor is the Court bound to adjudicate  
 upon it, even if such relief is asked for Such question can be considered when  
 contingency arises A I R 1933 Oudh 520 Court can under Order 34 rule 6  
 insufficient for satisfaction of  
 1931 All 631 Composite  
 valid A I R 1933 Oudh  
 466, see also 10 O  
 63=56 M 339 A  
 decree to give a net

, A I R 1933 Oudh 29  
 in mortgage suit A I R 1932  
 ed property is not available owing to  
 d A I R 1934 Lah 174

Preliminary decree in re ? (1) In a suit for redemption, if the  
 redemption suit plaintiff succeeds the Court shall pass a prelimi  
 nary decree—

- (a) ordering that an account be taken of what was due to the defendant  
 at the date of such decree for—
  - (i) principal and interest on the mortgage
  - (ii) the cost of suit if any awarded to him, and
  - (iii) other costs charges and expenses properly incurred by him up to  
 that date in resp ct of his mortgage security, together with interest  
 thereon or
- (b) declaring the amount so due at that date, and
- (c) directing—
  - (i) that if the plaintiff pays into Court the amount so found or declared  
 due on or before such date as the Court may fix within six months  
 from the date on which the Court confirms and countersigns the  
 the account taken under clause (a) or from the date on which  
 such amount is declared in Court under clause (b), as the case may  
 be and thereafter pays such amount as may be adjudged due in  
 respect of subsequent costs charges and expenses as provided in  
 rule 10, together with subsequent interest on such sums respec  
 tively as provided in rule 11, the defendant shall deliver up to the  
 plaintiff, or to such person as the plaintiff appoints all documents  
 in his possession or power relating to the mortgaged property, and  
 shall if so required re transfer the property to the plaintiff at his  
 cost free from the mortgage and from all incumbrances created by  
 the defendant or any person claiming under him, or, where, the  
 defendant claims by derived title, by those under whom he claims,  
 and shall also if necessary, put the plaintiff in possession of the  
 property, and

(11) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property

(2) The Court may, on good cause shown and upon terms to be fixed by the Court from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses, and interest

N B—For local amendment in Bombay and Rangoon *vide infra*

Notes—Decree for redemption cannot be passed unless all particulars are in plaint. A I R 1931 Outh 378=8 O W N 737= Luck 94 Rule 7 is mandatory and directs mortgagor on redemption to pay interest up to date of redemption A I R 1928 Lah 95

8 (1) Where, before a final decree declaring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree, and if necessary,—

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree, and, also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub rule (3) of this rule, the Court shall not pass an order under sub rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent thereof

(3) Where payment in accordance with sub rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming

under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

- (b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same."

N. B.—For local amendment in Rangoon, vide *infra*

Notes—Adjustment out of Court cannot be pleaded in passing final decree. 54 M 708=A I R 1931 Mad 592 In redemption suit mortgagee is decree-holder and can transfer his decree *Ibid* Application for final decree made within three years after second appeal against preliminary decree is within time A I R. 1930 Mad. 353=58 M. L. J 207.

8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient, to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.

Notes—Order 34, rule 8A does not apply to usufructuary mortgages. A I R. 1933 Oudh 40=9 O W N 1059

## 9. [New]

Decree where found due or where mortgagee has been overpaid, the Court shall pass a decree to refund of the mortgage property

appears in rule 7, that he to re-found of the

Notes—Suit for redemption is also suit for surplus profit due to mortgagor. 60 M L J 698=A I R 1931 Mad 479, see also A I R 1929 Bom. 337=31 Bom L. R 476

## 10 In finally adjusting the amount to be paid to a mortgagee in case of

Costs of mortgagee subsequent to decree a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, and to the mortgage money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

of costs relates to

of mortgagee since the passing of the preliminary decree and before the final decree passed in the case A I R 1926 All 722=48 A. 682=96 Ind Cas 512, A I R 1930 Oudh 328=7 O W N 398 Where mortgagee raises question of involving denial of mortgagor's right to redeem it, it is subject to Court's discretion whether to award costs or not A I R 1926 Mad 405. Costs which should have been included in final decree are not claimable in execution A. I R 1922 All 27=44A 350=20 A L J 170=65 Ind Cas 799 Costs including costs of appeal, form part of the decretal amount and are realisable in the first instance by sale of mortgaged property 48 Ind Cas. 320

11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely :—

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable,

(ii) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security up to the date of the preliminary decree and agreed between the parties, or if no such agreement is payable on the rate of \_\_\_\_\_ per cent per annum, and \_\_\_\_\_

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause, and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10.

Scope—Bond rate of interest till expiry of grace period cannot be claimed as of right A I R 1932 Pat 232=13 P L T 545 "Principal amount found due or declared due on the mortgage" was only principal amount on mortgage without any interest Mortgagee is entitled to contract rate till date fixed for payment A I R 1933 Oudh 128=10 O W N 173 Having regard to Order 34 of the Code of Civil Procedure the lower Court was perfectly right in allowing interest at the contract rate on the principal amount only from the date of the suit to the date fixed for the payment Ibid Interest ceases from the date of deposit on money in court and not from the date of its removal by the decree holder A I R 1933 Lah 126 The presumption is that where a mortgage deed is executed the parties contemplate the possibility that payment may not be made at the time when the entire amount becomes due If the deed contains stipulations regarding payment of interest before this date, the presumption arises that the parties intended that interest should be fixed after that date Stipulators may be such as to justify the inference that interest on the due date is to be paid at a particular rate, but where no inference regarding the rate can be drawn, the presumption is that what it was intended to pay interest at a reasonable rate 28 N L R 1=A I R 1932 Nag 39 As regards the period subsequent to the date fixed for payment the award of interest even at the court rate is not obligatory Though ordinarily the court will award interest for that period at the court rate, it has in proper cases, a discretion to refuse interest altogether i.e. even at the court rate 59 C 722=A I R 1932 Cal 689

12 [T. P. Act. S 96] Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

**Scope**—Without the consent of the prior mortgagee the property cannot be sold free of the prior encumbrance 47 C 662 (P C)=25 C W M 417, see also A I R 120 Lah 1063=130 Ind. Cas 49, A I R 1934 All 75. Where subsequent mortgagee impedes prior mortgagee but does not challenge prior mortgage prior mortgagee's failure to pay his own mortgage as defence does not bar suit to enforce his mortgage against subsequent mortgagee. 55 Ind. Cas 956.

**Application of proceeds** 13 [T P Act S 97] (r) Such proceeds shall be brought into Court and applied as follows —

- first, in payment of all expenses incident to the sale or properly incurred in any attempted sale,
- secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith,
- thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made,
- fourthly, in payment of the principal money due on account of that mortgage and
- lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882\*

**Scope**—Surplus assets after an auction sale should not be paid out to a subsequent encumbrancer otherwise than with mortgagor's consent A I R 1927 All 467=2, A L J 330=49 A 636. Mortgagee is not entitled to share in surplus sale proceeds if his final decree of sale is barred by time 22 A L J 823=83 Ind Cas 1033

**14 [T P Act S 99]** (r) Where a mortgagee has obtained a decree

Suit for sale necessary for bringing mortgaged property to sale

for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage and he may institute such suit notwithstanding anything contained in Order II rule 2

(2) Nothing in sub-rule (r) shall apply to any territories to which the Transfer of Property Act, 1902\* has not been extended

**Scope**—Rule 14 does not apply where charge is created by decree itself A I R 1934 Nag 147, see also A I R 1934 Cal 327. Money decree holder may bring to sale property comprised in security bond without bringing suit on basis of security bond A I R 1934 All 374. Maintenance decree creating charge does not come within rule 14 A I R 1934 Nag 83. Award by Registrar Co-operative Societies, Nag 211. Where compromise is silent as to how hypothecated property is to be sold rule 14 applies 34 A 763=1932 A L J 486=A I R 1932 All 419. It is clear from language of rule 14 that the rule does not apply unless the decree falls within decree for payment of money in satisfaction of claim under mortgage or charge. The mortgage or charge in this rule must be a mortgage or charge existing prior to date of decree and not one created by decree. It is not necessary for a person to sue to enforce a charge on immovable property created by a consent decree. 64 Ind Cas 332=33 C L J 61, see also 43 A 677=19 A L J 728=63 Ind Cas 445. Rule 14 applies only to claims under mortgage and not where sale

takes place in execution of decree upon claim not arising under mortgage 27 C W N 38=37 C L J 266. As a mortgagee is entitled to have the equity of redemption sold in satisfaction of a debt which he might have against the mortgagor or connected with the mortgage. 33 Ind Cas 32=18 P R 1916, see also 38 A 327=33 Ind Cas 92. Rule 14 is confined to cases where a mortgagee has obtained a personal decree against a mortgagor on a mortgage debt. Rules 14 and 15 read with s 100 Transfer of Property Act 1908 that where immovable property has been made security for the payment of the money and the beneficiary has obtained a decree for the payment of the money so secured he can bring the property to sale only by a suit for sale. The decree referred to in rule 14 must be a decree subsequent to the creation of the mortgage. 31 A L W 202=38 Ind Cas 791, see also 63 Ind Cas 303. Rules 14 and 15 do not apply unless the charge was created before obtaining the decree. 46 I L C 1516. 'Mortgagee' in rule 14 means the holder of a subsisting legal or equitable mortgage. 39 A 26=14 A L J 902=36 Ind Cas 907. see also A I R 1909 All 509. 115 Ind Cas 829, 41 M L J 160=62 Ind Cas 756. A I R 1930 Mad 114. 42 A 46. Rule 14 means that the decree should relate to payment of money in satisfaction of a claim arising under the mortgage. The mortgage in question of the decree. 43 B 631=31 Ind Cas 920.

Where there are simultaneous and differing mortgages which could reasonably be treated as constituting one transaction Courts will be slow to allow plaintiffs to resort to a device which would enable them to circumvent the rule to allow plaintiffs to resort to a device which would enable them to circumvent the rule to prevent. 49 B 208=27 Bom L R 492=2 I L C 1516. A sale in contravention of the rule is not void but voidable and a mortgagee is not bound to avoid it, it is sufficient for the mortgagee to allow the sale to stand. 14 A 45 B 174=58 Ind Cas 231, see also A I R 1912 Pat 1135. A I R 1913 Pat 490=27 P L R 494, 2 Pat L J 587=41 Ind Cas 533. 31 I L C 3=41 B 357=19 Bom L R 75. Mortgagee obtaining only a personal decree against mortgagor may ask to sell property in execution of that decree. A I R 1930 Mad 139=53 M 670. Rule 14 has no application to cases where the mortgage was created by decree and did not exist prior to it. A I R 1929 Pat 433.

15 All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title deeds and charges within the meaning of section 54, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1908.

N B—For local amendment in Oudh vide *infra*

provisions in Order XXXIV of the Code of Civil Procedure 1908, by corresponding Select Committee, see also A I R 1934 Nag 140. —*Report of the*

## ORDER XXXV

### Interpleader.

1 [S 471] In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaintiffs, state—

- that the plaintiff claims no interest in the subject matter in dispute other than for charges or costs,
- the claims made by the defendants severally,
- that there is no collusion between the plaintiff and any of the defendants.

Notes—Where the preliminary decree is passed in an interpleader suit it becomes to all intents and purposes a partition suit. A I R 1930 Mad 988=60 M L J 79.

2 [S 472] Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. [S 470] Where any of the defendants in an interpleader suit is actually suing the plaintiff in respect of the subject matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed, by the Court in which the interpleader suit has been instituted, stay the proceedings as against him, and his costs in the suit so stayed may be provided for in such suit, but if, and in so far as, they are not provided for in that suit they may be added to his costs incurred in the interpleader suit

Procedure at first hearing 4 [S 473, R S C O 57, r 7] (i) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit, or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit

(2) Where the Court, finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner

Notes—Vide 21 Bom L R 918=53 Ind Cas 365

5 [S 474] Nothing in this Order shall be deemed to enable agents to sue their principals or tenants to sue their Agents and tenants may not institute interpleader suits landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords

#### *Illustrations*

(a) A deposits a box of jewels with B as his agent C alleges that the jewels were wrongfully obtained from him by A and claims them from B B cannot institute an interpleader suit against A and C

(b) A deposits a box of jewels with B as his agent He then writes to C for the purpose of making the jewels a security for a debt due from himself to C A afterwards alleges that C's debt is satisfied and C alleges the contrary Both claim the jewels from B B may institute an interpleader suit against A and C

Notes—A tenant cannot bring an interpleader suit to determine which of the two defendants both of whom claim rent from him is his landlord 48 Ind Cas 733

6 [S 475.] Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving Charge for plaintiff's costs him a charge on the thing claimed or in some other effectual way

### ORDER XXXVI

#### *Special Case*

1 [S 527] (i) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, Power to state case for Courts



and providing that, upon the finding of the Court with respect to such question,—

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them, or
- (b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
- (c) one or more of the parties shall do, or refrain from doing some other particular act specified in the agreement

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby

**Notes**—A special case stated by consent can only be reopened by mutual consent. Rule 1 obliges the parties to state the case in the form of a case for the finding of the Court with respect to such questions the parties shall do or refrain from doing some other particular act specified in the agreement. A 1 R 1930 Bom 232=32 Bom L R 416=45 B 825=125 Ind Cas 897

2 [S 528] Where the agreement is for the delivery of any property, or for the doing or the refraining from doing any particular act the estimated value of the property to be delivered or to which the act specified has reference shall be stated in the agreement

3 [S 529] (1) The agreement if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject matter of which is the same as the amount or value of the subject matter of the agreement

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants, and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented

4. [S 530] Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein

5 [S 531] (1) The case shall be set down for hearing as a suit instituted in the ordinary manner and the provisions of this Code shall apply to such suit so far as the same are applicable

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit—

- (a) that the agreement was duly executed by them,
- (b) that they have a bona fide interest in the question stated therein and
- (c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow

**Notes**—Vide A 1 R 1930 Bom 732=32 Bom L R 41=54 B 825=125 Ind Cas 897

**3 [S 476.]** Where any of the defendants in an interpleader suit is actually suing the plaintiff in respect of the subject matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed, by the Court in which the interpleader suit has been instituted, stay the proceedings as against him, and his costs in the suit so stayed may be provided for in such suit, but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit

**4 [S 473, R S. C O 57, r. 7] (1)** At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit, or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court, finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Notes—Vide 21 Bom L R 918=53 Ind Cas 365

**5 [S 474.]** Nothing in this Order shall be deemed to enable agents to sue their principals or tenants to sue their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords

#### *Illustrations*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A and claims them from B. B cannot institute an interpleader suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

Notes—A tenant cannot bring an interpleader suit to determine which of the two defendants both of whom claim rent from him is his landlord. 48 Ind Cas 733

**6 [S 475.]** Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way

### ORDER XXXVI

#### *Special Case*

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and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them, or

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(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby

**Notes**—A special case stated by consent can only be reopened by mutual consent. Rule 1 obliges the parties to enter a case for the opinion of the Court with respect to such questions the parties shall do or refrain from doing some other particular act specified in the agreement. A I R 1930 Bom 232=32 Bom L R 416=45 B 825=125 Ind Cas 897

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(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit—

(a) that the agreement was duly executed by them,

(b) that they have a *bona fide* interest in the question stated therein and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow

**Notes**—Vide A I R 1930 Bom 732=32 Bom L R 41=54 B 825=125 Ind Cas 897

## ORDER XXXVII

*Summary Procedure on Negotiable Instruments.*

Application of Order 1. [S 538] This Order shall apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay,
- (b) the Chief Court of Lower Burma,
- (c) the Court of the Judicial Commissioner of Sind, and
- (d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882† have been already applied

N B—For local amendment in Lahore vide *infra*

Notes—A  
powers has no

Court exercising Small Cause  
A I R 1928 Mad 517=51  
to this rule by the Lahore High

2 [S 532] (1) All suits upon bills of exchange hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed, but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed

(2) In any case in which the plaintiff and summons are in such forms, respectively, as the defendant shall not appear or defend the suit unless he can and defend, and defence in and to be admitted and the plaintiff shall be entitled to a decree

(a) for the principal sum due on the instrument and for the interest calculated in accordance with the provisions of section 79 or section 80 as the case may be of the Negotiable Instruments Act 1881 up to the date of the institution of the suit, or for the sum mentioned in the summons whichever is less and for interest up to the date of the decree at the same rate or at such other rate as the Court think fit and

(b) for such subsequent interest if any, as the Court may order under section 34 of this Code, and

(c) for such sum for costs as may be prescribed

Provided that, if the plaintiff claims more than such fixed sum for costs the costs shall be ascertained in the ordinary way

(3) A decree passed under this rule may be executed forthwith ‡

N B—For local amendments in Bombay and Rangoon vide *infra*

Notes—Order by  
appealable A I R 1  
no agreement to pay in  
allowed A I R 1933 Mad 299=56 M 348=64 M L J 117

to depend is  
Where there is  
erest should be

\* See Notifications under s. 538 of Act XIV of 1882 in the various Lists of Local Rules and Orders

† XIV of 1882

‡ Substituted by Act XXX of 1906

3. [S. 533.] (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

N B—For local amendment in Bombay, vide *infra*.

Notes—Where defendant fails to show that *hundi* were without consideration, leave to defend should not be granted A I R 1933 Lah 440. The question under rule 3 is whether or not a triable issue is disclosed on affidavit or otherwise. A triable issue means a plea which is at least plausible 98 Ind Cas 72, see also A I R 1928 Cal 123=32 C W N 125, A I R 1929 Mad 841, 82 Ind Cas 1028; 78 Ind Cas 505=46 M L J 255. Where defendant has not obtained leave he cannot apply for payment of decretal amount by instalments A I R 1926 Bom 250=50 B 262, but see A I R 1933 Rang 245.

4 [S 534] After decree the Court may, under special circumstances, set aside the decree and if necessary stay or set aside execution and may give leave to the defendant to appear to the summons and to defend the suit if it seems reasonable to the Court so to do and on such terms as the Court thinks fit.

Notes—Vide 32 M L J 505=58 Ind Cas 481.

5 [535] In any proceeding under this Order the Court may order the bill *hundi* or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all the proceedings shall be stayed until the plaintiff given security for the costs thereof.

6. [S 536] The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7 [S 537.] Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

*Procedure in suits*

## ORDER XXXVIII

### *Arrest and Attachment before Judgment*

#### *Arrest before Judgment.*

1. [Ss 477, 478] Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

Where defendant may be called upon to furnish security for appearance

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(d) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim, and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Scope—Where warrant has been taken under rule 1, amount of security to be furnished is the amount mentioned in the warrant A I R 1929 Cal 732=56 C 700 Court should exercise power under Order 38 after satisfying that plaintiff's case is *prima facie* an unimpeachable one there must be reason to believe real danger that the defendant

the Court A I R 1926 Mad 284=50 Mad 27, see also 4 Lab L J 423 Sale must be in fraud of creditors 36 C W N 46=A I R 1932 Cal 790 Provincial Small Cause Court has no power to attach immovable property before judgment 28 C W N 16 The power of Court to issue simultaneous execution for arrest and attachment is entirely discretionary 84 Ind Cas 270 Attachment before judgment does not rank in the same position as an attachment after judgment 3 Pat 250=83 Ind Cas 413

2 [S 479] (1) Where the defendant fails to show such cause the Court

shall order him either to deposit in Court money or other property sufficient to answer the claim

Security against him or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit

Scope—Security under rule 2 is for defendant's appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in suit If decree has been passed defendant would be bound to appear when called upon between date of decree and satisfaction thereof 70 Ind Cas 129=1 Bur L J 196, see also 115 Ind Cas 129, A I R 1931 Mad 328, A I R 1934 Mad 24 Where money is deposited, money is subject to the lien of the plaintiff 41 M 1053=35 M L J 355=49 Ind Cas 20 Claimant whose objection has been disallowed is at liberty to bring a suit under Order 21, rule 63 within period prescribed by Art 11 of the Limitation Act. 47 Ind. Cas 1000=35 M L J 231

3 [S 480] (1) A

Procedure on application surety to be discharged

any such

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

**Scope**—A surety in case of arrest before judgment can set a discharge under rule 3. But surety for due performance can not be granted discharge. A I R 1929 Lah 435=30 P L R 130, see also A I R 1929 Bom 190=31 Bom I R 225. A surety is not discharged even the judgment-deb or is a judged insolvent. A I R 1928 Rang 184=6 Rang 241. Obligation of surety continues even though it parties to the suit entered into a compromise of the strength of which a decree is passed. 43 M 272=53 Ind Cas 367, see also A I R 1928 Rang 184=6 Rang, 241. Order of arrest under rule 3 is illegal. A I R 1929 Lah 163=30 P L R 147.

4 [S. 481] Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or where a decree is passed against the defendant, until the decree has been satisfied.

*Procedure where defendant fails to furnish security or find fresh security*

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months nor for a longer period than six weeks when the amount or value of the subject matter of the suit does not exceed fifty rupees.

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

#### *Attachment before Judgment*

5 [Ss 483, 484] (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

**Scope**—Under rule 5 attachment before judgment can be of property with or without the jurisdiction of the Court. A I R 1926 Lah 330=27 P L R 144, A I R 1928 Lah 376, A I R 1926 B 278, A I R 1931 Rang 279. Rule does not contemplate attachment of property already disposed of. A I R 1928 Lah 772. The provision of rule 5 can only be invoked if the Court is satisfied that the property is about to be disposed of wholly or partly. A I R 1928 Lah 808, see also A I R 1928 Pat 172, 73 Ind Cas 721=5 Pat L T 124. Surety is not discharged from liability though suit is once dismissed for default, but immediately restored and decreed. 89 Ind Cas. 17=12 O L J 521, see also A I R 1927 Bom 84=51 B 31, but see 82 Ind Cas. 461=47.

13.\* Nothing in this order shall be deemed to empower any Court of Small Causes Court no to Small Causes to make an order for the attachment of immovable property

Notes—Act I of 1926 by which rule 13 was added to order 38 is retrospective in effect A I R 1928 Mad 1173=55 M. L. J 382

### ORDER XXXIX.

#### TEMPERARY INJUNCTIONS AND INTERLOCUTORY ORDERS

##### *Temporary Injunctions*

1. [S 492] Where in any suit it is proved by affidavit or otherwise—  
Cases in which temporary injunction may be granted

- that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
  - that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,
- the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders

N B—For local amendment the Allahabad, Calcutta, C P, Oudh, and Rangoon, vide *infra*

- governed by order XXXIX A I R 1926  
Order 39 applies to liquidation proceedings  
d Cas 310=A I R 1926 Lah 525

effect of injunction is to  
1 which it is issued are  
and (3) balance of con

venience A I R 1950 Sind 287=127 Ind Cas 72  
589 23 C W N 677=46 C 1001 A I R 1926 Cal 837=43 C L J 405, 88  
Ind Cas 581, A I R 1927 Mad 188, A I R 1929 Sind 182, A I R 1928  
Sind 82 110 Ind Cas 621 (Nag), 66 Ind Cas 161, A I R 22 Lah 356, 75  
Ind Cas 859=5 P L T 195 A I R 1926 Pat 318=7 P L T 337, 85 Ind  
Cas 88=6 Lah L J 298, 81 Ind Cas 332=5 Lah L J 262, A I R 1926  
Lah 435 A I R 1930 Lah 108, 31 P L R 587, 89 Ind Cas 321=21 S L R  
170, 70 Ind Cas 864 A I R 1933 Lah 621, A I R 1933 Lah 448, A I R  
1933 Lah 282, A I R 1933 Sind 311

Scope—When conditions in rule 1 do not exist, injunction has no legal effect 51 Ind Cas 108, see also 46 Ind Cas 224=(1918) Pat 303, A I R 1925 Cal 233=81 Ind Cas 2 'Property in dispute in suit' means property which is the subject matter of suit 89 Ind Cas 678 Indian Courts can grant temporary injunctions in a mandatory form 41 M 208=6 L W 140=33 M L J 448=41 Ind Cas 384, A I R 1926 Sind 201 In a case under Order 39 rule 1, Court had not order petitioner to furnish security to compensate opposite party A I R 1934 Lah 26 Injunction to restrain should not be ordinarily granted A I R 1933 Mad 103 Whether injunction has been obtained without reasonable and probable cause is a

granting injunction  
53 Where dis

should not be  
some cases it is difficult for court  
to extent prejudicing case A I R  
conditions applicable to perpetual  
86=1932 A L J 803 Court has  
of property to which *prima facie*



company is entitled 34 P L R 388=A I R 1932 Lah 437=14 Lah 68 High Court has no power to grant injunction under Order 39 in appeal or revision from mofussal courts A I R 1933 Mad 500=56 M 563=64 M L J 112 Temporary injunction against President Legislative Assembly restraining him from proceeding =56 Bom 254=34 Bom ct suitors resorting to it also A I R 1928 Mad injunction on parties in N 291=54 C L J 317 282 Where demolition ratory injunction should ing before High Court P L R 550 Temporary

injunction if 'until disposal ends with suit, and if 'until further orders' on earlier date on which further orders may be passed A I R 1930 All 387, see also 76 Ind Cas 126 Injunction to stop sale by creditors can be granted if claim is bona to suit A I y to whom it A L J 519 ned A I R nent injunction ct of suit 43

Ind Cas 24 Proof of waste is sufficient ground for obtaining injunction and appointing Receiver 53 Ind Cas 760=10 L W 551 It is general principle restricting grant of temporary injunctions that equally efficacious relief should not be obtainable by any other usual remedy A I R 1921 Nag 90=4 N L R 207 One subordinate court has no power to restrain action of another subordinate court co-ordinate to itself 2 P L T 716-63 I I Cas 465 Order to keep accounts and prepare inventory comes under this rule A I R 1923 Lah 48=72 Ind Cas 569 Temporary injunction will not be allowed if permanent injunction cannot be granted 73 Ind Cas 294=2 Pat L R 17 Where a person is beyond jurisdiction injunction can be granted against him if he has submitted to jurisdiction A I R 1926 Pat 171=6 Pat L T 540 Sale is not void where there is an injunction against alienation A I R 1930 Lah 858, see also A I R 1930 All 387, A I R 1929 Oudh 255, A I R 1928 Lah 639

2 [S 493] (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or to restrain y complained of the same

contract or relating to the same property or right

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit

any such terms, the Court the person guilty of such also order such person to be exceeding six months, unless in

remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto

Scope—Temporary mandatory injunctions are not covered by rule 2 but can be issued under s 151 A I R 1927 Mad 201=24 L W 854 In absence of strong proof injunction will not be issued for stopping shareholder's meeting A I R 1926 Sind 295 No injunction can be issued in suit for declaration that a candidate is

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- the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders

N B—For local amendment the Allahabad, Calcutta, C P, Oudh, and Rangoon, vide *infra*

XXXIX A I R 1926  
liquidation proceedings  
2 1926 Lah 525

effect of injunction is to  
1 which it is issued are  
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venience A I R 1930 Sind 287=127 Ind Cas 699 see also A I R 1926 Lah 589 23 C W N 677=46 C 1001 A I R 1926 Cal 837=43 C L J 405, 88 Ind Cas 581, A I R 1927 Mad 188 A I R 1929 Sind 182 A I R 1928 Sind 82 110 Ind Cas 621 (Nag) 66 Ind Cas 161, A I R 22 Lah 356, 75 Ind Cas 859=5 P L T 195 A I R 1926 Pat 318=7 P L T 337 85 Ind Cas 88-61 ab L J 298, 81 Ind Cas 332=5 Lah L J 263, A I R 1926 Lah 435 A I R 1930 Lah 108, 31 P L R 587, 89 Ind Cas 321=21 S I R 170, 70 Ind Cas 864 A I R 1933 Lah 621, A I R 1933 Lah 448, A I R 1933 Lah 282, A I R 1933 Sind 311

Scope—When conditions in rule, 1 do not exist, injunction has no legal effect 51 Ind Cas 108, see also 46 Ind Cas 224=(1918) Pat 303, A I R 1925 Cal 233-81 Ind Cas 2 'Property in dispute in suit' means property which is the subject matter of suit 89 Ind Cas 678 Indian Courts can grant temporary injunctions in a mandatory form 41 M 208=6 L W 140=33 M L J 448=41 Ind Cas 384, A I R 1926 Sind 201 In a case under Order 39 rule 1, Court had not order petitioner to furnish security to compensate opposite party A I R 1934 Lah 26 Injunction to restrain should not be ordinarily granted A I R 1933 Mad 103 Whether injunction has been obtained without reasonable and probable cause is a finding of fact A I R 1933 Lah 263=34 P L R 281 In granting injunction balance of convenience should be considered A I R 1933 Nag 153 Where dis  
id not be  
for court  
A I R

1931 Nag 106 In cases of temporary injunction, conditions applicable to perpetual injunctions are to be applied A I R 1933 All 86=1932 A L J 803 Court has summary power to pass *interim* order in respect of property to which *prima facie*



not cl

Court

A L J

803=A I R 1933 All 86, see also A I R 1933 Lah 1046 Delay is sufficient reason for refusing injunction 14 Lah 330=A I R 1933 Lah 203 Court should not pass order frivolously and vexatiously *Ibid* Where breach has already been committed, injunction though cannot grant it in its inherent powers 34 compensation in damages is possible, order restraining minor's marriage with unsuitable person is competent A I R 1933 Nag 62=28 N L R 332 In case of injunction restraining import and sale of goods as infringing trade mark fraudulent misrepresentation is not essential A I R 1932 Sind 84=26 S L R 51 Party not carrying on business in British India should be put to terms in granting injunction 26 S L R 51. Person disobeying injunction restraining alienation of property pending decision of appeal must be punished A I R 1931 Lah 201=12 Lah L J 309

Under rule 2

5 A 399=1933

1932 A L J

Delay is sufficient

Court should

Where breach has already been

Court can

73 Where

id Interim

Fact that suit would be infructuous if no temporary injunction is issued is not 201. Injunction can be passed of Court A I R 1934 Cal 402 n with impunity A I R 1931 Lah 201=12 Lah L J 309, see also A I R 1920 Mad 574=50 M L J 401

3. [S 494] The Court shall in all cases, except where it appears that the object of granting the injunction would be

Before granting injunction the object of granting the injunction would be  
Court to direct notice to n injunc  
opposite party for the

Scope—Court should issue injunction without notice if object of injunction is likely to be defeated by delay 13 Bur L T 227=64 Ind Cas 534 Order merely ordering notice is not appealable A I R 1924 Mad 857

4 [S 496] Any order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such order

Scope—Rule 4 is intended to cover two cases viz. (1) order afterwards becoming unnecessary harsh or unworkable or (2) when urgent order *ex parte* is passed under rule 3 A I R 1929 Mad 803

5 [S 495] An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain

Notes—This rule applies to registered or unincorporated bodies or associations 9 Bur L T 247=38 Ind Cas 572

### Interlocutory Orders

6 [S. 498] The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once

Scope—Rule does not authorise Court to send commissioner to sell crops A I R 1930 Mad 224 Interlocutory order without jurisdiction can be attacked in revision A I R 1932 Lah 51

Detention, preservation, inspection, etc of subject matter of suit

7 [S 499] (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

- (a) make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein,
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, for the purpose of obtaining

(2) . . . . . *exly, mutatis mutandis*,  
to persons authorized to enter under this rule

Notes.—Where the question is whether certain structure is old or new commission must be issued under this rule 37 C W N 143 Inventory of property can be made 52 Ind Cas 33 As regards order of production, *vile*, 30 C L J 64=52 Ind Cas 4

8 [S 500] (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit  
Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance

Scope.—Improper delay deprives right of interlocutory judgment A I R 1933 Sind 76=76 S L R 335

9 [S 501] Where land paying revenue to Government or a tenure liable to sale is the subject matter of a suit, and when party may be put in immediate possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure,

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit

10 [S 502] Where the subject matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court

Notes.—Admission under Order XII, r 6 if insufficient it is also insufficient under Order 39 rule 10 A I R 1927 Sind 25=97 Ind Cas 623

## ORDER XL

### *Appointment of Receivers*

1 [S. 503] (1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree,

Under rule 2  
599=1933  
332 A. L. J.  
803= A I R 1933 All 86, see also A I R 1933 Lah 1046 Delay is sufficient reason for refusing injunction 14 I R 330=A I R 1933 Lah 203 Court should not pass order frivolously and vexatiously *Ibid* Where breach has already been committed, injunction though cannot be granted under Order 39 rule 2, Court can grant it in its inherent powers 34 P L R 51=A I R 1933 Lah 73 Where compensation in damages is possible, injunction should not be granted *Ibid* Interim order restraining minor's marriage with unsuitable person is competent A I R 1933 Nag 62=28 N L R 332 In case of injunction restraining import and sale of goods as infringing trade mark fraudulent misrepresentation is not essential A I R 1932 Sind 84=26 S L R 51 Party not carrying on business in British India should be put to terms in granting injunction 26 S L R 51 Person disobeying injunction restraining alienation of property pending decision of appeal must be punished. A I R 1931 Lah 201=12 Lah L J 309

Fact that suit would be infructuous if no temporary injunction is issued is not sufficient for issuing injunction A I R 1933 Lah 203 Injunction can be passed by consent of parties But it must be by Order of Court A I R 1934 Cal 402 Persons should not be allowed to disobey injunction with impunity A I R 1931 Lah 201=12 Lah L J 309 see also A I R 1926 Mad 574=50 M L J 401

3. [S 494] The Court shall in all cases, except where it appears that the object of granting the injunction would be before granting injunction the object of granting the injunction would be Court to direct notice to the opposite party for the

Scope—Court should issue injunction without notice if object of injunction is likely to be defeated by delay 13 Bur L T 227=64 Ind Cas 534 Order merely ordering notice is not appealable A I R 1924 Mad 857

4. [S 496] Any order for an injunction may be discharged, or varied Order for injunction may be or set aside by the Court on application made discharged varied or set thereto by any party dissatisfied with such aside order

Scope—Rule 4 is intended to cover two cases viz (1) order afterwards becoming unnecessary harsh or unworkable or (2) when urgent order *ex parte* is passed under rule 3 A I R 1929 Mad 803

5. [S 495] An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain Injunct on to corporation on the corporation itself, but also on all binding on its officers members and officers of the corporation whose

Notes—This rule applies to registered or unincorporated bodies or associations 9 Bur L T 247=38 Ind Cas 572

### Interlocutory Orders

6. [S 498] The Court may, on the application of any party to a suit, Power to order interim sale order the sale, by any person named in such as it thinks fit, of any movable property, being the subject matter of such order, and in such manner and on such terms suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once

Scope—Rule does not authorise Court to send commissioner to sell crops A I R 1930 Mad 224 Interlocutory order without jurisdiction can be attacked in revision A I R 1932 Lah 51

Detention, preservation, inspection, etc of subject matter of suit 7. [S 499] (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

- (a) make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein ;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit ; and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

**Notes**—Where the question is whether certain structure is old or new commission must be issued under this rule 37 C W N 143 Inventory of property can be made. 52 Ind Cas 33 As regards order of production, *vide*, 30 C L J 64=52 Ind Cas 4.

**8 [S 500.]** (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance

**Scope**—Improper delay deprives right of interlocutory injunction A I R 1933 Sind 26=26 S L R 33,

**9 [S 501]** Where land paying revenue to Government, or a tenure liable to sale, is the subject matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure,

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit

**10. [S 502]** Where the subject matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court.

**Notes**—Admission under Order XII, r 6 if insufficient it is also insufficient under Order 39 rule 10 A I R 1927 Sind 25=97 Ind Cas 623

## ORDER XL

### *Appointment of Receivers*

**1 [S. 503] (1)** Where it appears to the Court to be just and convenient, the Court may by order—

Appointment of receivers

(a) appoint a receiver of any property, whether before or after decree

- (b) remove any person from the possession or custody of the property,
- (c) commit the same to the possession, custody or management of the receiver, and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove

**Receiver**—Receiver is not a judicial officer and cannot act as Judge in Court. A I R 1929 Bom 478=31 Bom L R 1081. Remedy is derived from English practice A I R 1927 All 419. Court can order *suo motu* even in declaratory suit 67 Ind Cas 383. Court has summary power to pass order in respect of property to which *prima facie* company is entitled A I R 1933 Lah 437. Receiver is a public officer 35 C W N 161=58 C 850, 57 C 1127.

**When can be appointed**—Receiver can be appointed when it is just and convenient A I R 1932 Mad 193=61 M L J 904. There must be danger of waste or destruction of property A I R 1933 Sind 231, see also 34 C W N 440, A I R 1929 Lah 497, A I R 1928 Nag 93, 45 Ind Cas 224, 48 Ind Cas 152, 44 B 727=57 Ind Cas 553, 46 M L J 133=79 Ind Cas, 561. Where there are rival claimants appointment of Receiver is proper A I R 1927 Pat 220=8 P L T 455. Receiver cannot be appointed to ascertain the real income of property 89 Ind Cas 943. Omission by executor to submit inventory and account is good ground for appointing Receiver A I R 1927 Rang 135=6 Bur L J 13. Even in simple claim for money Receiver can be appointed A I R 1929 Mad 184, 52 M 938. An executing Court can appoint a Receiver for realisation of property out of jurisdiction 61 Ind Cas 753. As regards Court's power to appoint Receiver in other cases see 55 C 249—A I R 1928 Cal 256, A I R 1927 Lah 65, 90 I L Cas 411=26 I L R 576, 57 C 513=88 Ind Cas 826, 30 C W N 818 (1 C), 47 A 385=52 I A 26, 78 Ind Cas 84=18 S L R 303, 73 Ind Cas 600, 5 Lah L J 533. Appointment of Receiver for equitable execution by Calcutta High Court is good though colliery was situate outside limits of its jurisdiction A I R 1930 Cal 502, 57 C 964=34 C W N 238.

1 Receiver is appointed by Court, he takes Court 71 Ind Cas 293=43 M L J 211. Property of the judgment debtor does not L T 628. Property in possession of a cannot be seized under a writ of attachment 68 Ind Cas 826=43 M L J 211=47 M 47, see also A I R 1930 Mad 4, 79

Ind Cas 612. The rule that possession of a Receiver does not apply to third parties until a Receiver has been actually appointed and is in actual possession 27 C W N 38=37 C L J 265.

**Application for appointment**—Application to be made in open Court A I R 1927 Bom 256=29 Bom L R 214. Application should be made promptly A I R 1926 Cal 1092. Notice to opposite party is not necessary. The main object is to preserve property and the court is to see that 71 Ind Cas 743, see also 67 Ind Cas 606, 43 C 986=20 C W N 1009.

**Discretion of Court**—Court has wide discretion but should be cautiously exercised A I R 1927 Rang 135=6 Bur L J 13, 26 P L R 228=88 Ind Cas 562, 28 C W N 86=77 Ind Cas 783, 61 Ind Cas 112, 55 Ind Cas 50, 76



1 & Cas 503, 23 C L J 57=34 Ind Cas 633, 36 C W N 62 (P C)=A I R 1932 P C 171, A I R 1932 Lah 52, A I R 1933 Kan 94 Two Receivers by 2 Different Courts cannot be appointed for same property A I R 1933 Lah 671

**Discharge of Receiver**—His function is continue until discharged 83 Ind Cas 932=6 Lah 442, see also 61 Ind Cas 562=13 L W 367 Neither a decree nor the pendency of the appeal against that decree will put an end to the authority of the Receiver appointed to collect rents 33 Ind Cas 67, see also 20 C W N 79, 38 Ind Cas 405=5 Pat L J 513, A I R 1929 Bom 279=31 Bom L R 320 Court appointing a Receiver can also dismiss him A I R 1931 All 72, 75 Ind Cas 855, but see 31 Ind Cas 903 A Receiver should be discharged if he is found to be incapable A I R 1929 Pat 114

### Who can be appoi

Lah 72 But for such

1926 Cal 53=53 C

53 C 319=A I R 1926 Cal 593, 28 C W N 86 A person who is guardian of an incapacitated defendant in a suit is not always justified to be a Receiver 35 Ind Cas 939=4 L W 285 The appointment of a Receiver lies in the discretion of the Court 6 Lah 74=83 Ind Cas 562 Creditors wishes are entitled to great weight in appointing Receiver A I R 1929 Pat 114

**Powers of Receiver**—Receiver is the representative and officer of Court He is the hand of Court A I R 1928 Cal 402 A Receiver has no more but expressly granted powers Whatever power he exercises are delegated powers of the Court which it expressly gives to him 33 Ind Cas 67, see also 31 Ind Cas 630=50 I A 77=50 C 338=28 C W N 1 (I C) 36 C W N 413 6 Bom L R 1153 (I C) The possession of the Receiver although it is not the possession of the Court is also the possession of all the parties to the suit according to their title (1918) M W N 683=4 Ind Cas 89 Person appointed as officer of Court can not pledge credit of individual party A I R 1929 Cal 654 Receiver continues till discharge though suit is dismissed in appeal A I R 1930 Mad 67=52 M 967=57 M L J 658 A Receiver can bring a suit for recovery of rent which accused

A private

known to

holds the app

of his appointment 30 M L J 456=32 Ind Cas 207 A Receiver appointed to collect outstandings has power to file suits though the suit in which he was appointed has terminated in a decree or an appeal is pending from that decree

not necessary for giving notice to quit occupation when the Receiver is given full 32 Ind Cas 92 Position and duties of common of Receiver of property appointed by Court

are analogous 59 C 961=A I R 1932 Cal 275

**Prima facie case**—Plaintiff must show *prima facie* good title and strong case for appointment of Receiver A I R 1928 Mad 813=106 Ind Cas 167, A I R 1926 Sind 83, A I R 1926 Sind 37=70 S L R 201=89 Ind Cas 104, 3 P L T 466=68 Ind Cas 656, 43 Ind Cas 550, 69 Ind Cas 361

### Meaning

'Receiver'

sub-section (2)

of it prior to the passing of an order appointing a Receiver 53 C 319=A I R 1926 Cal 593

, Receiver should not be appointed on

ang 271 Receiver can be appointed

1927 Sind 230, see also A I R

1929 Lah 780, A I R 1929 Mad 138, A I R 1927 Sind 230, A I R 1926 Cal 1006 A I R 1926 Cal 978, 87 Ind Cas 375, 85 Ind Cas 737, 56 Ind Cas 839=47 C 418, 43 Ind Cas 533, 32 Ind Cas 691 Receiver can be appointed in suit by simple mortgagee A I R 1933 Mad 570 (F B)=55 M L J 222, A I R 1933 Mad 447, but see 13 P L T 525=A I R 1932 Pat 360 Equitable mortgagee is entitled to appointment of receiver A I R 1932 Lah 82 Receiver in

- (b) remove any person from the possession or custody of the property ,  
 (c) commit the same to the possession, custody or management of the receiver , and  
 (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove

which is the same as in the case of a receiver appointed by the Court under the provisions of the Code of Civil Procedure, 1908, 35 C W N 161=58 C 850, 57 C 1127

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 1 L J 904 There must be danger of  
 333 Sind 231, see also 34 C W N 440,  
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 Receiver A I R 1927 Rang  
 y Receiver can be appointed  
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 Cas 753 As regards Courts  
 power to appoint Receiver in other cases V de 55 C 249=A I R 1928 Cal 256  
 A I R 1927 Lah 65 90 Ind Cas 511=26 P L R 576 52 C 513=88 Ind Cas  
 826 30 C W N 818 (P C) 47 A 385=52 I A 262 78 Ind Cas 84=18 S L R  
 303 73 Ind Cas 600 5 Lah L J 533 Appointment of Receiver for equitable  
 execution by Calcutta High Court is good though colliery was situate outside  
 limits of its jurisdiction A I R 1930 Cal 502=57 C 964=34 C W N 238

**Effect of appointment**—Where a Receiver is appointed by Court, he takes possession of the property on behalf of Court 71 Ind Cas 291=43 M L J 211

debtor does not  
 possession of a  
 right of attach  
 the property  
 1930 Mad 4, 79  
 Ind Cas, 632, 71 Ind  
 A I R 1933 Lah 671  
 1929 Mad 184=52 M 93  
 ment of Receiver A I R 1927 Pat 397 The rule that possession of a Receiver  
 may not be disturbed without leave does not apply to third parties until a Receiver  
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 J 265

**Application for appointment**—Application to be made in open Court A I R 1927 Bom 256=29 Bom L R 214 Application should be made promptly A I R 1926 Cal 1092 Notice to opposite party is not necessary The main object is to preserve property and the court is to see that 71 Ind Cas 743, see also 67 Ind Cas 606, 43 C 986=20 C W N 1009

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Ind. Cas. 583, 23 C L J 567=34 Ind Cas 623, 56 C W N 882 (P C)=A I R 1932 P C 191, A I R 1932 Lah 82, A I R 1933 Rang 94 Two Receivers by different Courts can not be appointed for same property A I R 1933 Lah 671

**Discharge of Receiver**—His functions continue until discharge 89 Ind Cas 932=6 Lah 442, see also 61 Ind Cas 562=13 L W 367 Neither a decree nor the pendency of the appeal against that decree will put an end to the authority of the Receiver appointed also 20 C W N 789, 58 Ind Cas 405=51 =31 Bom L R 320 Court appointing a Receiver 31 All 72, 75 Ind Cas 858; but see 31 Ind Cas 903 A Receiver should be discharged if he is found to be incapable. A I R 1929 Pat 114

**Who can be appointed**—Party or his agent can be appointed A I R 1929 Lah 709 But for such appointment consent of the other party is required A I R 1926 Cal 593=53 C 319, A 53 C 319=A I R 1926 Cal 593 an incapacitated defendant in Ind Cas 937=4 L W 285 of the Court 6 Lah 74=83 Ind Cas 562 Creditor's wishes are entitled to great weight in appointing Receiver A I R 1929 Pat 114

**Powers of Receiver**—Receiver is the representative and officer of Court He is the hand of Court A I R 1928 Cal 402 A Receiver has no but expressly granted powers. Whatever power he exercises are delegated powers of the Court which it expressly gives to him 82 Ind Cas 93 see also 1 Ind Cas 650=50 I A 77=50 C 338=26 C W N 1 (P C) C W N 413=6 Bom L R 1153 (P C) The possession of the Receiver although in a sense the possession of the Court is also the possession of all the parties to the suit according to their title (1918) M W N 683=49 Ind Cas 89 Person appointed as officer of Court can not pledge credit of individuality A I R 1929 Cal 654 Receiver continues till discharge though suit is dismissed in appeal A I R 1930 Mad 67=52 M 967=57 M L J 658 accused one prior to his A private Receiver deriving known in India 40 Ind Cas 605 of his appointment, subject to any subsequent change by the Court under which he holds the appointment 30 M L J 456=32 Ind Cas 207 A Receiver appointed to collect outstandings has power to file suits though the suit in which he was appointed has terminated in a decree or an appeal is pending from that decree 33 Ind Cas 69 Special leave of Court is not necessary for giving notice to quit or to sue for compensation for use and occupation when the Receiver is given full powers 10 Bur L T 244=38 Ind Cas 92 Position and duties of common manager of estate appointed by Court and of Receiver of property appointed by Court are analogous 59 C 961=A I R 1932 Cal 275

**Prima facie case**—Plaintiff must show *prima facie* good title and strong case for appointment of Receiver A I R 1928 Mad 813=106 Ind Cas 167, A I R 1926 Sind 83, A I R 1926 Sind 37=70 S L R 201=89 Ind Cas 104, 3 P L T 466=68 Ind Cas 656, 43 Ind Cas 550, 69 Ind, Cas 361

**Meaning of words**—Person in clause (b) denotes a person other than a "Receiver" A I R 1924 Mad 614=46 M L J 196=78 Ind Cas 625 Person in sub-section (2) denotes persons intrusted in the property and in possession or custody of it prior to the passing of an order appointing a Receiver 53 C 319=A I R 1926 Cal 593

, Receiver should not be appointed on ang 271 Receiver can be appointed

1927 Sind 230, see also A I R

1929 Lah 780, A I R 1929 Mad 138, A I R 1927 Sind 230, A I R 1926 Cal 1006, A I R 1926 Cal 978, 87 Ind Cas 375, 85 Ind Cas 737, 56 Ind Cas 839=47 C 418, 43 Ind Cas 533, 32 Ind Cas 691 Receiver can be appointed in suit by simple mortgagee A I R 1933 Mad 570 (P B)=55 M L J 222, A I R 1933 Mad 447, but see 13 P L T 525=A I R 1932 Pat 360 Equitable mortgagee is entitled to appointment of receiver A I R 1932 Lah 82 Receiver in

mortgage suit must make over income of the property towards mortgage due in preference to any other 54 M 365=A I R 1931 Mad 626 Receiver can be appointed after appointing a Receiver in execution of the suit 4 P . . . . t a party to the suit 4 P . . . . s asked to be appointed in a Receiver of the mortgage 23 C L J 440=34 Ind Cas 405

**Partition suit**—The Court can appoint a Receiver in a pending partition suit between co-owners or co sharers for the protection of the property in suit or the prevention of an injury to such property A I R 1926 Sind 37=20 S L R 201=89 Ind Cas 104 Plaintiff must show *prima facie* care and danger of waste 72 Ind Cas 569 The Court should appoint a Receiver, in a partition suit between members of a joint family only by consent and especially where the family property consists of land 55 Ind Cas 827=22 Bom L R 217, see also 15 Ind. Cas 93=3 Pat. 964

**Trust**—When a Receiver can be appointed vide 31 C W N 1021 P C, A I R 1927 Sind 237, A I R 1926 Cal 1092 29 C W N 836, 68 Ind Cas 565

**Suit or against Receiver**—Leave of Court essential for Receiver to sue or be sued A I R 1928 Rang 175=6 Rang 268, see also A I R 1928 Pat 321, A I R 1927 Pat 297, 73 Ind Cas 456=44 M L J 427, 76 Ind Cas 441, 69 Ind Cas 393

**Appeal**—No appeal lies from order removing a receiver from office 1931 A L J 13, see also A I R 1933 Pat 293 Order giving receiver directions to restore property is not appealable A I R 1933 Lah 216 Order holding that the case is one in which a receiver should be appointed is appealable A I R 1932 Pat 360

2 [S 503, Cl. (d)] The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver

**Remuneration** N B—For local amendment in Rangoon, vide *infra*

**Notes**—Vide A I R 1931 Mad 36=59 M L J 833 A I R 1931 Mad 500 91 Ind Cas 54 390 Ind Cas 492

3 [S 503 second part] Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property,
- (b) submit his accounts at such periods and in such form as the Court directs,
- (c) pay the amount due from him as the Court directs, and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence

**Notes**—A suit lies against receiver for accounts 53 C 881=A I R 1927 Cal 1175 see also 40 C L J 28=32 Ind Cas 419 Receiver is responsible to Court A I R 1931 Mad 760, see also 54 Ind Cas 207

**Enforcement of receiver's duties** 4 [New] Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
  - (b) fails to pay the amount due from him as the Court directs, or
  - (c) occasions loss to the property by his wilful default or gross negligence,
- the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver

N B—For local amendment in Madras, vide *infra*

Notes.—A. I R 1931 Mad 760; 55 Ind Cas 15, 55 Ind Cas 246

5. [S. 504] Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

## ORDER XLI

### *Appeals from Original Decrets.*

1. [S. 541.] (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

N B—For local amendment in Lahore, Madras and Rangoon vide *infra*

Notes.—Copy means copy only certified A. I R 1923 Lah 771 Copy of the decree should be produced A. I R 1930 Rang 197 A copy of final judgment should only be filed A. I R 1931 Lah 202 Judgment means the sentence of the final adjudication of the rights of parties A. I R 1929 Lah 481 Time for obtaining a copy of the decree and judgment should be excluded 33 C W N 84, P. C. Court can dispense with filing copy of judgment A. I R 1923 N 131

2 [S. 542] The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule.

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Notes.—Points not raised in memorandum of appeal should not be gone into 33 C W N 559, see also A. I R 1929 Lah 548, A. I R 1929 Mad 573, A. I R 1926 Lah 11, 54 Ind Cas 651, 68 Ind Cas 227 New ground can be heard if evidence is on record or when the ground raises legal questions 11 L W 611=57 Ind Cas 800, see also A. I R 1931 All 556 One appellant dying other can rely on his grounds 33 C W N 150 Additional grounds can be filed after period of limitation with Court's permission A. I R 1931 Rang 314.

3. [S. 543] (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.



6 [S 546] (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of

Notes—Rule 6 applies only to parties to suit 34 Bom L R 379 Application under rule 6 must be made to executing Court A I R 1932 Lah 30 Order accepting or rejecting security is not appealable A I R 1932 Lah 120 Court must stay sale on proper condition as to security etc 75 Ind Cas 515, see also 75 Ind Cas 789, 75 Ind Cas 1001, 41 M 813, A I R 1929 Lah 68, but see 77 Ind Cas 116 Security bond does not become operative until accepted by Court A I R 1934 Lah 138 F B)

7 [S 547] No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or where the Government has under taken the defence of the suit from any public officer sued in respect of an act alleged to be done by him in his official capacity

8 [New] The powers conferred by rule, 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree

#### *Procedure on admission of appeal*

9 [S 548] (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose

Register of appeal

(2) Such book shall be called the Register of Appeals

10 [S 549] (1) The appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal

N B—For local amendment in Allahabad vide *infra*

N B—For local amendment in Allahabad Bombay and Oudh, vide *infra*

Notes—Misdescription of respondent can be amended 21 C W N. 774  
Time barred appeal cannot be rejected 60 Ind Cas 493 Amendment cannot be  
allowed after great delay A I R 1926 Lah 626 Insufficiently stamped appeal  
can be rejected A I R 1929 All 75

4 [S 544] Where there are more plaintiffs or more defendants than  
one in a suit, and the decree appealed from

One of several plaintiffs or  
defendants may obtain rever  
sal of whole decree where  
it proceeds on ground com  
mon to all

proceeds on any ground common to all the  
plaintiffs or to all the defendants, any one of  
the plaintiffs or of the defendants may appeal  
from the whole decree, and thereupon the

appellate Court may reverse or vary the decree  
in favour of all the plaintiffs or defendants, as the case may be

Notes—Rule 4 does not apply when one of the appellants dies A I R 1934  
Lah 206 In appeal by one, decree in favour of all can be passed A I R 1929  
All 393 see also A I R 1929 Mad 230, 37 C W N 504, A I R 1932 All 710,  
Whether appellant can represent defendant not filing written statement is doubtful

ies is brought

A I R 1926

A I R 1926

Ind Cas 184

1 Cas 973,

23 C W N 372, 60 Ind Cas 460, 35 Ind Cas 547

#### *Stay of proceedings and of execution*

5 [S 545] (1) An appeal shall not operate as a stay of proceedings

under a decree or order appealed from except  
Stay by appellate Court so far as the appellate Court may order, nor  
shall execution of a decree be stayed by reason only of an appeal having  
been preferred from the decree but the appellate Court may for sufficient  
cause order stay of execution of such decree

(2) Where an application is made for stay of execution of an appealable  
decree before the expiration of the time  
Stay by Court which passed allowed for appealing therefrom, the Court  
the decree which passed the decree may on sufficient cause  
being shown order the execution to be stayed

(3) No order for stay of execution shall be made under sub rule (1) or  
sub rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execu  
tion unless the order is made,

(b) that the application has been made without unreasonable delay;  
and

(c) that security has been given by the applicant for the due perfor  
mance of such decree or order as may ultimately be binding  
upon him

(4) Notwithstanding anything contained in sub rule (3), the Court may  
make an *ex parte* order for stay of execution pending the hearing of the  
application

227  
Rul  
to execution but applies to final decree proceeding also A I R 1930 Pat  
Revenue Court A I R 1931 All 57  
229 Lah 167 Rule 5 is not confined  
see also 31 P L R 216 An appellant before filing an appeal can obtain an order  
for stay 23 C L J 310 Stay of execution is effective when communicated to the  
Lower Court 43 Ind Cas 214, 41 Ind Cas 752 A stay of execution cannot be  
granted where judgment debtor does not file security 2 Lah L J 330 The exe  
cution of a decree for possession of property, movable or immovable, should not  
be stayed unless all the conditions of rule 5 (3) are satisfied 61 Ind Cas 827



6. [S 546.] (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellants, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such decree or order of the Appellate Court which . . .

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

Notes—Rule 6 applies only to parties to suit 34 Bom L R 379 Application under rule 6 must be made to executing Court A I R 1932 Lah 30 Order accepting or rejecting security is not appealable A I R 1932 Lah 120 Court must stay sale on proper condition as to security etc 75 Ind Cas 515, see also 75 Ind Cas 789, 75 Ind Cas 1001, 41 M 813, A I R 1929 Lah 68, but see 77 Ind Cas 116 Security bond does not become operative until accepted by Court A I R 1934 Lah 138 F B)

7. [S 547] No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or, where the Government has under taken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity

8 [New] The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree

### *Procedure on admission of appeal*

9. [S 548] (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose

Registry of memorandum of appeal

Register of appeal

(2) Such book shall be called the Register of Appeals

10 [S. 549] (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both .

Appellate Court may require appellant to furnish security for costs

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immovable property within British India other than the property (if any) to which the appeal relates

Where appellant resides out of British India

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal

N B—For local amendment in Allahabad vide *infra*

**Notes**—Application for security for costs must be made promptly A I R 1930 520. Poverty alone is not sufficient A I R 1930 Lah 619. Non compliance entails dismissal A I R 1930 Mad 355. Order is discretionary. A. I. R 1930 Nag 28. Applies to Letters Patent appeal 25 C W. N 557 (P. C.) Provision of subsection (2) are mandatory *Ibid*. Does not apply to pauper appeals. 42 B 5.

**11. [S. 551] (1)** The Appellate Court, after sending for the record if it

Power to dismiss appeal without sending notice to Lower Court

thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

No judgment A I R

is allowed where a security appeal 918=36 C L J 76. see also 21 C W N 430.

53 A 528. No revision lies A I R 1934 Cal 26. Appeal can be admitted in part and dismissed in part A I R 1934 Bom 207 (F B).

33 Ind. Cas 666. Court must write 501, see also 43 C L J. 499, but see decree 30 C W. N. 334. No revision dismissed under rule 11. 27 C W N, Judgment should comply with rule 31.

**12 [S. 552] (1)** Unless the Appellate Court dismissed the appeal

Day for hearing appeal

under rule 11, it shall fix a day for hearing the appeal

(2) Such day shall be fixed with reference of the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Appellate Court to give notice to Court whose decree appealed from

13 [S. 550] (1) Where the appeal is not dismissed under rule 11, the appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made, and copies of such papers shall be made at the expense of, and given to the applicant.

**14 [S. 533] (1)** Notice of the day fixed under rule 12 shall be affixed in the Appellate Court house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and

Publication and service of notice of day for hearing appeal.

shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the Appellate Court may itself appeal is preferred the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to

N B—For local amendment in Allahabad Calcutta, C P Madras, Oudh Patna and Rangoon vide *infra*

Notes—Notice should specify date 36 Ind Cas 67 Must be served on respondent. 41 Ind Cas 839, see also 50 B 815 Substituted service is sufficient 69 Ind Cas 667

15 [S 554] The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*

Contents of notice

### *Procedure on hearing.*

16. [S 555] (1) On the day fixed, or on any other day to which the hearing may be adjourned the appellant shall be heard in support of the appeal

Right to begin

(2) The Court shall then if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply

Notes—Vile A I R 1922 Nag 89-11 N L J 238 23 Bom L R 738 63 Ind Cas 945

17 [S 556] Where on the day fixed or on any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Dismissal of appeal for appellant's defaults

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*

Hearing appeal *ex parte*

Dismissed for default—For cases vide 52 A 536 56 C 412 11 N L J 238, 1 Pat L J 65, 39 A 393 47 Ind Cas 691, 5 Pat L J 17, 62 Ind Cas 57, 45 M L J 813

Ex parte decree—L R 1 A 126

18 [S 557] Where on the day fixed, or on any other day to which the hearing may be adjourned it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit within the period fixed the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs

Provided that no such order shall be made although the notice has not been served upon the respondent if on any such day the respondent appears when the appeal is called on for hearing

N B—For local amendment in Madras vide *infra*

Notes—8 Rang 380—A I R 1930 Rang 278, 6, Ind Cas 49 52 Ind Cas 179.

19 [S 558] Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the readmission of the appeal, and, where it is prov

Re-admission of appeal dismissed for default

that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit

N B—For local amendments in Madras, vide *infra*

Notes—Appeal can be re-admitted for sufficient cause 82 Ind Cas 330 Mere illness of party is not sufficient cause 18 Ind Cas 362 Absence of knowledge of date is A I R 1927 Lah 375, A I R 1926 Mad 1210 Engagement of pleader in another Court is 44 C L J 165 Late appearance of pleader owing to rain is not A I R 1926 Cal 1152 Laches of advocate is not A I R 1926 Rang 50 A I R 1925 Lah 617, 71 Ind Cas 813, 68 Ind Cas 785, 51 Ind Cas 607 Where date of the case is not communicated it is 43 Ind Cas 925, 32 Ind Cas 936, A I R 1933 Pat 128 A I R 1933 Lah 642, A I R 1933 Lah 1043

20 [S 559] Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent

Notes—Court should implead proper party A I R 1930 Lah 295 This rule is permissive 14 R D 88 (B R) Person not party to original suit cannot be added 53 B 598 Where party is left out owing to bona fide mistake he should be made party 56 M L J 315 see also 32 C W N 281 P C The law of limitation does not affect the powers of Court A I R 1928 Lah 202 Rule 20 does not exhaust appellate court's power to add parties A I R 1933 Mad 806=65 M L J 548 Discretionary power should be refused if party is deprived of his valuable right A I R 1932 Snd 225=26 S L R 36

21 [S 560] Where an appeal is heard *ex parte* and judgment is pronounced against the respondent he may apply to the Appellate Court to rehear the appeal and if the Court is satisfied that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing the Court shall rehear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

N B—For local amendments in C P vide *infra*

Notes—Where respondent is a lady and her agent fails to attend Court due to illness of daughter there is sufficient cause to set aside *ex parte* decree A I R 1921 All 264=63 Ind Cas 737=19 A L J 547, but see [15 A L J 413=39 A. 388=39 Ind Cas 636 Pendency of appeal does not bar application of this rule 43 Ind Cas 902=14 N L R 30 Where son is not residing with father, service on son is not service on father A I R 1933 Lah 797 Conditions necessary are that no counsel was engaged, no notice was served on appellant and the application was filed within 30 days A I R 1933 Lah 882

22. [S 561] (1) Any respondent though he may not have appealed from any part of the decree may not only support the decree on any of the grounds decided against him in the Court below, but take any cross objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow

Set off not decreed can be claimed in cross objection. A. I. R. 1934 All 543. Cross objections against co-respondents should be heard of justice so required. 66 Ind. Cas. 642 = 8 O. L. J. 358; see also 54 Ind. Cas. 332, 40 A. 536 = 51 Ind. Cas. 646, 20 C. W. N. 370, 69 Ind. Cas. 330 = 5 Lah. L. J. 92, 53 Ind. Cas. 639 = 6 O. L. J. 495, 56 Ind. Cas. 469 = 2 Lah. L. J. 747. But cross objection against co-respondent



by 21 C. 1928 Cal 305; A. I. R. 1927 151 in remanding a case is not I. R. 1927 Mad. 335=52 M. L. J. to avoid remand. 34 C. W. N. 951.

**Appellate Court.**—Appellate Court cannot remand a case, not disposed on a preliminary point, for a fresh decision on taking further evidence. 27 C. L. J. 595=46 Ind. Cas. 333. Under for finding, it cannot Cas 797. Even it for re-hearing on an below, this ought payment of all costs. 43 C. 1104=43 Ind. Cas. 172=20 C. W. N. 1245 (P. C.)

**Preliminary Point.**—The expression "preliminary point" is not confined to such legal points only as may be pleaded in bar of suit but comprehend all such points as may have prevented the Court disposing of the case on the merits, whether such points are pure question of law or pure questions of fact. There are many instances of such point such as, that a suit is barred by limitation, that the Court has no jurisdiction under the Estates Land Act, that evidence tendered was not admissible, that on the plaintiffs' evidence there is no evidence for the defendant to answer; in a libel suit that there is no proof of publication 45 M. 900=69 Ind. Cas. 828; see also 2 Pat. L. J. 393=41 Ind. Cas. 202, 61 Ind. Cas. 829=13 L. W. 54; 48 M. L. J. 100=86 Ind. Cas. 548, A. I. R. 1927 Mad. 1159. In a mortgage suit, whether plaintiff is entitled to an unconditional subject to defendant's right to redeem is a Mad 1017=60 M. L. J. 72. Decision is to reject decision on a preliminary point within order

XLI r. 23 must be found to have restricted the trial of the suit. A. I. R. 1928 Mad. 991. Dismissal of suit on the ground of the inadmissibility of document is dismissal on a preliminary point. A. I. R. 1927 Lih 592, see also 5 P. L. J. 410. Where amended plaint the remand 36=100 Ind. Cas. 42. Where suit as not maintainable the Cas 125. The expression "in posed of the whole suit on a death of one defendant the suit and passes a d to have disposed of 23 71 Ind. Cas. 682

=5 Lah L. J. 187. Appellate Court can remand suit if Lower Court overlooks defendants' plea of subsisting tenancy 38 A. 533=14 A. L. J. 734. Where the lower Court has admitted inadmissible evidence the proper procedure for the Appellate Court is to remand the case 55 Ind. Cas. 922, see also 34 C. L. J. 205. A case decided on a wrong view of S. 107 and s. 108 of the Evidence Act should be remanded to the Court, as a case of wrong disposal on preliminary point 22 Bom. L. R. 771=57 Ind. Cas. 525.

**Order under the rule.**—Where the trial Court has disposed of suit completely of Appellate Court to direct a remand pleadings 119 Ind. Cas. 2. Where disposal it should be made quite clear 41, rule 23 or independently of it. A. I. R. 1929 Mad. 205=119 Ind. Cas. 705; see also 45 C. L. J. 194. It is the duty of the Court to which remand is made to record findings to all the questions sent on remand and not to omit certain answers because of the view it takes of the law. A. I. R. 1927 Bom. 594=51 B. 1026. No order of remand can be regarded as made under rule 23, unless the case has been disposed of without entering into the full merits by reason of a decision on law or fact which has prevented the case being tried to end. 73 Ind. Cas. 591. The High Court has authority to limit the scope of certain appeal remanded to the lower Court without keeping them on its own file 20 C. N. 584. The issues decided by the order of remand under rule 23 cannot be re-opened.

cannot be entertained unless grounds are common to co-respondent and appellant  
 A I R 1934 Cal 345, A I R 1934 Pat 131, 26 C W N 763 Where both converted into cross objection  
 A I R 1934 after 30 days

period is over A I R 1932 All 45=1931 A L J 606 Respondent in appeal cannot take cross objections unless he has filed memorandum of objections A I R 1933 Mad 465, see also A I R 1931 Mad 513 The word "default" in sub rule (4) includes any default made by appellant which would amount to non prosecution of the appeal e.g. non paying of deficit court fees A I R 1931 Mad 133=1932 Nag 41=28 N L R 25, 8 Rang n defendant is not party to appeal, cross plaintiff's claim is independant from claim 1933 Nag 186=29 N L R 173 Pauper g 158=29 N. L R 225 Respondent cannot

take a point in cross objection unless he could have filed appeal himself on such point A I R 1933 Rang 377

23 [S 562] Where the Court from whose decree an appeal is preferred

Remand of case by Appell has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the  
 the Court Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand

N B—For local amendment in Madras, vide *infra*

Grounds for remand—Where a case is not decided on preliminary point Appellate Court can not remand the case under this rule 35 C L J 345=70 Ind Cas 547, see also 70 Ind Cas 1008, 24 Bom L R 820=67 Ind Cas 965 562, A I R 1923 Lah 480, 96 Ind Cas 44, A I R 1927 Lah 618, A I R 1930 Lah 639, A I R 1930 Lah 181 A preliminary point within the meaning of order 41, rule 23 is any point the decision of which avoids the necessity for the full hearing of the suit A I R 1934 Pat 13 It must be independent of merits A I R 1934 Cal 49 The test of finality is whether rights of parties are finally disposed of 37 C W N 405 P C "Preliminary point" comprehends all points whether of law or of fact which prevent Court from disposing of case on merits A I R 1933 Rang 413

Remand order can be under inherent power A I R 1933 Pat 706, see also A I R 1933 Lah 135=34 P L R 270, A I R 1932 Lah 311=33 P L R 285, 37 C W N 1084 Under r 23 suit must be disposed of on preliminary point 33 P L R where the trial Court n e the trial Court decides mand the case under n point but under 24 or r 484

Remand under inherent power—Even where rule 23 does not apply, the appellate Court has inherent power to make a remand under s 151 A I R 1930 Mad 72, see also 32 C W N 101, A I R 1927 Pat 296=6 Pat 380, A I R 1927 Mad 1190, A I R 1927 Mad 335=52 M L J 90, 43 C L J 601=A I R 1926 Cal 1076; A I R 1926 Lah 537 Where there is no question of any preliminary point and the order of remand affects the whole decision of the whole suit the remand must be taken to have been under inherent powers A I R 1925 Pat 760, see also A I R 1926 Pat 516=7 P L T 811, 87 Ind Cas 575, 84 Ind Cas 965=48 M. 713, 31 Ind Cas 263, 32 Ind Cas 906, A I R 1933 Cal 632, A I R 1929 Nag 63, 76 Ind Cas 496 37 C L J 122, 73 Ind Cas 915, 73 Ind Cas 591, 43 C 1001, 44 C 929 (F B), 41 Ind Cas 598, 58 Ind Cas 444, 37 C L J 491, 69 Ind Cas 826 Although Appellate Court has inherent powers to remand case not falling under rules 23 and 25 that power should



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a case is not  
35=52 M. L. J.  
34 C. W. N.

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**XLI r. 23** must be found to have restricted the trial of the suit. A I R 1928 Mad 92, see also 5 P L J ed plaintiff the remand 0 Ind Cas 42. Where not maintainable the 125. The expression "in of the whole suit on a uth of one defendant i the suit and passes a d to have disposed of 23 71 Ind Cas 682 =5 Lah L J 187. Appellate Court can remand suit if Lower Court overlooks defendants' plea of subsisting tenancy 38 A 533=14 A L J 734. Where the lower Court has admitted inadmissible evidence the proper procedure for the Appellate Court is to remand the case 55 Ind Cas 922, see also 34 C L J 205. A case decided on a wrong view of S 107 and s 108 of the Evidence Act should be remanded to the Court, as a case of wrong disposal on preliminary point 22 Bom L. R 771=57 Ind Cas 525.

**Order under the rule**—Where the trial Court has disposed of suit completely on the merits, it is beyond the competence

and not to omit certain answers because of the view it takes of the law. A I R L J 194. It is the duty of the all the questions sent or remand

between the parties at any subsequent stage of litigation 70 Ind Cas 983 When all points have been decided by the lower Court remand should be under rule 25 and not under rule 23 A I R 1932 Lah 443=33 P L R 487 Except under rule 23 no case shall be remanded for a second decision which can be disposed of finally by first Appellate Court 36 Ind Cas 241=12 N L R 123

**Appeal.**—An order of remand can be appealed against only if made under order XLI rule 23 and not if it is made under s 151 A I R 1929 Mad 205, see also A I R 1930 Lah 221=30 P L R 645, A I R 1928 Lah 753, A I R 1928 Mad 430=27 L W 483, A I R 1928 Lah 341, 31 C W N 878, A I R 1928 Nag 68 A I R 1926 Pat 457 No second appeal lies against an order of remand A I R 1926 Mad 900=51 M L J 119

**Revision.**—When order of remand is not justified High Court can interfere in revision A I R 1930 All 863, see also 79 Ind Cas 857, 89 Ind Cas 404; but see 76 Ind Cas 525

**24. [S. 565]** Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after re settling the the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds

**Notes.**—A I R 1933 Oudh 28, A I R 1933 Rang 35, A I R 1932 Mad 545

**25 [S 566]** Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required

and such Court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor

**Scope.**—Under Order 41 when the Appellate Court is of opinion that certain findings of fact are necessary for the proper disposal of appeal and that evidence should be led on these points the proper procedure is under rule 25 and partly under rule 26 by calling for further findings A I R 1929 Bom 175=53 B 335 Mad 984 Where trial Court does not come to a finding on a point considering it to be unnecessary for it to do so lower Appellate Court is not bound to remand the case but can legally come to any finding of fact on the point A I R 1928 Mad 635=110 Ind Cas 548 Where appellate Court is of opinion that parties should be allowed to adduce evidence on certain issue not tried by trial court, the proper procedure is to make order under rule 25 110 Ind Cas 444 The order of remand on the ground *res judicata* not raised, 1927 Lah 376=29 P determine question of necessary issues and L R 578=18 A L J, to reconsideration 25 evidence that is necessary to establish his right in trial court, remand cannot be granted 71 Ind Cas 284

Remand order does not take away appellate court's seisin of the case A I R 1932 Rang 137=10 Rang 335 In first appeal the High Court can investigate facts in interest of justice A I R 1932 Pat 286=11 Pat 513 Where important evi

dence has been disregarded by lower Court, case should be remanded A I R 1933 Pat 472 Where party knew but failed to discharge remand is not proper though issue is not clear A I R 1932 Lah 293=32 P L R 861 Appellate Court cannot make new case and remand the suit A I R 1933 All 829=17 under rule 23 a rule 25  
 . . . . . ner by appellate Court to  
 . . . . . ions of fact and law is irre  
 . . . . . trial Court under Order 41,  
 rule 25 35 C W N 841=33 Bom L R 988=A I R 1931 P C 136 (P C)  
 Under Order 41, rule 25, case stands pending during appeal and before final judgment Court may give different consideration before final judgment 46 Ind Cas 922, see also 24 C W N 145=30 C L J 428=54 Ind Cas 700 Exercise of power of remand is within the discretion of the Appellate Court 67 Ind Cas 244 Where appellate Court finds that parties failed to grasp essential questions and adduce evidence adequately, it can frame new issues and remand them for trial 66 Ind Cas 833, see also 34 C L J 160=26 C W N 1022 Court to which case is remanded must give opportunity to both parties to produce evidence 19 A L J 79=62 Ind Cas 447 In case of remand under rule 25, the appellate Court can re-consider the view of the law on which the remand was based 68 Ind Cas 242

Findings and evidence to be put on record Objections to finding

26 [S 567.] (1) Such evidence and findings shall form part of the record in the suit, and either party may, within a time to be fixed by the Appellate Court present a memorandum

of objections to any finding

(2) After the expiration of

such  
 proceed

Determination of appeal

Notes—Appellate Court must give decisions on issues even though findings have not been objected 40 Ind Cas 405 Court may not hear at hearing objections to memorandum objection which have not been filed 3 Lah L J 230=67 Ind Cas 846 No Court fee is payable on memorandum of objections filed under rule 26 A I R. 1928 Pat 85

27. [S 568.] (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court But if—

Production of additional evidence in Appellate Court

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced, or witness to be examined

(2) Wherever additional evidence is allowed to be produced, by an Appellate Court the Court shall record the reasons for its admission

Notes—Additional evidence is allowed not for benefit of party but when evidence recorded is defective 1 P L J 435=37 Ind Cas 1008, see also 57 Ind Cas 843, 54 Ind Cas 666 53 Ind Cas 826 44 Ind Cas 670 Negligent party cannot be helped by way of rule 27 47 C 662=25 C W N 417=22 Bom L R 557=55 Ind Cas 954 (P C) Appellate Court can allow production of evidence 2 Pat 676=50 L A 183=25 Bom L R 1259=28 C W N 277 (P C) Additional evidence must be allowed where justice demands it A I R 1930 Oudh 110=6 O W N 1060 Fresh evidence can be admitted in appeal if it has been discovered after exercise of necessary diligence A I R 1930 Lah 1004=12 Lah L J 172 Document cannot be produced in appeal if its non production is not accounted in lower Court A I R 1930 Mad 824=54 M 132 It is no sufficient cause if pleader neglects to produce important evidence in lower Court. A I R. 1930 Bom 272=32 Bom L R 608 Litigant unsuccessful in lower Court cannot patch up weak parts of his case and fill up omissions in Court of appeal 35 C W N 786 P C=33 Bom L R 1015=1931 A L J 513=61 M L J 489

A I R 1931 P C 143 (P C), A I R 1932 Mad 709, A I R 1932 Mad 148 Where Judge is satisfied that documents could not be discovered at earlier stage such documents can be admitted in appeal A I R 1933 All 104=1932 A L J 1081 Appellate Court has power to issue commission for local investigation and need not record reasons under Order 41, rule 27 A I R 1932 All 270 Court exercising power under rule 27 shall make direct reference to rule 27 giving reasons A I R 1932 Bom 230=34 Bom L R 372, see also A I R 1933 Cal 319=56 C L J 246, 35 C W N 925=33 Bom L R 1251=1931 A L J 550=A I R 1931 P C 175 (P C), A I R 1933 Lah 823, A I R 1933 Lah 547=14 Lah 153 In appeal additional evidence should be admitted very carefully and cautiously 8 Luck 18=A I R 1932 Oudh 227, see also A I R 1933 Lah 1024 Additional evidence admitted by appellate Court disregarding rules 27 and 29 should be ruled out A I R 1932 All 264=1932 A L J 117 For applying rule 26 some inherent lacuna or defect apparent on examination of evidence must exist 8 O W N 627=A I R 1931 Oudh 293, see also A I R 1933 Mad 407=64 M L J 449, A I R 1934 Pat 60 Where additional evidence is taken on apparently obscure point not affecting finding in case, reason need not be given A I R 1933 Lah 328=34 P L R 99 Where party was given opportunity to produce evidence but failed to avail himself of it he can not be allowed to produce it in appellate court 8 O W N 627=A I R 1931 Oudh 298, but see A I R 1932 Lah 202 Error of law by itself would not furnish ground for revision unless Court has not capriciously or unjustly exercised its discretion under this rule 33 P L R 330, see also A I R 1932 Lah 93, A I R 1934 Cal 269 No second appeal lies from refusal to admit fresh evidence under rule 27 A I R 1931 Lah 506 Opportunity must be given to opposite party to rebut the evidence A I R 1934 Lah 462

**28 [S 569]** Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whence the appeal is preferred, or on any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court

**Scope**—On remand the second appeal under rule 28 Commissioner for examination of witness can be appointed 81 Ind Cis 580=5 Lah 252 Appellate court has discretion to decide case with or without taking evidence A I R 1933 Lah 1014

**29 [S 570]** Where additional evidence is directed or allowed to be taken the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified

### *Judgment in Appeal*

**30. [S 571]** The appellate Court, after hearing the parties or their pleaders, and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders

There will be ground for setting aside the judgment as to the presumption

7-1-1934 1932=9 Lah L J 309=28 P L R 330

**31 [S 574]** The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision, and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein

N B—For local amendment in Madras, vide *infra*

Scope—Rule 31 does not apply to the chartered High Courts A I R 1929 All 403=(1929) A L J 713 Reversing judgment should discuss matters fully A I R 1934 Mad 169 Lower courts should pronounce opinion on all important points A I R 1933 P C 33=37 C W, N 221=57 C L J 51=60 I A 49=64 M L J 142 Judgment is no judgment where there is non compliance with provision of Order 41, rule 31 34 P L R 199=A I R 1933 Lah 333 Judgment of dismissal under rule 11 must conform to rule 31, 65 Ind Cas 479 Affirming judgment need not be at length if all facts are considered, 68 Ind Cas 467 All objections to decree should be considered as in trial Court A I R 1929 Cal 110=55 C 1216=49 C L J 70 Approval after consideration of the reasons of the decision by trial Court is sufficient compliance of rule 31 A I R 1928 Oudh 489 Decision should preferably be on all points and not on preliminary point A I R 1931 Cal 333=34 C W N 839, see also A I R 1928 Oudh 374 Summarily to dispose of the appeal by saying the trial court has discussed the matter fully is not a proper method 112 Ind Cas 698 Court must give its reasons and not merely approve of lower court's reasons A L R 1928 Lah 655=10 Lah L J 257 Confirming judgment may not be in detail such as in reversal A I R 1926 Cal 515=91 Ind Cas 478 Adoption of reason after considering all facts is not bad A I R 1927 Cal 323=97 Ind Cas 760 Rule 31 must be strictly followed A I R 1927 Oudh 95=15 O L J 586=29 O C 330=95 Ind Cas 95 Reason for reversal must be given 55 Ind Cas 816 A judgment based on an indefinite conclusion is not a judgment with law 1 P L T 27 Appellate Court is bound to discuss all issues in its judgment 42 Ind Cas 838

32 [S 577] The judgment may be for confirming varying or reversing the decree from which the appeal is preferred, or if the parties to the appeal agree as to the from which the decree in appeal shall take or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly

Notes.—A I R 1928 Oudh 22=2 Luck 42, 6 Lah L J 406=14 Ind Cas 946

33 [New] The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection

\*[Provided that the Appellate Court shall not make any order under section 35 A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order]

#### Illustrations

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The appellate Court decides in favour of X. It has power to pass a decree against Y.

Scope—The word 'parties' in rule 33, includes persons other than those who

defendants  
or not  
decree  
Bom

135 Rule 31 must be applied with caution A I R

1932 Rang 123 (F B)=  
but for re course to it  
5 C L J 285, Appellate  
34 P L R 844=A I R

A I R 1931 P C 143 (P C), A I R 1932 Mad 709, A I R 1932 Mad 148 Where Judge is satisfied that documents could not be discovered at earlier stage such documents can be admitted in appeal A I R 1933 All 104=1932 A L J 1081 Appellate Court has power to issue commission for local investigation and need not record reasons under Order 41, rule 27 A I R 1932 All 270 Court exercising power under rule 27 shall make direct reference to rule 27 giving reasons A I R 1931 Bom 230=34 Bom L R 372, see also A I R 1933 Cal 319=36 C L J 246, 35 C W N 925=33 Bom L R 1251=1931 A L J 550=A I R 1931 P C 175 (P C), A I R 1933 Lah 823, A I R 1933 Lah 547=14 Lah 153 In appeal additional evidence should be admitted very carefully and cautiously 8 Luck 18=A I R 1932 Oudh 227, see also A I R 1933 Lah 1024 Additional evidence admitted by appellate Court disregarding rules 27 and 29 should be ruled out A I R 1932 All 264=1932 A L J 117 For applying rule 26 some inherent lacuna or defect apparent on examination of evidence must exist 8 O W N 627=A I R 1931 Oudh 293, see also A I R 1933 Mad 407=64 M L J 449, A I R 1934 Pat 60 Where additional evidence is taken on apparently obscure point not affecting finding in case, reason need not be given A I R 1933 Lah 328=34 P L R 99 Where party was given opportunity to produce evidence but failed to avail himself of it he can not be allowed to produce it in appellate court 8 O W N 627=A I R 1931 Oudh 298, but see A I R 1932 Lah 202 Error of law by itself would not furnish ground for revision unless Court has not capriciously or unjustly exercised its discretion under this rule 33 P L R 330, see also A I R 1932 Lah 93, A I R 1934 Cal 269 No second appeal lies from refusal to admit fresh evidence under rule 27 A I R 1931 Lah 506 Opportunity must be given to opposite party to rebut the evidence A I R 1934 Lah 462

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**29 [S 570]** Where additional evidence is directed or allowed to be taken the Appellate Court shall specify the Points to be defined and recorded points to which the evidence is to be confined, specified. and record on its proceedings the points so

### *Judgment in Appeal*

**30. [S 571]** The appellate Court, after hearing the parties or their Judgment when and where pronounced pleaders, and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders

but will be ground for judgment as to the presumption

Contents, date and signature of judgment

**31 [S 574]** The Appellate Court shall be in writing and shall state—

- (a) the points for determination ;
- (b) the decision thereon ,
- (c) the reasons for the decision , and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein

N B—For local amendment in Madras, vide *infra*

Scope—Rule 31 does not apply to the chartered High Courts A I R, 1929 All 403=(1929) A L J 713 Reversing judgment should discuss matters fully A I R 1934 Mad 169 Lower courts should pronounce opinion on all important points A I R 1933 P C 33=37 C W, N 221=57 C L J 51=60 I A 49=64 M L J 142 Judgment is no judgment where there is non compliance with provision of Order 41, rule 31 34 P L R 199=A I R 1933 Lah 333 Judgment of dismissal under rule 11 must conform to rule 31, 65 Ind Cas 479 Affirming judgment need not be at length if all facts are considered. 68 Ind Cas 467 All objections to decree should be considered as in trial Court A I R 1929 Cal 110=55 C 1216=49 C L J 70 Approval after consideration of the reasons of the decision by trial Court is sufficient compliance of should preferably be on all points and 325=34 C W N 839, see also A I R

has discussed the matter fully is not a proper method 112 Ind Cas 698 the appeal by saying the trial Court must give its reason and not merely approve of lower court's reasons A L R 1928 Lah 655=10 Lah L J 257 Confirming judgment may not be in detail such as in reversal A I R 1926 Cal 41,=91 Ind Cas 478 Adoption 27 Cal 32,=97 Ind Cas 95=13 O L J 586=29 55 Ind Cas 816 A judgment based on a indefinite conclusion is no judgment with law I P L T 27 Appellate Court is bound to discuss all issues in its judgment 42 Ind Cas 838

32 [S 577] The judgment may be for confirming varying or reversing the decree from which the appeal is preferred, What judgment may direct or if the parties to the appeal agree as to the from which the decree in appeal shall take or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly

Notes—A I R 1928 Oudh 22=2 Luck 42, 6 Lah L J 406=14 Ind Cas 946

33 [New] The appellate Court shall have power to pass any decree and make any order which ought to have been Power of Court of Appeal passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection

\*[Provided that the Appellate Court shall not make any order under section 35 A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order]

#### Illustrations

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The appellate Court decides in favour of X. It has power to pass a decree against Y.

Scope—The word 'parties' in rule 33, includes persons other than those who have been arraigned as appellants or respondents in the appeal A I R 1929 All

notice of events happened since the decree according to the circumstances

Bom 254=54 B 125=32 Bom L R 1 R 19 4 Pat 131 Appellate Court

can pass decree which it thinks fit and proper A I R 1932 Rang 123 (F B)=10 Rang 412 Rules should be applied only in cases where but for the course to it ends of justice would be defeated A I R 1933 Cal 165=56 C L J 28, Appellate Court would not interfere except for very cogent reason 34 P L R 844=A I R

1933 Lah 682  
trial Court when  
Power under rule

I R 1933 Mad 800

not to favour one party as against another A I R 1933 Pat 224 Discretion should  
not be exercised unless success of appeal would render granting of relief just against  
non appealing party A I R 1933 Nag 186

34 [S. 576] Where the appeal is heard by more Judges than one, any  
Dissent to be recorded Judge dissenting from the judgment of the  
Court shall state in writing the decision or order  
which he thinks should be passed on the appeal, and he may state his reasons  
for the same

#### *Decree in appeal*

Date and contents of 35 [S. 579] (1) The decree of the  
decree Appellate Court shall bear date the day on  
which the judgment was pronounced

(2) The decree shall contain the number of the appeal, the names and  
descriptions of the appellant and respondent, and a clear specification of the  
relief granted or other adjudication made

(3) The decree shall also state the amount of costs incurred, in the appeal,  
and by whom, or out of what property, and in what proportions such costs  
and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who  
passed it

Provided that where there are more Judges than one and there is a  
difference of opinion among them, it shall not  
be necessary for any Judge dissenting from the  
judgment of the Court to sign the decree

N B—For local amendments in Lahore and Madras vide *infra*  
36 [S. 580] Certified copies of the judgment and decree in appeal  
Copies of judgment and shall be furnished to the parties on applica-  
decree to be furnished to tion to the Appellate Court and at their  
parties expense

37 [S. 581] A copy of the judgment and of the decree, certified by  
the Appellate Court or such officer as it appoints  
in this behalf shall be sent to the Court which  
passed the decree appealed from and shall be  
filed with the original proceedings in the suit,  
and an entry of the judgment of the Appellate Court shall be made in the  
register of civil suits

N B—For additional rules in Allahabad, Lahore, Madras, Oudh, Patna, Sind  
and Peshwar, vide *infra*

### ORDER XLII

#### *Appeals from Appellate Decrees*

##### *Procedure*

1 [S. 587] The rules of Order XLI  
shall apply, so far as may be, to appeals from  
appellate decrees

N B—For local amendments in Allahabad, Lahore and Madras, vide *infra*  
Scope—Memo must be accompanied by copy of judgment of first Court  
Failure within time entails rejection of appeal 73 Ind Cas 910, see 63 Ind Cas  
338=43 A 660, A I R 1927 All 747 67 Ind Cas 670=3 Lah 255

### ORDER XLIII

#### *Appeals from Orders*

Appeals from orders 1 [S. 588] An appeal shall lie from  
the following orders under the provisions of  
section 104, namely—

(a) an order under rule 10 of Order VII returning a plaint to be present-  
ted to the proper Court



- (b) an order under rule 10 of Order VIII pronouncing judgment against a party.
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party,
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of order XVI for the attachment of property,
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party,
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement,
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale,
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit,
- (l) an order under rule 10 of Order XXII giving or refusing to give leave,
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction,
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (o) an order under r 2, r 4, or r 7 of Order XXXIV refusing to extend the time for the payment of mortgage money,
- (p) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII,
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX,
- (s) an order under rule 1 or rule 4 of Order XL
- (t) an order of refusal under rule 19 of Order XLI to re admit, or under rule 21 of Order XLI to
- (u) an order under rule 23 (where an appeal would lie from it)
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV,
- (w) an order under rule 4 of Order XLVII granting an application for review

N B—For local amendments in Allahabad Bombay, Calcutta, Madras, Oudh and Rangoon, vide *infra*

Clause (a)—11 C W N 765=5 C L J 580, 97 Ind Cas 790=51 M L J 119, 62 Ind Cas 399, 52 Ind Cas 801=46 C 738, 56 Ind Cas 865, 46 Ind Cas 99  
judgment A I R 1931 Lah 77=31 P L R 946

Clause (c)—A I R 1923 Pat 223=73 Ind Cas 373, 8 C W N 313, 20 C W N 1203, 75 Ind Cas 589, 45 A 148, 45 C L J 60

Clause (d)—A I R 1932 All 113

Clause (e)—A I R 1933 Lah 216

Clause (f)—34 C W N 220

Clause (j)—117 Ind Cas 253, 14 C W N 573, 21 C L J 628, 30 C W N 570, A I R 1929 All 671, A I R 1929 Lah 778, A I R 1931 P 97

Clause (k)—33 C W N 881, 34 Ind Cas 372, A I R 1931 Pat 351

Clause (l)—35 C W N 296, 27 C W N 29

Clause (m)—A I R 1933 Bom 205=57 B 206, 36 C W N 1013

Order rule 33 after decree of  
A I R 1931 Lah 370  
A I R 1931 A

not be exercised unless success of appeal  
non appealing party A I R 1933 Nag 186

34 [S. 576] Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same

#### *Decree in appeal*

Date and contents of decree 35 [S. 579] (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made

(3) The decree shall also state the amount of costs incurred, in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid

(4) The decree shall be signed and dated by the Judge or Judges who passed it

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree

Judge dissenting from judgment need not sign decree

N B—For local amendments in Lahore and Madras vide *infra*  
36 [S. 580] Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense

37 [S. 581] A copy of the judgment and of the decree certified by the Appellate Court or such officer as it appoints in this behalf shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits

N B—For additional rules in Allahabad, Lahore, Madras, Oudh, Patna, Sind and Peshwar vide *infra*

### ORDER XLII

#### *Appeals from Appellate Decrees*

##### *Procedure*

1 [S. 587] The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees

N B—For local amendments in Allahabad, Lahore and Madras, vide *infra*  
Scope—Memo must be accompanied by copy of judgment of first Court  
Failure within time entails rejection of appeal 73 Ind Cas 910, see 63 Ind. Cas 338=43 A 660, A I R 1927 All 747 67 Ind Cas 670=3 Lah 255

### ORDER XLIII

#### *Appeals from Orders*

Appeals from orders 1 [S. 588] An appeal shall lie from the following orders under the provisions of section 104, namely—

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court

- (b) an order under rule 10 of Order VIII pronouncing judgment against a party.
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ,
- (e) an order under rule 4 of Order X pronouncing judgment against a party ,
- (f) an order under rule 21 of Order XI ;
- (g) an order under rule 10 of order XVI for the attachment of property ,
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party ,
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement ,
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale ,
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ,
- (l) an order under rule 10 of Order XXII giving or refusing to give leave ,
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction ,
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ,
- (o) an order under r. 2, r. 4, or r. 7 of Order XXIV refusing to extend the time for the payment of mortgage money ,
- (p) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV ,
- (q) an order under rule 2, rule 3 or rule 6 of Order XXVIII ,
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX ,
- (s) an order under rule 1 or rule 4 of Order XL
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal ,
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ,
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV ,
- (w) an order under rule 4 of Order XLVII granting an application for review

N B—For local amendments in Allahabad Bombay, Calcutta, Madras, Oudh and Rangoon, vide *infra*

Clause (a)—11 C W N 765=5 C L J 580 ,

3 , 8 C W N 313 , 20 C  
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Clause (j)—17 Ind Cas 253 , 14 C W N 573 , 21 C L J 628 , 30 C W N 570 , A I R 1929 All 671 , A I R 1929 Lah 778 , A I R 1931 P 97  
 Clause (k)—33 C W N 881 , 34 Ind Cas 372 , A I R 1931 Pat 353  
 Clause (l)—35 C W N 296 , 27 C W N 29  
 Clause (m)—A I R 1933 Bom 205=57 B 206 , 36 C W N 1013

applies even after application is made and notice to respondent is ordered. proviso is mandatory *Ibid* Appellate and notice on the opposite party has in the proviso are satisfied 133 Ind pauper appellant to satisfy Court that judgment is erroneous A I R 1933 Mad 519=56 M 323, but see 53 M 245 Allowing appellant to appeal in *forma pauperis* does not preclude respondent from showing at later date that the appeal is without substance A I R 1932 Mad 523 Court fee on appeal is to be calculated as on date of presentation and not of payment, A I R. 1932 Oudh 343=9 O W N 855 Court after application under Order 44, rule 1 is still competent to consider if conditions in the proviso to order 44, rule 1 are satisfied A I R. 1931 Pat 183 (F B)=12 P I T 156 No distinction exists non A I R 1931 Rang 131 is not precluded from arguing sh 73 Order is revisable if A I R 1924 All 424

2. [S. 593] The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in is preferred, no further inquiry in res , unless the Appellate Court sees cause

Notes.—32 Ind Cas 630, A I R 1930 Pat 365

#### ORDER XLV.

##### *Appeal to the King in Council*

1. [S. 594.] In this Order, unless there is something repugnant in the subject or context, the expression 'decree' shall include a final order

Notes.—77 Ind Cas 869—A I R 1924 Lah 225

Application to Court whose decree complained of

2 [S. 598] Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

3. [S. 600] (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council

(2) Upon receipt of such petition the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted

N B.—For local amendment in Bombay and C P, vide *infra*

Notes.—A I R 1933 Oudh 394—10 O W N 953, A I R 1929 Oudh 243, 25 C W N 630, 43 M L J 312 (F B)

4. [New] For the purposes of preliminary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated, but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination

Notes.—Judgment means judgment appealed against A I R 1932 Mad 125—61 M L J 692 Discretion is to be in applicant's favour A I R 1932 Mad 125—55 M 125 Court fee value is the least market value A I R 1931 Mad 125 Separate judgment may be treated as one 61 M L J 692

5. [New] In the event of any dispute arising between the parties as to the amount or value of the subject matter of the suit in the Court of first instance, or as to the amount or value of the subject matter in dispute on appeal to His Majesty in Council the Court to which a petition for a certificate is made under rule 2 may if it thinks fit, refer such dispute for report to the Court of first instance, which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made

Notes.—34 Ind Cas 203, 82 Ind Cas 744 A I R 1927 Cal 411—45 C L J 225, 42 B 609—46 Ind Cas 4, A I R 1933 P C 232

Effect of refusal of certificate refused, the petition shall be dismissed

7. [S. 602.] (1) Where the certificate is granted, the applicant shall, within [ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow], from the date of the decree

- Clause (g)—A. I. R. 1912 All 269=1932 A. L. J. 228; A. I. R. 1928 Lah. 445  
 Clause (r)—A. I. R. 1933 All 86=1933 A. L. J. 803; A. I. R. 1931 Bom 509=  
 33 Bom 1. R. 1109, A. I. R. 1933 Lah 203; A. I. R. 1922 Lah. 347=66 Ind  
 Cas 9  
 Clause (s)—A. I. R. 1933 Mad. 570 (F. B.)=56 M. L. J. 222; A. I. R. 1934 Nag.  
 64; 69 Ind Cas 929; 36 C. W. N. 903; 53 C. 319; A. I. R. 1931 All. 72=29 A.  
 L. J. 13, 13 C. W. N. 654; A. I. R. 1928 Oudh 297.  
 Clause (t)—45 C. 638; 19 C. W. N. 539, 53 Ind. Cas 333, A. I. R. 1930 Lah.  
 112  
 Clause (u)—A. I. R. 1933 Oudh 350, A. I. R. 1933 Lah 615, A. I. R. 1929  
 Oudh 398; A. I. R. 1931 Lah 497, A. I. R. 1930 All 122; 31 A. 479  
 Clause (w)—A. I. R. 1933 All 778, A. I. R. 1933 Bom 183; A. I. R. 1933 Cal  
 727=37 C. W. N. 705, A. I. R. 1933 Lah 169=34 P. L. R. 88; A. I. R. 1932 Oudh.  
 63; 47 A. 881; A. I. R. 1928 Rang 177; 52 M. L. J. 682; 32 C. W. N. 693; 60  
 Ind Cas 259, A. I. R. 1929 Rang 105, 25 C. W. N. 884, A. I. R. 1926 Bom.  
 121, A. I. R. 1929 Bom 183, A. I. R. 1929 Mad 261; A. I. R. 1929 Nag 73;  
 A. I. R. 1927 Lah 435; A. I. R. 1931 All 329; A. I. R. 1930 All 126; A. I. R.  
 1928 Lah 608, A. I. R. 1929 Lah 26

2. [S 590] The rules of Order XLI shall apply, so far as may be, to  
 Procedure appeals from orders.

N B—For local amendments in Allahabad, Madras, and Oudh, vide *infra*  
 Notes—A. I. R. 1930 Sind 252=25 S. L. R. 63=130 Ind Cas 554

## ORDER XLIV.

### *Pauper Appeals.*

1 [S 592] Any person entitled to prefer an appeal, who is unable to  
 pay the fee required for the memorandum of

Who ———— , subject  
 by a ———— , provisions  
 in all ————  
 relative ————  
 P1. ———— perusal  
 ———— appealed

Procedure on application for admission of appeal from, it seems reason to think that the decree is  
 contrary to law or to some usage having the  
 force of law or is otherwise erroneous or unjust

Scope—Court is not bound to hear respondent before leave to appeal in *forma*  
*pauperis* is granted A. I. R. 1932 Mad 523=61 M. L. J. 28 Issue of notice to  
 applicant should be rejected

if the Court has issued notice,

A. I. R. 1932 All. 925, see

at order refusing application

A. I. R. 1932 All 712=1932

admission of application for permission to appeal in *forma pauperis*

3 Lah 256=34 P. L. R. 516 Proviso

and notice to respondent is ordered.

proviso is mandatory *Ibid* Appellate

and notice on the opposite party has

been served consider whether the conditions in the proviso are satisfied. 133 Ind

Cas 125 (Lah) Before leave to appeal as pauper is granted it is incumbent upon

pauper appellant to satisfy Court that judgment is erroneous A. I. R. 1933

Mad 519=56 M. 323, but see 53 M. 245 Allowing appellant to appeal in

*forma pauperis* does not preclude respondent from showing at later date that

the appeal is without substance. A. I. R. 1932 Mad 523 Court fee on appeal

is to be calculated as on date of presentation and not of payment, A. I. R.

1933 Oudh 341=9 O. W. N. 886 Application under Order 44,

proviso to order 44, rule 1

156. No distinction exists

on. A. I. R. 1931 Rang 131

is not precluded from arguing

73 Order is revisable if

A. I. R. 1924 All 424

2. [S. 593] The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

Notes.—32 Ind Cas 630, A I R 1930 Pat 365

#### ORDER XLV.

##### *Appeal to the King in Council*

1 [S. 594.] In this Order, unless there is something repugnant in the subject or context, the expression 'decree' shall include a final order

Notes.—77 Ind Cas 869—A I R 1924 Lah 225

Application to Court whose decree complained of

2 [S. 598] Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

3. [S. 600] (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is other

Certificate as to value or fitness

wise a fit one for appeal to His Majesty in Council

(2) Upon receipt of such petition the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted

N B.—For local amendment in Bombay and C P, vide *infra*

Notes.—A I R 1933 Oudh 394—10 O W N 953, A I R 1929 Oudh 243, 25 C W N 630, 43 M L J 312 (F R)

4 [New] For the purposes of preliminary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated, but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination

Notes.—Judgment means judgment appealed against A I R 1932 Mad 125=61 M L J 692 Discretion is to be in applicant's favour A I R 1932 Mad 125=55 M 125 Court fee value is the least market value A I R 1931 Mad 125 Separate judgment may be treated as one 61 M L J 692

5. [New] In the event of any dispute arising between the parties as to the amount or value of the subject matter of the suit in the Court of first instance, or as to the amount or value of the subject matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made

Notes.—34 Ind Cas 203, 82 Ind Cas 744, A I R 1927 Cal 411=45 C L J 225, 42 B 609=46 Ind Cas 4, A I R 1933 P C 232

6. [S. 601] Where such certificate is refused, the petition shall be dismissed

7. [S. 602] (1) Where the certificate is granted, the applicant shall, within \* [ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow], from the date of the decree

Effect of refusal of certificate

Security and deposit required on grant of certificate

complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

- (a) furnish security [in cash or in Government securities] for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—
  - (1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being,
  - (2) papers which the parties agree to exclude,
  - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the party directed, and
  - (4) such other papers as may be directed to be excluded,

\* [Provided that the Court at the time of the grant of the certificate may, after hearing any opposite party, on the ground of special hardship that some other for

Provided further, that the Court may, if it thinks fit, direct the costs to be granted to an opposite party to contest the nature of such security]\*

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also within the time mentioned in sub rule (1) deposit the amount required to defray the expense of printing such copy

Notes—For additional rules in Bombay and C P, vide *infra*  
 N B—A I R 1934 Oudh 139, A I R 1932 Mad 484=63 M L J 665, 58 C 1034=A I R 1931 Cal 734, A I R 1931 Bom 279=33 Bom L R 487, A I R 1933 All 410=1933 A L J 276, A I R 1933 All 241 (F B), 52 A 619 (F B), A I R 1929 Pat 431, A I R 1929 All 794, 26 A L J 433, 44 A 216, A I R 1929 All 794, 51 B 430, 44 A 242=20 A L J 51

8. [S 603] Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them

Notes—If respondent knew of admission, failure to give notice to the respondent of admission of an appeal to the Privy Council is not sufficient ground for rehearing 22 Bom L R 550=59 Ind Cas 7

9 [S 604.] At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Notes.—Rule 10 and not rule 9 is application for enhancement of amount of security for costs after admission of appeal 49 Ind Cas 893

\* 9A Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court





complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

- (a) furnish security † [in cash or in Government securities] for the costs of the respondent, and  
(b) deposit the amount required to defray the expense of translating, " " " " sty in Council

(1)

His Majesty

- (2) papers which the parties agree to exclude,  
(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and  
(4) such other documents as the High Court may direct to be excluded,

\* [Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:]

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security]\*

(2) Where the applicant prefers to print in India the copy of the record, except as

(c) deposit

N B—

Notes—A I R 1934 Oudh 139, A I R 1931 Bom 279=33 Bom. L R 487, 58 C 1034=A I R 1931 Cal 734, A I R 1931 Bom 279=33 Bom. L R 487, A I R 1933 All 410=1933 A I J 276, A I R 1933 All 241 (F B.), 52 A. 619 (F B.), A I R 1929 Pri 431, A I R 1929 All 794, 26 A. L J 433, 44 A 216, A I 1929 All 794, 51 B 430, 44 A 242=20 A L J 51

8. [S 603] Where such security has been furnished and deposit made Admission of appeal and to the satisfaction of the Court, the Court procedure thereon shall—

- (a) declare the appeal admitted,  
(b) give notice thereof to the respondent,  
(c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and  
(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them

Notes—If respondent knew of admission, failure to give notice to the respondent of admission of an appeal to the Privy Council is not sufficient ground for rehearing 22 Bom L R 550=59 Ind Cas 7

9 [S 604.] At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon

Revocation of acceptance of security  
Notes.—Rule 10 and not rule 9 is application for enhancement of amount of security for costs after admission of appeal 49 Ind Cas 893

\* 9A Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any where such opposite in the Court whose decree is complained of or to the decree of that Court

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct]

N B.—For local amendment in Rangoon, *vide infra*

10 [S. 605] Where at any time after the admission of an appeal but before the transmission of the copy of the record, Power to order further security for payment except as aforesaid, to His Majesty in Council, such security appears inadequate, or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may, order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment

11 [S. 606] Where the appellant fails to comply with such order, the Proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed.

12 [S. 607] When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council Refund of balance deposit the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7

13 [S. 608] (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed Powers of Court pending appeal from shall be unconditionally executed, unless the Court otherwise directs

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed from taking such security due performance His Majesty in

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise

Notes.—High Court can amend its own decree even after time to appeal to

P L R 258 Where leave to on to stay proceedings should to the plaintiff A I R 1928 as been admitted to the Privy can also be directed to furnish execution can be ordered even 734 Execution of High Court's 42 Ind Cas 835 Where stay in Privy Council security must be and the Court can give such 57 Ind. Cas 382.



## ORDER XLVI

*Reference*

1. [S 617] Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or Reference of question to High Court where in the execution of any such decree, any question of law or usage having the force of law arises on which the Court trying the suit or appeal or executing the decree, entertains reasonable doubt, the Court may either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court

Notes.—Reference is allowed only in cases of suits or appeals which are not subject to appeal A I R 1927 Mad 1179=34 M L J 66=107 Ind Cas 649 37 Ind. Cas 221, A I R 1933 Lah 402, A I R 1931 Pat 353 Reference to High Court is permissible only when lower Court entertains reasonable doubts A I R 1933 Lah 402=34 P L R 541 But Subordinate Courts are not relieved of deciding difficult questions A I R 1933 All 597 Subordinate Court cannot question of law taken by High Court to which it High Courts 1930 M W N 955=A I R R 1926 All 69 This Order has no application W N 521 Question on sanction application

cannot be referred to Rang 270=76 Ind Cas 519 Inquiry before a rent-collector is not a suit. 84 Ind Cas 543=29 C W N 521 The difference between appeal and reference is that reference is by a Subordinate Court to a Superior Court while appellant is a party to

2 [S 618] The Court

may pass decree contingent upon decision of High Court

in the Court and may pass a decree or make an order contingent upon the decision of the High Court on the point referred,

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference

3 [S 619] The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof proceed to dispose of the case in conformity with the decision of the High Court

4 [S 620] The costs (if any) consequent on a reference for the Costs of reference to High Court decision of the High Court shall be costs in the case

5 [S 621] Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose and make such order as it thinks fit

Notes.—High Court quite as much as when

the Court of Appeal on 23 C W N 80

6 [S 648A] (1, ..

Power to refer to High Court questions as to jurisdiction in small causes

a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons

for the doubt as to the nature of the suit

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presenta

14 [S. 609] (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security ;

(b) if the original security was furnished by the respondent, the Court, shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject matter of the appeal as it thinks fit.

15 [S. 610] (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same, and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provision is applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

(4) Unless His Majesty in Council is pleased otherwise to direct, no order of His Majesty in Council shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.]

N B.—For local amendment in Allahabad, vide *infra*.

Notes.—Court acting under Order 45 rule 15 cannot consider or discuss the merits of the case. Any application to this is *ultra vires* and does not apply to proceedings under Order 45. Application of Order 45 to proceedings under Order 45.

70 Ind Cas 765 = 5 P L T 407. Execution cannot be postponed on ground that the Court has not considered the merits of the case. A I R 1931 Pat 203 = 12 P. L. T. 100. In every person interested in execution is entitled to be heard. Ind Cas 219, 55 M 856.

16. [S. 611] The order made by the Court which executes the order of the Court relating to the execution of its own decrees.

## ORDER XLVI

*Reference*

1. [S 617] Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where in the execution of any such decree, any question of law or usage having the force of law arises on which the Court trying the suit or appeal or executing the decree, either of its own motion or on the application of a party, a statement of the facts of the case is made, and refer such statement with its own opinion on the point for the decision of the High Court

Notes.—Reference is allowed only in cases of suits or appeals which are not subject to appeal. A. I. R. 1927 Mad 1179=54 M. L. J. 66=107 Ind. Cas 649 37 Ind. Cas 221, A. I. R. 1933 Lah 402, A. I. R. 1931 Pat 333. Reference to High Court is permissible only when lower Court entertains reasonable doubts. A. I. R. 1933 Lah 402=34 P. L. R. 541. But Subordinate Courts are not relieved of deciding difficult questions. A. I. R. 1933 All 597. Subordinate Court cannot compare soundness of views on question of law taken by High Court to which it is subordinate with the views of other High Courts. 1930 M. W. N. 955=A. I. R. 1931 Mad. 71, 48 A. 188 F. B.=A. I. R. 1926 All 69. This Order has no application to miscellaneous proceedings. 29 C. W. N. 521. Question on sanction application cannot be referred to. 1 Rang 220=76 Ind. Cas 519. Inquiry before a rent-collector is not a suit. 84 Ind. Cas 543=29 C. W. N. 521. The difference between appeal and reference is that reference is by a Subordinate Court to a Superior Court while appellant is a party to the suit to the Appellate Court. 47 A. 513.

2. [S 618] The Court may either stay the proceedings or proceed in the case notwithstanding such reference and may pass a decree or make an order contingent upon the decision of the High Court on the point referred,

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. [S 619] The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. [S 620] The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. [S 621] Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose and make such order as it thinks fit.

Notes.—High Court has power to alter, etc., decree of court making reference. he Court of Appeal on 25 C. W. N. 80.

6. [S 648A] (1) a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation

to such other Court as it may in its order declare to be competent to take cognizance of the suit

7 [S 848B] (1) Where it appears to a District Court that a Court subordinate thereto has by reason of erroneously holding a suit to be cognizable by a Court of small causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper

(4) A Court subordinate to a District Court shall comply with any order for any record or information

Bombay and Oudh vide *infra*

1933 Na. 221 AIR 1933 Pat 690

## ORDER XLVII

### Review

Application for review of judgment I [S 823] (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order

(2) A party who is not appealing from a decree or order may apply for reviewing the pendency of an appeal by some one of such appeal is common to the appellant and respondent, he can present to the Court when he applies for the review

1934 Pat 229 Consent decree can not be set aside on ground of fraud under order 47 A I R 1932 Mad 229

Consent decree can not be set aside on ground of fraud under order 47 A I R 1932 Mad 229

laid down by Order 47, rule 1 are existent A I R 1933 Mad 631 (F B)=65 M L J 713, see A I R 1932 Mad 63 61 M L J 719 when decree under partition suit is alleged to be incorrect, review under rule 1 may be made A I R 1931 Pat 296=12 P L T 466 Application to set aside an *ex parte* order is not an application for review A I R 1933 Mad 345=37 M L W 720 Court cannot grant leave to file application for review in *forma pauperis* A I R 1930 Rang 280=8 Rang 423

Grounds for review.—Where evidence on a point is shut out owing to misconception of pleading, it is a ground for review A I R 1931 Sind 3=25 S L R 242 Faulty logic and error of law is no ground for review A I R 1932 Pat 275=11 Pat. 519 Omission to consider important facts on record is ground for



review A I R 1932 Nag 177=28 N L R 221 Discovery of new argument based on fact or law is no ground for review A I R 1933 Mad 290, 57 Ind Cas 147, 63 Ind Cas 344 Where due to mistake of everybody a revision filed and dismissed from an appealable order it is a ground of review A I R 1933 Lah 476=14 Lah 453=34 P L R 400 Review may be granted when evidence was overlooked by excusable misfortune A I R 1933 Sind 110 Court is competent to review its wrongly made order 48 Ind Cas 122 The ground for review under rule 1 must be something which existed at the date of the decree 70 Ind Cas 741=43 M L J 33, 73 Ind Cas 4, 89 Ind Cas 216, 13 O L J 507, 31 C W N 822 Errorers view of evidence or of law is no ground for review 34 C W N 695, see also 33 Bom L R 610, A I R 1930 Oudh 392, A I R 1929 Nag 231=12 N L J 148, A I R 1928 Nag 305=11 N L J 184, 112 Ind Cas 27, 107 Ind Cas 908, A I R 1925 Nag 384=87 Ind Cas 1029, 78 Ind Cas 977=19 S L R 30 Overlooking substantial rights and taking too strict views of title of suit and its prayer is good ground for review A I R 1930 Rang 162 Subsequent decision of superior Court of binding authority on the question of law does not make prior judgment passed on a different view of law liable to be reviewed A I R 1933 Ind 379 Fraud practised upon Court or partly discovered after order or decree.

Ind Cas 759, 48 A is sufficient to justify

A I R 1928 Lah 91

good ground for review A I R 1919 Rang 70=6 Rang 794 Subsequent legislation is no ground for review A I R 1928 Bom 308=52 B 434 No review is justified except as mentioned in rule 1 50 M 67=A I R 1926 Mad 980

New evidence—Review on ground of discovery of new and important matter can be granted when such matter was in existence at the date of the decree A I R 1933 Mad 48, see also A I R 1933 Pat 63, 64 Ind Cas 324, 23 C W N 247 Fresh documentary evidence cannot be admitted in review unless sufficient reasons are given for non production at time of trial A I R 1933 Oudh 328 The word evidence includes oral evidence also A I R 1928 Nag 279 The evidence newly discovered must be at least such as is presumably to be believed, and if believed would be conclusive A I R 1929 All 545, see also 38 Ind Cas 142 Review on ground of discovery of fresh evidence cannot be supported in absence of proof that applicant could not have got it earlier 29 Bom L R 371=A I R 1927 Bom 233 Review can not be admitted where new evidence does not comply with

R 1927 Mad  
covery of new  
decree of the  
cc 21 A L J  
new evidence

45 C 564=21 C W N 1076, see also 40 Ind 218=14 A L J 20=32 Ind Cas 622 Where petition for review on ground of discovery of review is sought by defendants who preferred

appeal 21 C W N 430=24 C L J 517=36 Ind Cas 460

Within his knowledge—Vide 75 Ind Cas 91

Mistake or error—Decision on wrong authority is not mistake apparent on face of record A I R 1933 Lah 223=38 P L R 254 The error must be on the face of the record A I R 1933 Mad 631 (F B)=65 M L J 173, see also A I R

'means that one can find  
eto some legal proposition  
is erroneous' Further an

which is well settled and beyond controversy so far as the Court which delivered the judgment is concerned and on which the judgment rests A I R 1929 Mad 209=1928 M W N 911, see also A I R 1929 Rang 70=6 Rang 714, A I R 1930 Lah 37=11 Lah 158, A I R 1929 Lah 424=30 P L R 593 76 Ind Cas 342=46 M 955=45 M L J 309 Mere mistake or error of law is not a sufficient reason. Such error or mistake must be apparent on the face of the record 21 C W N 1107, A I R 1927 Rang 20, 88 Ind Cas 112, A I R 1929 Nag 58, A I R 1927 Mad 252 87 Ind. Cas 125, 75 Ind. ter decisions in the construction on the face of the record

I R 1934 Nag 111

**Other sufficient cause**—Other sufficient cause means something *ejusdem generis* with or analogous to what precedes. A I R 1928 Mad 694=55 M L J 30, see also A I R 1929 Cal 47=33 C W N 883, 113 Ind Cas 887, 108 Ind Cas 750, A I R 1928 Rang 31=3 Rang 675, 31 C W N 822, A I R 1927 Nag 368, A I R 1927 Mad 355=52 M L J 123, 92 Ind Cas 1013; 50 M L J 493=A I R 1926 Mad 764, 90 Ind Cas 610=49 B 839=27 Bom L R 1150, 47 A 361=21 A L J 56=86 Ind Cas 168, 39 C L J 247, 51 C 70, 26 C W N 697=49 I A 144=24 Bom L R 1238 P C, A I R 1933 Lah 596=13 Lah 546, A I R 1932 Pat 275=13 P L T 384

**Power of Court**—Former Court can still entertain application to set aside its pre

Ind	.	.	116
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reg	.	.	As
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**Appeal** *when* *revised*  
Revision 30 C W N 570, 52 M L J 681, A I R 1929 All 375

2 [S 624] An application for review of a decree or order of a Court,

To whom applications for review may be made not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge, who passed the decree or made the order sought to be reviewed, but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub rule (2), proviso (a), be disposed of by his successor

Notes—Vide 20 C W N 391, 75 Ind Cas 91, 47 A 751

From of applications for review 3 [S 625] The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review

Application where rejected review it shall reject the application 4 [S 626] (1) Where it appears to the Court that there is not sufficient ground for a

Application where granted grant the same (2) Where the Court is of opinion that the application for review should be granted it shall

Provided that—

(a) no such application opposite party, ce to the support of

(b) ground of discovery of alleges was not within him when the decree

or order was passed or made, without strict proof of such allegation

Notes—A I R 1928 Mad 56, 51 M L J 219=50 M 67, A I R 1923 Lah 303, 70 Ind Cas 144, 63 Ind Cas 99, 38 Ind Cas 403

5 [S 627] Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not

or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same

Notes—A I R 1927 Rang 20 72 Ind Cas. 566=49 I A 144 (P C)

Application where rejected 6. [S 628] (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. [S 629] (1) An order of the Court rejecting the application shall not be Order of rejection not appealable, but an order granting an application may be objected to on the ground that the application was—

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit,

sub-rule (2) unless notice of the party

N B—For local amendment in Madras, vide *infra*

8. [S. 630.] When an application for review is granted, a note thereof shall be made in the register and the Court may at once rehear the case or make such order in regard to the rehearing as it thinks fit.

N B—For local amendments in Allahabad, Bombay and Oudh, vide *infra*

9. [S. 629, last para.] No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained

Bar of certain applications

## ORDER XLVIII

### Miscellaneous

1 [S. 93] (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the

Process to be served at expense of party issuing

Court otherwise directs

Costs of service

(2) The court fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

N B—For local amendments in Allahabad and Oudh, vide *infra*

2. [S 94] All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons

Orders and notices how served.

3. [S 644.] The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned

Use of forms in appendices

## ORDER XLIX

### Chartered High Courts

1. [S 636.] Notice to produce documents, summonses to witnesses, and every other judicial process, issued, in the exercise of original civil jurisdiction of the High Court, and of its matrimonial, testam

Who may serve processes of High Courts.

ary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs

2 [N<sup>o</sup> 2] Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a

Chartered High Court

3 [S 638.] The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

Application of rules

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII,

(2) rule 3 of Order X,

(3) rule 2 of Order XVI,

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15, and 16 (so far as relates to the manner of taking evidence) of Order XVIII

(5) rules 1 to 8 of Order XX, and

(6) rule 7 of Order XXVIII (so far as relates to the making of a memorandum),

and rule 33 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction

N B For local amendment in Bombay, vide *infra*

## ORDER L

### Provincial Small Cause Courts

1 [N<sup>o</sup> 1] The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Causes Court Act 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act that is to say—

(1) so much of this schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits,

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property,

(iii) the settlement of issues, and

(b) the following rules and orders,—

Order II rule 1 (frame of suit),

Order X rule 3 (record of examination of parties)

Order XV except so much of rule 4 as provides for the pronouncement at once of judgment,

Order XVIII, rules 5 to 12 (evidence),

Orders XLI to XLV (appeals),

Order XLVII, rules 2, 3, 5, 6, 7 (review),

Order LI

## ORDER LI

### Presidency Small Cause Court.

1 [N<sup>o</sup> 1] Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XVI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882, this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta Madras and Bombay

N B—For additional orders in Allahabad Bombay, Oudh and Rangoon vide *infra*

## APPENDIX A.

## PLEADINGS

## (1) TITLES OF SUITS

IN THE COURT OF

A. B (*add description and residence*) ... .. Plaintiff,  
*against*  
 C D (*add description and residence*) ... .. Defendant

## (2) DESCRIPTION OF PARTIES IN PARTICULAR CASES

The Secretary of State for India in Council

The Advocate General of

The Collector of

The State of

The A B Company, Limited having its registered office at

A B a public officer of the C D Company

A B (*add description and residence*), on behalf of himself and all other creditors of C D (*add description and residence*)A B (*add description and residence*), on behalf of himself and all other holders of debentures issued by the \_\_\_\_\_ Company, Limited

The official Receiver,

A B a minor (*add description and residence*), by C. D [*or by the Court of Words*], his next friendA B (*add description and residence*), a person of unsound mind [*or of weak mind*], by C D, his next friend

A B a firm carrying on business in partnership at

A. B (*add description and residence*), by his constituted attorney C. D. (*add description and residence*)A B (*add description and residence*), Shebait of ThakurA. B (*add description and residence*), executor of C D, deceasedA. B (*add description and residence*) *heir of* C. D, deceased

## (3) PLAINTS,

No 1

MONEY LENT

(Title)

A B, the above named plaintiff, states as follows —

1 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he lent the defendant \_\_\_\_\_ rupees repayable on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

2 The defendant has not paid the same, except \_\_\_\_\_ rupees paid on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

[If the plaintiff claims exemption from any law of limitation, says —]

3 The plaintiff was a minor [*or insane*] from the \_\_\_\_\_ day of \_\_\_\_\_ till the \_\_\_\_\_ day of \_\_\_\_\_

4 [ *Facts showing when the cause of action arose and that the Court has jurisdiction* ]

5 The value of the subject matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees

6 The plaintiff claims rupees with interest at per cent from the day of 19 .

No 2

### MONEY OVERPAID

(Title)

A B the above named plaintiff, states as follows —

1 On the day of 19 , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver

2 The plaintiff procured the said bars to be assayed by E F, who was paid by the defendant for such assay and E F declared each of the bars to contain 1500 tolas of fine silver and the plaintiff accordingly paid the defendant rupees

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment

4 The defendant has not repaid the sum so overpaid

[As in paras 4 and 5 of form No 1, and Relief claimed]

No 3

### GOODS SOLD AT A FIXED PRICE AND DELIVERED

(Title)

A B the above named plaintiff, states as follows —

1 On the day of 19 E F sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed or sundry goods]

2 The defendant promised to pay rupees for the said goods on delivery [or on the day of some day before the plaint was filed]

3 He has not paid the same

4 E F died on the day of 19 By his last will he appointed his brother, the plaintiff his executor

[As in paras 4 and 5 of Form No 1]

7 The plaintiff as executor of E F claims [Relief claimed]

No 4

### GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A B the above named plaintiff, states as follows —

1 On the day of 19 plaintiff sold and delivered to the defendant [sundry articles of house furniture] but no express agreement was made as to the price

2 The goods were reasonably worth rupees

3 The defendant has not paid the money

[As in paras 4 and 5 of form No 1, and Relief claimed]

No 5

### GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED

(Title)

A B, the above named plaintiff states as follows —

1 On the day of 19 , E F agreed with the plain

uff that the plaintiff should make for him [tax tables in fifty hours] and that E F  
rupees  
and on the day of 19  
has ever since been ready and willing so to do  
3 E F has not accepted the goods or paid for them  
[As in paras 4 and 5 of Form No 1 and Relief claimed]

No 6  
DEFICIENCY UPON A RE SALE [GOODS SOLD AT AUCTION]  
(Title)

the plaintiff put up at auction  
not paid for and removed by  
account of which condition the defendant had no ice  
2 The defendant purchased [one crate of crockery] at the auction at the price  
ant on  
ay for  
rate of  
the defendant has not paid for the same  
rupees  
[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 7  
SERVICES AT A REASONABLE RATE  
(Title)

A B, above named plaintiff states as follows —  
1 Between the  
day of  
drawings, designs at  
express agreement was made —  
2 The services were reasonably worth rupees  
3 The defendant has not paid the money  
[As in paras 4 and 5 of Form No 1 and Relief claimed]

No 8  
SERVICES AND MATERIALS AT A REASONABLE COST  
(Title)

A. B, the above named plaintiff states as follows —  
1 On the day of 19, at  
built a house [known as No in ], and furnished the materials therefor  
agreement was made as to the  
rupees

[As in paras. 4 and 5 of Form No 1, and Relief claimed]

No 9  
USE AND OCCUPATION  
(Title)

A B, the above named plaintiff executor of the will of X Y deceased states  
as follows —  
1. That the defendant occupied the [house No. Street] by  
permission of the said X Y from the day of 19, until

- 4 [ *Facts showing when the cause of action arose and that the Court has jurisdiction* ]  
 5 The value of the subject matter of the suit for the purpose of jurisdiction is  
 rupees and for the purpose of court fees is rupees  
 6 The plaintiff claims rupees with interest at per cent from  
 the day of 19

---

No. 2

MONEY OVERPAID

(Title)

A B the above named plaintiff, states as follows —

- 1 On the day of 19, the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver  
 2 The plaintiff procured the said bars to be assayed by E F, who was paid by the defendant for such assay and E F declared each of the bars to contain 1500 tolas of fine silver and the plaintiff accordingly paid the defendant rupees  
 3 Each of the said bars contained only 1200 tolas of fine silver of which fact the plaintiff was ignorant when he made the payment  
 4 The defendant has not repaid the sum so overpaid  
 [As in paras 4 and 5 of form No 1 and Relief claimed]

---

No 3

GOODS SOLD AT A FIXED PRICE AND DELIVERED

(Title)

A B the above named plaintiff states as follows —

- 1 On the day of 19 E F sold and delivered to the defendant [one hundred barrels of flour or the goods mentioned in the schedule hereto annexed or sundry goods]  
 2 The defendant promised to pay rupees for the said goods on delivery [or on the day of some day before the plaint was filed]  
 3 He has not paid the same  
 4 E F died on the day of 19 By his last will he appointed his brother the plaintiff his executor  
 [As in paras 4 and 5 of Form No 1]  
 7 The plaintiff as executor of E F claims [Relief claimed]

---

No 4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A B the above named plaintiff, states as follows —

- 1 On the day of 19 plaintiff sold and delivered to the defendant [sundry articles of house furniture] but no express agreement was made as to the price  
 2 The goods were reasonably worth rupees  
 3 The defendant has not paid the money  
 [As in paras 4 and 5 of form No 1, and Relief claimed]

---

No 5

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED

(Title)

A B, the above named plaintiff states as follows —

- 1 On the day of 19, E F agreed with the plain



2 On the day of 19 the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant] tendered to the defendant a sufficient instrument of transfer of the same [or was ready and willing, and is still ready and willing, and offered to transfer the same to the defendant by a sufficient instrument] on the day of 19 the defendant of the sum agreed upon

3 The defendant has not paid the money

*[As in paras 4 and 5 of Form No 1, in Relief claimed]*

#### NO 14

#### NOT DELIVERING GOODS SOLD

(Title)

A B the above named plaintiff, states as follows —

1 On the day of 19, the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19 and that the plaintiff should pay therefor rupees on delivery

2 On the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the goods

3 The defendant has not delivered the goods and the plaintiff has been deprived of the profits which would have accrued to him from such delivery

*[As in paras 4 and 5 of Form No 1, in Relief claimed]*

#### NO 15

#### WRONGFUL DISMISSAL

(Title)

A B the above named plaintiff, states as follows —

1 On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman or as the case may be] and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly]

notice

3 On the day of 19, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services

*[As in paras 4 and 5 of Form No 1, and Relief claimed]*

#### NO 16

#### BREACH OF CONTRACT TO SERVE

(Title)

A B, the above named plaintiff states as follows —

mutually

term of

[one year]

2 The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19, offered so to do]

3 The defendant [entered upon] the service of the plaintiff on the above mentioned day but afterwards on the day of 19, he refused to serve the plaintiff as aforesaid

*[As in paras 4 and 5 of Form No 1, and Relief claimed]*

- the day of 19 , and no agreement was made as to payment for the use of the said premises
- 2 That the use of the said premises for the said period was reasonably worth rupees
  - 3 The defendant has not paid the money  
[As in paras 4 and 5 of Form No 1]
  - 6 The plaintiff as executor of X Y [Relief claimed]

No 10  
ON AN AWARD  
(Title)

A B, the above named plaintiff states as follows —

- 1 On the day of 19 , the plaintiff and defendant, making [a demand of the plaintiff for the defendant refused to pay], agreed in writing E F and G H, and the original document is annexed hereto

- 2 On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees]
- 3 The defendant has not paid the money  
[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 11  
ON A FOREIGN JUDGMENT  
(Title)

A B, the above named plaintiff, states as follows —

- 1 On the day of 19 , at , in the State [or Kingdom] of , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees with interest from the said date

- 2 The defendant has not paid the money  
[As in paras 4 and 5 of Form No 1 and Relief claimed]

No 12  
AGAINST SURETY FOR PAYMENT OF RENT  
(Title)

A B, the above named plaintiff states as follows —

- 1 On the day of 19 , E F let the term of the house of G H to I J, for the term of K L rupees, to guarantee the punctual payment of the rent E F
- 3 The rent for the month of 19 amounting to rupees, has not been paid
- 4 On the day of 19 , the plaintiff gave notice to the defendant of the non payment of the rent, and demanded payment thereof
- 5 The defendant has not paid the same

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 13  
BREACH OF AGREEMENT TO PURCHASE LAND  
(Title)

A B, the above named plaintiff, states as follows —

- 1 On the day of 19 , the plaintiff and defendant entered into an agreement and the original document is here on annexed , [Or, on the day of 19 the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees]

2 On the day of 19, the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the satisfaction] tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the 19<sup>th</sup> 19 by the defendant of the sum agreed upon

3. The defendant has not paid the money

*[As in paras 4 and 5 of Form No 1, and Relief claimed]*

#### NO 14

#### NOT DELIVERING GOODS SOLD

*(Title)*

A B, the above named plaintiff, states as follows —

1 On the day of 19, the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19 and that the plaintiff should pay

ing and offered to pay the

and the plaintiff has been from such delivery

*[As in paras 4 and 5, of Form No 1 and Relief claimed]*

#### NO 15

#### WRONGFUL DISMISSAL

*(Title)*

A B the above named plaintiff, states as follows —

1 On the day of 19, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant or in the capacity of foreman or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly]

2 On the day of 19 the plaintiff entered upon the service of the defendant and has ever since been and still is ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice

3 On the day of 19, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid or to pay him for his services

*[As in paras 4 and 5 of Form No 1, and Relief claimed]*

#### NO 16

#### BREACH OF CONTRACT TO SERVE

*(Title)*

A B, the above named plaintiff states as follows —

mutually

[one year] term of

2 The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19, offered so to do]

3 The defendant [entered upon] the service of the plaintiff on the above-mentioned day but afterwards on the day of 19, he refused to serve the plaintiff as aforesaid

*[As in paras 4 and 5 of Form No 1, and Relief claimed]*

## No 17

## AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

## (Title)

*A B*, the above named plaintiff states as follows —

1 On the                      day of                      19                      , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed [*Or state the tenor of the contract*]

2 [The plaintiff duly performed all the conditions of the agreement on his part]

3 The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner]

[*As in paras 4 and 5 of Form No 1, and Relief claimed*]

## No 18

## ON A BOND FOR THE FIDELITY OF A CLERK

## (Title)

*A B* the above named plaintiff, states as follows —

1 On the                      day of                      19                      , the plaintiff took *E F* into his employment as a clerk

2 In consideration thereof, on the                      day of                      19                      , the defendant agreed with the plaintiff that if *E F* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies evidences of debt or other property received by him for the use of the plaintiff the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof not exceeding                      rupees

by his bond of the same date  
of                      rupees, subject to  
his duties as clerk and cashier  
intiff for all monies, evidences  
time held by him in trust for the

plaintiff the bond should be void]

[*Or 2 In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed*]

3 Between the                      day of                      19                      , and the                      day of                      19                      , *E F* received money and other property amounting to the value of                      rupees, for the use of the plaintiff for which sum he has not accounted to him and the same still remains due and unpaid

[*As in paras 4 and 5 of Form No 1 and Relief claimed*]

## No 19

## BY TENANT AGAINST LANDLORDS, WITH SPECIAL DAMAGE

## (Title)

*A B* the above named plaintiff, states as follows —

1 On the                      day of                      19                      the defendant, by a registered  
Street] for the  
plaintiff, and his  
said term

2 All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit

3 On the                      day of                      19                      , during the said term *E F*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4 The plaintiff was thereby [prevented from continuing the business of a tailor at the said place was compelled to expend                      rupees in moving and lost the custom of *G H*, and *I J*, by such removal]

[*As in paras 4 and 5 of Form No 1 and Relief claimed*]

10 20

## ON AN AGREEMENT OF INDEMNITY

(T:1c)

1. *Re* the above named plaintiff, states as follows —

On the day of 19, the plaintiff and defendant, being partners in trade under the style of A B and C D dissolved the partnership, and mutual property, in such manner as may appear by the exhibits thereto, that

7 The plaintiff duly performed all the conditions of the agreement on his part

3 On the day of 19 [a judgment was recovered against the plaintiff and defendant by E / in the High Court of Judicature at upon a debt due from the firm to E / and on the day of 19 ] the plaintiff paid rupees [ in satisfaction of the same ]

4 The defendant has not paid the same to the plaintiff

[As in par 1 & 4 of Form No 1 in relief clause D]

## No 21

# PROCURING PROPERTY BY FRAUD

(Title)

A B the above named plaintiff states as follows —

11 On the day of 19 the defendant for the purpose of inducing the plaintiff to sell in certain goods represented to the plaintiff that [he, the defendant was solvent and worth rupees over all his liabilities]

2 The plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees

3 The said representations were false [or state the particular falsehoods] and were then known by the defendant to be so

4 The defendant has not paid for the good [Or if the goods were not delivered]  
The plaintiff in preparing and shipping the goods and procuring their restoration  
expended rupees

[As in paras 4 and 5 of Form No 1, and Relief claimed]

## No 22

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

(Title)

A B the above named plaintiff states as follo vs —

1 On the day 19, the defendant represented to the plaintiff that E F was solvent and in good credit and worth rupees over all his liabilities [or that E F then held a responsible situation and was trusted with goods on credit] sell to E F [rice] of the value of

n by the defendant  
and the plaintiff for

the credit aforesaid  
the same

[As in paras 4 and 5 of form No 1, and Relief claimed]

## No 23

### POLLUTING THE WATER UNDER THE PLAINTIFFS LAND

(Title)

*A B*

1 The  
certain lan  
in the well, and was entitled to the use of

therein, and to have have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted

2 On the day of 19 the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well

3 In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water

[As in paras 4 and 5 of Form No 1, and Relief claimed]

#### No 24

### CARRYING ON A NOXIOUS MANUFACTURE

(Title)

A B the above named plaintiff states as follows —

1 The plaintiff is and at all the times hereinafter mentioned was possessed of certain lands called situate in

; wrong  
at large  
matter

which spread themselves over and upon the said lands and corrupted the air and settled on the surface of the lands

3 Thereby the trees, hedge herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died

4 The plaintiff was wise might have done and therefrom, and has been occupation of the lands as he otherwise would have had

(As in paras 4 and 5 of Form No 1 and Relief claimed)

#### No 25

### OBSTRUCTING A RIGHT OF WAY

75

1

states as follows —

time hereinafter mentioned was possessed of [a

way from the [house] over a certain field to a the high way over the field to the house for or on foot] at all times of the year

3 On the day of 19 defendant wrongfully obstructed the said way so that the plaintiff could not pass [with vehicles or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same]

4 (State special damage if any)

[As in paras 4 and 5 of form No 1, and Relief claimed]

#### No 26

### OBSTRUCTING A HIGHWAY

(Title)

1 The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it

2 Thereby the plaintiff while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain and was prevented from attending to his business for a long time, and incurred expense for medical attendance

[As in paras 4 and 5 of Form No 1 and Relief claimed]

## No 27

## DIVERTING A WATER COURSE

## (Title)

A B, the above named plaintiff states as follows —

1 The plaintiff is and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the \_\_\_\_\_, in the village of \_\_\_\_\_ district of \_\_\_\_\_

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill

3 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill

4 By reason thereof the plaintiff has been unable to grind more than \_\_\_\_\_ sacks per day whereas, before the said diversion of water he was able to grind \_\_\_\_\_ sacks per day

[As in paras 4 and 5 of Form No 1 and Relief claimed]

## No 28

## OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

## (Title)

A B the above named plaintiff states as follows —

hereinafter mentioned, possessed of certain \_\_\_\_\_ and use a portion of the water of a certain \_\_\_\_\_

2 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream,

[As in paras 4 and 5 of Form No 1 and Relief claimed]

## No 29

## INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

## (Title)

A B, the above named plaintiff, states as follows —

1 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendants were common carriers

the defen

3 While he was such passenger, at \_\_\_\_\_ [or near the station] of \_\_\_\_\_ or between the stations of \_\_\_\_\_ and \_\_\_\_\_ a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants whereby the plaintiff was much injured [having his leg broken his head cut etc, and state the special damage, if any as] and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman]

[As in paras 4 and 5 of Form No, 1 and Relief claimed]

fully and  
thereto  
y cross  
, where-

by, etc, as in para 3]

## No 30.

## INJURIES CAUSED BY NEGLIGENT DRIVING

## (Title)

A B the above named plaintiff, states as follows —

1 The plaintiff is a shoemaker carrying on business at \_\_\_\_\_ The defendant is a merchant of \_\_\_\_\_

2 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon

He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendant's drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3 By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras 4 and 5 of Form No 1. and Relief claimed]

### No. 31.

#### FOR MALICIOUS PROSECUTION.

(Title)

A B, the above-named plaintiff, states as follows —

1 On the                      day of                      19                      , the defendant obtained a warrant of arrest from

[a Magistrate of the said city or as the case may be] on a charge of,

and the plaintiff was arrested thereon, and imprisoned for

[days or hours, and gave bail in the sum of                      rupees to obtain his release]

2 In so doing the defendant acted maliciously and without reasonable or probable cause

3 On the                      day                      19                      , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff

4 Many persons whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him, or in consequence of the said arrest, the plaintiff lost his situation as clerk to one E F or in consequence the plaintiff suffered pain of body and mind and was prevented from transacting his business, and was injured in his credit and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint

[As in paras 4 and 5 of Form No 1 and Relief claimed]

### No 32

#### MOVEABLES WRONGFULLY DETAINED

(Title.)

A B, the above named plaintiff states as follows —

1 On the                      day of                      19                      , plaintiff owned [ or state facts showing a right to the possession ] the goods mentioned in the schedule hereto annexed [or describe the goods] the value of which is                      rupees of this suit the defendant has

19                      the plaintiff demanded the same from the defendant, but he refused to deliver them

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims —

(1) delivery of the said goods, or                      rupees, in case delivery cannot be had;

(2)                      rupees compensation for the detention thereof

*The Schedule*



1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. \_\_\_\_\_, \_\_\_\_\_ Street, Calcutta]

mentioned was, in  
Street, Calcutta ]

2 The defendant is, and at all the said times was the absolute owner of [a plot of ground in the same street ]

3 On the day of 19 , the defendant erected upon his said plot a slaughter house, and still maintains the same and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff]

[4 In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same]

[As in paras 4 and 5 of Form No 1]

7 The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance

No 37  
PUBLIC NUISANCE  
(Title)

A B, the above named plaintiff, states as follows —

1 The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act

2 The plaintiff has obtained the consent in writing of the Advocate General [or of the Collector or other officer appointed in this behalf] to the institution of this suit

[As in paras 4 and 5 of Form No 1]

5 The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid

No 38  
INJUNCTION AGAINST THE DIVERSION OF A WATER COURSE  
(Title)

A B the above named plaintiff states as follows —

[As in Form No 27]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid

No 39  
RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION  
AND FOR AN INJUNCTION  
(Title)

1 The plaintiff states that the defendant is the owner of [a painting] mentioned was, the owner of [a painting] an eminent painter] and of which no duplicate exists [or state any facts showing that the property is of a kind that cannot be replaced by money]

2 On the day of 19 , he deposited the same for safe keeping with the defendant

3 On the day of 19 , he removed the same from the storage of the same and delivered it up to the defendant and threatens to do so again

5 No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting]

[As in paras 4 and 5 of Form No 1]

8 The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting] ;
- (2) that he be compelled to deliver the same to the plaintiff

---

No 40

INTERPLEADER

(Title)

*A B*, the above-named plaintiff, states as follows.—

1. Before the date of the claims hereinafter mentioned *G. H* deposited with the plaintiff [*describe the property*] for [safe keeping]

2 The defendant *C D* claims the same [under an alleged assingment thereof to him from *G H*]

3 The defendant *E F* also claims the same [under an order of *G H* trans-

costs, and

~ [As in paras 4 and 5 of Form No 1] ~

9 The plaintiff claims—

(1) that the defendants be restrained, by injunction from taking any proceedings against the plaintiff in relation thereto

(2) that they be required to interplead together concerning their claims to the said property,

[(3) that some person be authorized to receive the said property pending such litigation,]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto

---

No 41

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND  
ALL OTHER CREDITORS

(Title)

*A B*, the above named plaintiff states as follows —

the time of his death, and his estate

any]

day of

day of

he appointed *C D* his executor [or devised his state in trust, etc., or died intestate as the case may be]

3

4  
proceed

[As in paras 4 and 5 of Form No 1]

7 The plaintiff claims that an account may be taken of the moveable [and immoveable] property of *E F* deceased and that the same may be administered under the decree of the Court

---

No 42

ADMINISTRATION BY SPECIFIC LEGATEE

(Title)

[Alter Form No 41 thus]—

[Omit paragraph 1 and commence paragraph 2] *E F*, late of

died on or about the

day of

day of

By his last will, dated the  
he appointed *C D*, his executor, and bequeathed to the plaintiff [here state the specific legacy]

and, amongst  
 other things, of the said [here name the subject of the specific bequest],  
 and, amongst

## No. 43

## ADMINISTRATION BY PECUNIARY LEGATTEE.

(Title)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2] E. F., late of  
 died on or about the day of By his last will  
 dated the day of he appointed C. D. his  
 executor, and bequeathed to the plaintiff a legacy of  
 rupees.

In paragraph 4 substitute "legacy" for "debt".

Another form.

(Title.)

E. F., as follows—  
 I. died on the day of

execu-  
 tor  
 after

be the testator's next-of-kin if he had  
 would be the testator's next-of-kin if he had  
 the plaintiff, and such failure of his issue

day of  
 the def.  
 got in the moveable property, he has sold some part of the immoveable  
 property

1 immoveable property ;  
 moveable property and

[As in paras 4 and 5 of Form No. 1]

## 6 The plaintiff claims—

- (1) to have the moveable and immoveable property of A. B. adminis-  
 tered in this Court and for that purpose to have all proper directions  
 given and accounts taken,
- (2) such further or other relief as the nature of the case may require.

## No. 44.

## EXECUTION OF TRUSTS

(Title.)

A. B. the above-named plaintiff, states as follows —

1 He is one of the trustees under an instrument of settlement bearing date on  
 or about the day of made upon the marriage of E.  
 F. and G. H., the father and mother of the defendant [or an instrument of transfer  
 of the estate and effects of E. F. for the benefit of C. D., the defendant, and the  
 other creditors of E. F.]

2. A. B. has taken upon himself the burden of the said trust, and is in possession  
 of [or of the proceeds of] the moveable and immoveable property transferred by the  
 said instrument.

C. D. claims to be entitled to a beneficial interest under the instrument.

[As in paras 4 and 5 of Form No. 1]

6. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, or of part of the said, immovable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the account of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C D, the defendant, and all other persons who may be interested in such administration in the presence of C D and such other person so interested as the Court may direct or that C D may show good cause to the contrary.

[V B—Where the suit is by a beneficiary, the plaintiff may be made, mutatis mutandis, on the plaint by a legatee]

## No 45

## FORECLOSURE OR SALE

(Title)

- (a) (date);  
 (b) (names of mortgagor and mortgagee);  
 (c) (sum secured);  
 (d) (rate of interest);  
 (e) (property subject to mortgage);  
 (f) (amount of advance).

of 3 and is ready to account as mortgagee in possession from that time  
 [As in paras 4 and 5 of Form No 1]

6 The plaintiff claims—

- (1) payment, or in default [sale or] foreclosure [and possession],  
 [Where Order 34, rule 6, applies]  
 (2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance,

## No 46

## REDEMPTION

(Title)

A 1

1

2

(date)

in mortgage

(If the defendant is mortgagee in possession, add)

3 The defendant has taken possession [or has received the rents] of the mortgaged property

[As in paras 4 and 5 of Form No 1.]

6 The plaintiff claims to redeem the said property and to have the same conveyed to him [and to have possession thereof]

## No 47

## SPECIFIC PERFORMANCE (No 1)

## (Title)

*A B*, the above named plaintiff, states as follows —

1 By an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immoveable property therein described and referred to for the sum of \_\_\_\_\_ rupees

2 The plaintiff has applied to the defendant specifically to perform the agreement on his part but the defendant has not done so

3 The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit

## No 48

## SPECIFIC PERFORMANCE (No 2)

## (Title)

*A B* the above named plaintiff states as follows —

1 On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the plaintiff and defendant enter into an agreement in writing, and the original document is hereto annexed

The defendant was absolutely entitled to the immoveable property described in the agreement

2 On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the plaintiff tendered \_\_\_\_\_ rupees to the defendant and demanded a transfer of the said property by a sufficient instrument

3 On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the plaintiff again demanded such transfer [Or the defendant refused to transfer the same to the plaintiff]

4 The defendant has not executed any instrument of transfer

5 The plaintiff is still ready and willing to pay the purchase money of the said property to the defendant

[As in paras 4 and 5 of Form No. 1]

8 The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement]

(2) \_\_\_\_\_ rupees compensation for withholding the same

## No 49

## PARTNERSHIP

## (Title)

*A B* the above named plaintiff, states as follows —

1 He and *C D* the defendant, have been for \_\_\_\_\_ years [or months] past carrying on business together under articles of partnership in writing [or under, a deed, or under a verbal agreement]

2 Several disputes and differences have arisen between the plaintiff and defendant on the business in which the plaintiff has committed the

(1)  
(2)  
(3)

[As in paras 4 and 5 of Form No 1]

- 5 The plaintiff claims—  
 (1) dissolution of the partnership ;  
 (2) that accounts be taken ,

(N  
 on, a  
 disso' c t)

## (4) WRITTEN STATEMENTS.

*General defences*

- Denial** The defendant denies that (*set out facts*)  
 The defendant does not admit that (*set out facts*)  
 The defendant admits that but says that
- Protest** The defendant denies that he is a partner in the defendant firm of  
 The defendant denies that he made the contract alleged or any contract with the plaintiff  
 The defendant denies that he contracted with the plaintiff as alleged or at all  
 The defendant admits assets but not the plaintiff's claim  
 The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.
- The suit is barred by article of the Limitation. second schedule to the Indian Limitation Act, 1877 +
- Jurisdiction.** The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*)
- On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action
- Insolvency** The defendant has been adjudged an insolvent.  
 The plaintiff before the institution of the suit was adjudged an insolvent and the right to use vested in the receiver.
- Minority** The defendant was a minor at the time of making the alleged contract  
 The defendant as to the whole claim (or as to Rs part of the money claimed, or as the case may be) has paid into Court Rs and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid)
- Performance remitted.** The performance of the promise alleged was remitted on the (*date*)
- Rescission** The contract was rescinded by agreement between the plaintiff and defendant
- Pes judicata** The plaintiff's claim is barred by the decree in suit (*give the reference*)  
 The plaintiff is estopped from denying the truth of (*inserts statement as to which estoppel is claimed*) because here state the facts relied on as creating the estoppel)
- Estoppel**
- Ground of defence subsequent to institution of suit** Since the institution of the suit, that is to say, on the day of (*set out facts*)

## No 1

## DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

- 1 The defendant did not order the goods  
 2 The goods were not delivered to the defendant

\* See now the Indian Limitation Act 1908 (IX of 1908)

+ XV of 1877

## No 47

## SPECIFIC PERFORMANCE (No 1)

## (Title)

A B, the above named plaintiff, states as follows —

of  
of [or sell to] the plaintiff certain  
d to for the sum of

rupees

the agreement on his part of which the defendant has had notice

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit

## No 48

## SPECIFIC PERFORMANCE (No 2)

## (Title)

A B, the above named plaintiff states as follows —

1 On the day of 19 , the plaintiff and defendant enter into an agreement in writing, and the original document is hereto annexed

The defendant was absolutely entitled to the immoveable property described in the agreement

2 On the day of 19 the plaintiff tendered rupees to the defendant and demanded a transfer of the said property by a sufficient instrument

3 On the day of 19 , the plaintiff again demanded such transfer [Or the defendant refused to transfer the same to the plaintiff]

4 The defendant has not executed any instrument of transfer

5 The plaintiff is still ready and willing to pay the purchase money of the said property to the defendant

[As in paras 4 and 5 of Form No 1]

8 The plaintiff claims—

(1) plaintiff by a sufficient

instr

(2) the same

## No 49

## PARTNERSHIP

## (Title)

A B the above named plaintiff, states as follows —

1 He and C D the defendant have been for

articles of partner

plaintiff and defen  
on the business in  
has committed the

(1) 6 ~ -  
(2)  
(3)

[As in paras 4 and 5 of Form No 1]



- 5 The plaintiff claims—  
 (1) dissolution of the partnership ;  
 (2) that accounts be taken ;

(IV . . . . .  
 tion, a . . . . .  
 dissolved)

#### (4) WRITTEN STATEMENTS

##### *General defences*

Denial The defendant denies that (*set out facts*)

The defendant does not admit that (*set out facts*)

The defendant admit that but says that

Protest The defendant denies that he is a partner in the defendant firm of

The defendant denies that he made the contract alleged or any contract with the plaintiff all

plaint or any of them in the

The suit is barred by article or article of the Limitation second schedule to the \* Indian Limitation Act, 1877 †

Jurisdiction The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*)

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action

Insolvency The defendant has been adjudged an insolvent

The plaintiff before the institution of the suit was adjudged an insolvent and the right to use vested in the receiver.

Minor ty. The defendant was a minor at the time of making the alleged contract

The defendant as to the whole claim (*or as to Rs* part of the money Payment into court. claimed, *or as the case may be*) has paid into Court Rs and says that this sum is enough to satisfy the plaintiff's claim (*or the part aforesaid*)

Performance remitted The performance of the promise alleged was remitted on the (*date*)

Rescission The contract was rescinded by agreement between the plaintiff and defendant

*Res judicata* The plaintiff's claim is barred by the decree in suit (*give the reference*)

The plaintiff is estopped from denying the truth of (*inserts statement as to which estoppel is claimed*) because here state the facts relied on as creating the estoppel

Estoppel Since the institution of the suit, that is to Ground of defence subsequent to institution of suit say, on the day of (*set out facts*)

#### No 1

#### DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

1. The defendant did not order the goods
2. The goods were not delivered to the defendant.

\* See now the Indian Limitation Act, 1908 (IX of 1908).

† XV of 1877



## No 7

1907, May 3rd To carriage of the goods claimed from Delhi to Calcutta —  
45 maunds at Rs 2 per maund Rs 90.

## No 8

## DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

- 1 The plaintiff is not the author [*assignee, etc*]
- 2 The book was not registered
- 3 The defendant did not infringe

## No 9

## DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

- 1 The trade mark is not the plaintiff's
- 2 The alleged trade mark is not a trade mark
- 3 The defendant did not infringe

## No 10

## DEFENCES IN SUITS RELATING TO NUISANCES

- 1 The plaintiff's rights are not ancient [*or deny his other alleged prescriptive rights*]
- 2 The plaintiff's rights will not be materially interfered with by the defendant's buildings

3 The defendant denies that he or his servants pollute the water [*or do what is complained of*]

[*If the defendant claims the right by prescription or otherwise to do what is complained of he must say so and must state the grounds of the claim, i.e., whether by prescription grant or what*]

- 4 The plaintiff has been guilty of laches of which the following are particulars —

1870 Plaintiff's mill began to work

1871 Plaintiff came into possession

1883 First complaint

5 As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff [*If other grounds are relied on, they must be stated e.g., limitation as to past damage*]

## No 11

## DEFENCE TO SUIT FOR FORECLOSURE

- 1 The defendant did not execute the mortgage
- 2 The mortgage was not transferred to the plaintiff [*if more than one transfer is alleged, say which is denied*]
- 3 The suit is barred by article \_\_\_\_\_ of the second schedule to the \* Indian Limitation Act 1877
- 4 The following payments have been made viz —

(Insert date) ———, Rs 1000

(Insert date) ———, 500

5 The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since

6 That plaintiff released the debt on the \_\_\_\_\_ of \_\_\_\_\_

7 The defendant transferred all his interest to A B by a document, dated \_\_\_\_\_.

## No 12

## DEFENCE TO SUIT FOR REDEMPTION

- 1 The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second schedule to the \* Indian Limitation Act 1877

3 The price was not Rs

[or]

4. }  
5. } Except as to Rs.  
6. }

same as }  
1.  
2.  
3.

7. The defendant [or A. B. the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C. D. the plaintiff's agent] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

No. 2.

#### DEFENCE IN SUITS ON BONDS

1. . . . . plaintiff on the day according to the

3 The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond,

No. 3

#### DEFENCE IN SUITS ON GUARANTEES

1. . . . . time to the principal

No. 4

#### DEFENCE IN A SUIT FOR DEBT

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff

Particulars are as follows —

1907 January, 25th	Rs
" February 1st	150
	50
Total	200

2. As to the whole [or as to Rs . . . . . part of the money claimed] the defendant made tender before suit of Rs . . . . . and has paid the same into Court.

No. 5

#### DEFENCE ON SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage and that it was under the charge or control of the defendant's servants. The carriage belonged to . . . . . of . . . . . Street Calcutta, livery stable-keepers employed by the defendant to supply him with carriages and horses, and the person under whose charge and control the said carriage was, was the servant of the said . . . . .

2. The defendant does not admit that the said carriage was turned out of the Middleton Street, either negligently, suddenly or without warning, or at a rapid or . . . . .

3. . . . . exercise of reasonable . . . . . him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6

#### DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [or matters] complained of

## No 7

1907, May 3rd To carriage of the goods claimed from Delhi to Calcutta —  
 45 maunds at Rs 2 per maund . Rs 90.

## No 8

## DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

- 1 The plaintiff is not the author [*assignee, etc*]
- 2 The book was not registered
- 3 The defendant did not infringe

## No 9

## DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

- 1 The trade mark is not the plaintiff's
- 2 The alleged trade mark is not a trade mark
- 3 The defendant did not infringe

## No 10

## DEFENCES IN SUITS RELATING TO NUISANCES

- 1 The plaintiff's rights are not ancient [*or deny his other alleged prescriptive rights*]
- 2 The plaintiff's rights will not be materially interfered with by the defendant's buildings
- 3 The defendant denies that he or his servants pollute the water [*or do what is complained of*]  
*[If the defendant claims the right by prescription or otherwise to do what is complained of he must say so and must state the grounds of the claim, i.e., whether by prescription grant or what]*
- 4 The plaintiff has been guilty of laches of which the following are particulars —  
 1870 Plaintiff's mill began to work

5 will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff [*If other grounds are relied on, they must be stated e.g., limitation as to past damage*]

## No 11

- 4 The following payments have been made, viz —

(Insert date) ———,	Rs
(Insert date) ———,	1 000
	500

- 5 The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since
- 6 That plaintiff released the debt on the \_\_\_\_\_ of \_\_\_\_\_
- 7 The defendant transferred all his interest to A B by a document dated \_\_\_\_\_

## No 12

## DEFENCE TO SUIT FOR REDEMPTION

- 1 The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second schedule to the \* Indian Limitation Act 1877

3 The price was not Rs

[or]

4 }  
5 } Except as to Rs  
6 }

same as }  
1  
2  
3

7 The defendant [or A B the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C D the plaintiff's agent] on the day of

8 The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19

No 2

### DEFENCE IN SUITS ON BONDS

plaintiff on the day according to the  
plaintiff after the day named and before  
bond

No 3

### DEFENCE IN SUITS ON GUARANTEES

time to the principal

No 4

### DEFENCE IN ANY SUIT FOR DEBT

1 As to Rs 200 of the money claimed the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff

Particulars are as follows —

1907 January 25th  
February 1st

Rs  
150  
50

Total

200

2 As to the whole [or as to Rs part of the money claimed] the defendant made tender before suit of Rs and has paid the same into Court

No 5

### DEFENCE ON SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1 The defendant denies that the carriage mentioned in the plaint was the defendant's carriage and that it was under the charge or control of the defendant's servants. The carriage belonged to of Street Calcutta livery stable keepers employed by the defendant to supply him with carriages and horses, and the person under whose charge and control the said carriage was, was the servant of the said

2 The defendant does not admit that the said carriage was turned out of the Middleton Street either negligently suddenly or without warning or at a rapid or

by the exercise of reasonable  
driving him, and avoided any

3 The defendant does not admit the statements contained in the third paragraph of the plaint.

No 6

### DEFENCE IN ALL SUITS FOR WRONGS

1 Denial of the several acts [or matters] complained of

## No 7

1 The

2 The

Particulars are as follows —

1907, May 3rd To carriage of the goods claimed from Delhi to Calcutta —  
 45 maunds at Rs 2 per maund Rs 90.

## No 8

## DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1 The plaintiff is not the author [*assignee, etc*]

2 The book was not registered

3 The defendant did not infringe

## No 9

## DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

1 The trade mark is not the plaintiff's

2 The alleged trade mark is not a trade mark

3 The defendant did not infringe

## No 10

## DEFENCE IN SUITS RELATING TO NUISANCES

1 The plaintiff's rights are not ancient [*or deny his other alleged prescriptive rights*].

2 The plaintiff's rights will not be materially interfered with by the defendant's buildings

3 The defendant denies that he or his servants pollute the water [*or do what is complained of*]

[*If the defendant claims the right by prescription or otherwise to do what is complained of he must say so and must state the grounds of the claim, i.e., whether by prescription grant or what*]

4 The plaintiff has been guilty of laches of which the following are particulars —

1870 Plaintiff's mill began to work

1871 Plaintiff came into possession

1883 First complaint

5 As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff [*If other grounds are relied on they must be stated e.g., limitation as to past damage*]

## No 11

1  
 2  
*alleged.*

3 The suit is barred by article \_\_\_\_\_ of the second schedule  
 to the \* Indian Limitation Act 1877

4 The following payments have been made, viz —

(Insert date) \_\_\_\_\_, Rs 1000

(Insert date) \_\_\_\_\_, 500

5 The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since

6 That plaintiff released the debt on the \_\_\_\_\_ of \_\_\_\_\_

7 The defendant transferred all his interest to A B by a document dated \_\_\_\_\_

## No 12

## DEFENCE TO SUIT FOR REDEMPTION

1 The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second  
 schedule to the \* Indian Limitation Act 1877

2 The plaintiff transferred all interest in the property to A B

3 The defendant, by a document dated the \_\_\_\_\_ day of \_\_\_\_\_, transferred all his interest in the mortgage debt and property comprised in the mortgage to A B

4 The defendant never took possession of the mortgaged property, or received the rents thereof

(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

No 13

### DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

ons)

the defen-

9

10

10  
1111  
12

12

or as the case may be)

1 Sale No 11 (or by mutual

(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

## No 14

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATTEE

1 A B's will contained a charge of debts, he died insolvent, he was entitled at his death to some immoveable property which the defendant, sold and which produced the net sum of Rs

and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs

2 The defendant applied the whole of the said sums and the sum of Rs which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4 The defendant submits that the plaintiff ought to pay the costs of this suit

## No 15

### PROBATE OF WILL IN SOLEMN FORM

have been executed, was not of sound mind, memory and understanding

3 The execution of the said will and colicil was obtained by the undue influence of the plaintiff and others acting with him whose names are at present unknown to the defendant ]

4 The execution of the said will and codicil was obtained by the fraud of the plaintiff such fraud so far as is within the defendant's present knowledge, being [State the nature of the fraud]



5 The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said will, *as the case may be*]

6 The deceased made his true last will, dated the 1st January, 1873 and thereby appointed the defendant sole executor thereof

The defendant claims—

(1) that the Court will pronounce against the said will and codicil pronounced by the plaintiff

(2) that the Court will decree probate of the will of the deceased dated the 1st January, 1873 in solemn form of law

—  
No 16

PARTICULARS (O 6, r 5)

*Title of suit*

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of

(*Here set out the particulars ordered in paragraphs if necessary*)

## APPENDIX B

### PROCESS

No 1\*

SUMMONS FOR DISPOSAL OF SUIT (O 5 rr 1, 5)

(*Title*)

To  
[*Name, description and place of residence*]

WHEREAS  
has instituted a suit against you for  
you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit or who shall be accompanied by some person able to answer all such questions, on the day of 19, at o'clock in the noon, to answer the claim, and as the day fixed for your appearance is appointed for the final disposal of the suit you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence

Take notice that in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this 19 day of  
Judge

NOTICE—1 Should you apprehend your witnesses will not attend of their own accord you can have a summons from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce on applying to the Court and on depositing the necessary expenses

2 If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree which may be against your person or property, or both

No 2  
 SUMMONS FOR SETTLEMENT OF ISSUES (O 5, r. 1, 5)  
 (Title)

To [Name description and place of residence]

WHEREAS has instituted a suit against you for

person, or by a pleader duly  
 elating to the suit, or who shall  
 questions on the

day of 19 at o'clock in the  
 noon, to answer the claim, and you are directed to produce on that day all the docu-  
 ments upon which you intend to rely in support of your defence

Take notice that, in default of your appearance on the day before mentioned,  
 the suit will be heard and determined, in your absence

GIVEN under my hand and the seal of the Court, this day of  
 19 Judge

NOTICE — 1 Should you apprehend your w  
 accord you can have a  
 attendance of any witness,  
 you have a right to call on the witness to produce, on applying  
 to the Court  
 2 If you admit the together  
 with the co which  
 may be agreed to

No 3  
 SUMMONS TO APPEAR IN PERSON (O 5, r. 3)  
 (Title)

To [Name description and place of residence]

WHEREAS has instituted a suit against you for  
 you are hereby summoned to appear in this court in person  
 on the day of 19 at o'clock in  
 the noon to answer the claim and you are directed to produce  
 on that day all the documents upon which you intend to rely in support of your  
 defence

Take notice that in default of your appearance on the day before mentioned, the  
 suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this day of  
 19 Judge

No 4  
 SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT  
 (O 37, r. 2)  
 (Title)

To [Name, description and place of residence]

WHEREAS has instituted a suit against you under Order XXXVII of  
 the Code of Civil Procedure, 1908, for Rs balance of principal and in-  
 terest due to him as the of a of which a copy is hereto

and the sum of Rs for costs together with such interest if any from  
 the date of the institution of the suit as the Court may order\*

GIVEN under my hand and the seal of the Court, this  
19

day of  
*Judge*

No 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS SHOULD BE  
ADDED AS CO-PLAINTIFF (O 1, r 10)  
(Title)

To

[Name, description and place of residence]

WHEREAS for has instituted the above suit against  
and, whereas it appears  
necessary that you should be added as a plaintiff in the said suit in order to enable  
the Court effectually and completely to adjudicate upon and settle all the questions  
involved

Take notice that you should on or before the day of 19 ,  
signify to this Court whether you consent to be so added

GIVEN under my hand and the seal of the Court, this day  
of 19

*Judge*

No 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED  
DEFENDANT (O 22 r 4)  
(Title)

TO

WHEREAS the plaintiff instituted a suit in this court on the  
day of 19  
since deceased,  
s court alleging

You are hereby summoned to attend in this Court on the  
day of 19 at A M to defend  
the said suit and, in default of your appearance on the day specified the said  
suit will be heard and determined in your absence

Given under my hand and the seal of the Court this day  
of 19

*Judge*

No 7 \*

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION  
OF ANOTHER COURT (O 5 r 21)  
(Title)

WHEREAS it is stated that

defendant  
witness in the above suit is at present residing in

It is ordered that a summons returnable  
on the day of 19 , be forwarded to the  
Court of for service on the said defendant  
witness with a duplicate of  
this proceeding

\* In Allahabad this form has been cancelled, vide *infra*

No 2  
SUMMONS FOR SETTLEMENT OF ISSUES (O. 5, rr. 1, 5)  
(Title)

To

[Name description and place of residence]

WHEREAS

has instituted a suit against you for

person, or by a pleader duly  
claiming to the suit, or who shall  
questions on the

day of 19, at

o'clock in the

noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

on the day before mentioned

the

day of

19

Judge

NOTICE—1 Should you apprehend your witnesses will not attend of their own accord you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses

2 If you admit the claim you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both

No 3  
SUMMONS TO APPEAR IN PERSON (O. 5, r. 3)  
(Title)

To

[Name description and place of residence]

WHEREAS

has instituted a suit against you for

you are hereby summoned to appear in this court in person

on the

day of

19, at

o'clock in

the

noon, to answer the claim, and you are directed to produce

on that day all the documents upon which you intend to rely in support of your defence

attendance on the day before mentioned, the  
absence

19

of the Court, this

day of

Judge

No 4  
SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT  
(O. 37, r. 2)  
(Title)

To

[Name, description and place of residence]

WHEREAS has instituted a suit under the Code of Civil Procedure, 1908, for interest due to him as the

of

may be ordered to deposit or such ten days to obtain a decree for any sum not exceeding the sum of Rs for costs together with such interest if any from the date of the institution of the suit as the Court may order.\*

GIVEN under my hand and the seal of the Court this  
19

day of

*Judge*

No 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS SHOULD BE  
ADDED AS CO PLAINTIFF (O 1, r 10)

(Title)

To

[Name, description and place of residence]

WHEREAS

for has instituted the above suit against  
and, whereas it appears  
necessary that you should be added as a plaintiff in the said suit in order to enable  
the Court effectually and completely to adjudicate upon and settle all the questions  
involved

Take notice that you should on or before the day of 19 ,  
signify to this Court whether you consent to be so added

GIVEN under my hand and the seal of the Court this day  
of 19

*Judge*

No 6

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED  
DEFENDANT (O 22 r 4)

(Title)

TO

WHEREAS the plaintiff  
day of

instituted a suit in this court on the

19

since deceased,  
the court alleging

You are hereby summoned to attend in this Court on the  
day of 19 at AM to defend  
the said suit and, in default of your appearance on the day specified the said  
suit will be heard and determined in your absence

Given under my hand and the seal of the Court this day  
of 19

*Judge*

No 7 \*

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION  
OF ANOTHER COURT (O 5 r 21)

(Title)

WHEREAS it is stated that

defendant in the above suit is at present residing in  
witness

It is ordered that a summons returnable  
on the day of 19 , be forwarded to the  
Court of for service on the said defendant  
with a duplicate of  
this proceeding

\* In Allahabad this form has been cancelled, vide *infra*

The court fee of \_\_\_\_\_  
 been realized in this Court in stamps  
 Dated 19 . . . . .

chargeable in respect to the summons has

Judge

NO 8

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER  
 (O 5 r 24)

(Title)

To The Superintendent of the Jail at \_\_\_\_\_  
 Under the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a  
 summons in duplicate is herewith forwarded for service on the defendant  
 who is \_\_\_\_\_ said summons to be  
 a prisoner in jail \_\_\_\_\_ this Court signed by  
 served upon the \_\_\_\_\_ by you  
 the said defendant, . . . . .

Judge

NO 9

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC  
 SERVANT OR SOLDIER (O 5 r 27, 28)

(Title)

TO Under the provisions of Order V, rule 27 (or 28, as the case may be), of  
 the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded  
 for service on the defendant \_\_\_\_\_ who is stated to be serving under you  
 \_\_\_\_\_ summons to be served upon the  
 \_\_\_\_\_ signed by the said defen-

Judge

NO 10 \*

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT (O 5 r 23)

(Title)

Read proceeding from the \_\_\_\_\_ forwarding  
 for service on \_\_\_\_\_ in Suit No  
 of 19 \_\_\_\_\_ of that Court

Read Serving Officer's endorsement stating that the  
 and proof of the above having been duly taken by me on the oath of  
 and \_\_\_\_\_ it is ordered that the  
 be returned to the \_\_\_\_\_ with a copy of this  
 proceeding, \_\_\_\_\_

Judge.

NOTE—This form will be applicable to process other than summons, the service  
 of which may have to be effected in the same manner

NO 11 †

AFFIDAVIT OF PROCESS SERVER TO ACCOMPANY RETURN OF A  
 SUMMONS OR NOTICE (O 5 r 18.)

(Title)

The Affidavit of \_\_\_\_\_ son of \_\_\_\_\_ I

Make oath \_\_\_\_\_ and say as follows —  
 affirm

(1) I am a process server of this Court

\* For amended form in Bombay and Calcutta Vide *infra*

† For amended form in Calcutta and Lahore Vide *infra*

(2) On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I received a summons issued by the Court of \_\_\_\_\_ in Suit No \_\_\_\_\_ of 19\_\_\_\_ in the said Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for service on \_\_\_\_\_ (3) The said \_\_\_\_\_ was at the time personally known to me, and I served the said summons on him on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at \_\_\_\_\_ by tendering a copy thereof to him and requiring his signature to the original summons notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

or,

(3) The said \_\_\_\_\_ not being personally known to me \_\_\_\_\_ accompanied me to \_\_\_\_\_ and pointed out to me a person whom he stated to be the said \_\_\_\_\_, and I served the said summons on him on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at \_\_\_\_\_ by tendering a copy thereof to him and requiring his signature to the the original summons notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose presence

(b) Signature of process server

or,

(3) The said \_\_\_\_\_ and the house in which he ordinarily resides being personally known to me, I went to the said house, in \_\_\_\_\_ and there on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, I did not find the said \_\_\_\_\_

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served with special reference to Order 5 rules 15 and 17

(b) Signature of process server

or,

(3) One \_\_\_\_\_ accompanied me to \_\_\_\_\_ and there pointed out to me \_\_\_\_\_ which he said was the house in which ordinarily resides I did not find the said \_\_\_\_\_ there

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5 rules 15 and 17

(b) Signature of process-server

or,

*If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service*

Sworn  
Affirmed by the said  
day of

before me this

19

*Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents*

No 12 \*

NOTICE TO DEFENDANT. (O 9 r. 6)

(Title)

To

*(Name, description and place of residence)*

WHEREAS this day was fixed for the hearing of the above suit and a summons issued and the plaintiff has appeared in this Court and you did not so

fraction of  
time to

Notice is hereby given to you that the hearing of the suit is now fixed for the day and that the day of 19 is now fixed for the hearing of the same, in default of your appearance on the day last mentioned the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this day of

19

Judge

No 13 +

SUMMONS TO WITNESS. (O 16 rr 1, 5)

(Title)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of 19 at o'clock in the forenoon, and to bring with you [or to send to this

A sum of Rs. b and subsistence allowance for one day is with this order without lawful excuse you will non attendance laid down in rule 12 of order 308

GIVEN under my hand and the seal of the Court, this day of 19

Judge

NOTICE—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid

(2) If you are detained beyond the day aforesaid, a sum of Rs will be tendered to you for each day's attendance beyond the day specified

No 14

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS

(O 16, r 10)

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil

\* In Madras 12 A has been added, Vide *infra*

+ In Madras 13 A has been added, Vide *infra*



Procedure, 1908 issued requiring the attendance of the witness in this Court on the  
 day of 19 at o'clock in the  
 forenoon and from day to day until he shall have leave to depart, and if the witness  
 fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court this day of  
 19 .

*Judge*

No 15

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS

(O. 16, r. 10)

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer  
 that the summons has been duly served upon the witness, and whereas  
 the witness is material and he has failed to  
 . . . . . mons This proclamation is therefore under  
 . . . . . of Civil Procedure, 1908, issued, requiring the  
 . . . . . court on the day of

19 at o'clock in the forenoon and from day to day until he  
 shall have leave to depart, and if the witness fails to attend on the day and hour  
 aforesaid he will be dealt with according to law

GIVEN under my hand and the seal of the Court this day of 19

*Judge*

No 16

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS

(O. 16, r. 10)

(Title)

To

The Bailiff of the Court

WHEREAS the witness  
 cited by

proclamation issued for his

and to submit a return,

days

GIVEN under my hand and the seal of the Court, this day of

19

*Judge*

No 17

WARRANT OF ARREST OF WITNESS (O. 16 r. 10)

(Title)

To

The Bailiff of the Court

WHEREAS has been duly served with a summons but has failed to  
 attend [absconds and keeps out of the way for the purpose of avoiding service of a  
 summons], You are hereby ordered to arrest and bring the said before

day of

the manner

19 .

*Judge*

No 18

WARRANT OF COMMITTAL (O 16, r 18)

(Title)

... .. has made appli-  
to  
give evidence (or to produce a document) on the  
day of 19 , and whereas the Court has called upon the said  
to furnish such security, which he has failed to do, this is to require you to  
receive, the said into your custody in the civil prison and to  
produce him before this Court at on the said day and on such  
other day or days as may be hereafter ordered

GIVEN under my hand and the seal of the Court this day of  
19

Judge

No 19 \*

WARRANT OF COMMITTAL (O 16, r 18)

(Title)

To The Officer in charge of the Jail at  
WHEREAS , whose attendance is required before this Court in the  
has been arrested  
the absence of the  
give such evidence  
(or produce such document), and whereas the Court has called upon the said  
19 , at

Court at

day of 19

Judge

## APPENDIX C

## DISCOVERY INSPECTION AND ADMISSION

No 1

ORDER FOR DELIVERY OF INTERROGATORIES (O 11 r 1)

In the Court of  
Civil Suit No of 19  
A B Plaintiff

against

C D, E F and G H Defendants

Upon hearing and upon reading the affidavit of  
filed the day of 19 , It is ordered that the  
be at liberty to deliver to the interrogatories in writing, and  
that the said do answer the interrogatories as prescribed by order XI,  
rule 8 and that the cost of this applicat on be

No 2

INTERROGATORIES (O 11, r 4)

(Title as in NO 1, supra)

Interrogatories on behalf of the above named [plaintiff or defendant C D] for  
the examination of the above named [defendants E F and G H or plaintiff]

\* After this Form 20 has been added in Allahabad Vide *infra*

1 did not, etc.

2. Has not, etc

etc.

etc.

etc.

[The defendant E F is required to answer the interrogatories numbered 1]

[The defendant G H is required to answer the interrogatories numbered 2]

### No 3

#### ANSWER TO INTERROGATORIES (O 11 r 9)

(Title as in No 1, supra)

The answer of the above named defendant E F to the interrogatories for his examination by the above named plaintiff

In answer to the said interrogatories 1, the above named E, F, make oath and say as follows —

1 } Enter answers to interrogatories in paragraphs numbered

2 } consecutively

3 I object to answer the interrogatories numbered \_\_\_\_\_ on the ground that  
[state grounds of objection]

### No 4

#### ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O 11 r 12)

(Title as in No 1 supra)

Upon hearing \_\_\_\_\_ It is ordered  
that the \_\_\_\_\_ do within \_\_\_\_\_ days from the date of this order answer  
an affidavit stating which documents are or have been in his possession or power  
relating to the matter in question in this suit and that the costs of this application  
be \_\_\_\_\_

### No 5

#### AFFIDAVIT AS TO DOCUMENTS (O 11 r 13)

(Title as in No 1 supra)

I the above named defendant G D, make oath and as say as follows —

1 I have in my possession or power the documents relating to the matters  
in question in this suit set forth in the first and second parts of the first schedule  
hereto

2 I object to produce the said documents set forth in the second part of  
the first schedule hereto [state grounds of objection]

3 I have had but have not now, in my possession or power the documents  
relating to the matters in question in the suit set forth in the second schedule hereto

4 The last mentioned documents were last in my possession or power on [state  
when and what has become of them and in whose possession they now are]

5 According to the best of my knowledge, information and belief I have not  
now, and never had in my possession, custody or power or in the possession  
custody or power of my pleader or agent or in the possession custody or power of  
any other person on my behalf, any account book of account, voucher, receipt, letter,  
memorandum, paper or writing, or any copy of or extract from any such docu-  
ment, or any other document whatsoever, relating to the matters in question in this  
suit or any of them, or wherein any entry has been made relative to such matters  
or any of them, other than and except the documents set fourth in the said first and  
second schedules hereto

### No 6

#### ORDER TO PRODUCE DOCUMENTS FOR INSPECTION

(O 11, r 14)

(Title as in No 1 supra)

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 19 \_\_\_\_\_ It is ordered that the \_\_\_\_\_ do at all reasonable  
times, on reasonable notice, produce at \_\_\_\_\_ situate at, the  
following documents namely \_\_\_\_\_ and that the \_\_\_\_\_ be at

No 18  
WARRANT OF COMMITTAL (O 16, r 18)  
(Title)

ut has made appl<sup>to</sup>

give evidence (or to produce a document) on the day of 19, and whereas the Court has called upon the said to furnish such security, which he has failed to do, this is to require you to receive, the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered

GIVEN under my hand and the seal of the Court this day of 19 Judge

No 19 \*  
WARRANT OF COMMITTAL (O 16, r 18)  
(Title)

To The Officer-in charge of the Jail at  
WHEREAS, whose attendance is required before this Court in the (or produce such document) has been arrested reas owing to the absence of the cannot give such evidence (or produce such document), and whereas the Court has called upon the said to give security for his appearance on the day of 19 at which he has failed to do, this is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19

GIVEN under my hand and the seal of the Court this day of 19 Judge

### APPENDIX C

#### DISCOVERY INSPECTION AND ADMISSION

##### No I

##### ORDER FOR DELIVERY OF INTERROGATORIES (O 11 r 1)

In the Court of Civil Suit No of 19 Plaintiff  
A B against  
C D E F and G H Defendants  
Upon hearing and upon reading the affidavit of filed the day of 19, It is ordered that the be at liberty to deliver to the interrogatories in writing and that the said do answer the interrogatories as prescribed by order XI rule 8 and that the cost of this application be

No 2  
INTERROGATORIES (O 11, r 4)  
(Title as in NO 1, supra)

Interrogatories on behalf of the above named {plaintiff or defendant C D} for the examination of the above named [defendants E F and G H or plaintiff]

\* After this Form 20 has been added in Allahabad Vide *infra*

- 1 did not, etc.
2. Has not etc
- etc. etc. etc
- [The defendant E F is required to answer the interrogatories numbered 1 ]
- [The defendant G H is required to answer the interrogatories numbered 1 ]

No 3

ANSWER TO INTERROGATORIES (O 11 r 9)

(Title as in No 1, supra)

E F to the interrogatories for his

the above named E, F, make oath and

say as follows —

1 } En er answers to interro\_gatories in paragraphs numbered

2 } consecutively

3. I object to answer the interrogatories numbered on the ground that

[state grounds of objection]

No 4

ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O 11 r 12)

(Title as in No 1 supra)

Upon hearing

that the do within days from the date of this order answer

on affidavit stating which documents are or have been in his possession or power

relating to the matter in question in this suit and that the costs of this application

be

It is ordered

No 5

AFFIDAVIT AS TO DOCUMENTS (O 11 r 13)

(Title as in No 1 supra)

- I the above named defendant G D, make oath and as say as follows —
- 1 I have in my possession or power the documents relating to the matters
- in question in this suit set forth in the first and second parts of the first schedule
- hereto
- 2 I object to produce the said documents set forth in the second part of
- the first schedule hereto [ state grounds of objection ]
- 3 I have had but have not now, in my possession or power the documents
- relating to the matters in question in the suit set forth in the second schedule hereto
- 4 The last mentioned documents were last in my possession or power on [state
- when and what has become of them and in whose possession they now are)
- 5 According to the best of my knowledge, information and belief I have not
- now and never had in my possession, custody or power or in the possession
- custody or power of my pleader or agent or in the possession custody or power of
- any other person on my behalf, any account book of account, voucher, receipt, letter,
- memorandum, paper or writing, or any copy of or extract from any such docu
- ment, or any other document whatsoever relating to the matters in question in this
- suit or any of them, or wherein any entry has been made relative to such matters
- or any of them, other than and except the documents set fourth in the said first and
- second schedules hereto

No 6

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION

(O 11, r 14)

(Title as in No 1 supra)

Upon hearing

and upon reading the affidavit of

day of 19 It is ordered that the do at all reasonable

times, on reasonable notice, produce at , situate at the

following documents namely and that the be at

liberty to inspect and persue the documents so produced and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16)

(Title as in No 1 supra)

Taken notice that the [plaintiff or defendant] requires you to produce for his inspection the following documents referred to in your [plaint or written statement or affidavit dated the day of 19 ]

[Describe documents required.]

X. Y pleader for the

To Z, Pleader for the

---

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17)

(Title as in No 1 supra)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [except the documents numbered in that notice] at [insert place of inspection] on Thursday next, the instant, between the hours of 12 and 4 o'clock

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the day of 19, on the ground that [state the ground] —

---

No 9

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3)

(Title as in No 1 supra)

between the hours of , and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit

G. H., pleader [or agent] for plaintiff [or defendant]

To E. F., pleader [or agent] for defendant [or plaintiff]

[Here describe the documents and especially as to each document whether it is original or a copy,]

---

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5)

(Title as in No 1 supra)

Take  
[or plain  
hereund  
six days  
just excl.

G. H., pleader [or agent] for plaintiff [or defendant]

To E. F., pleader [or agent] for defendant [or plaintiff]

The facts, the admission of which is required, are—

- 1 That M died on the 1st January, 1892.
- 2 That he died intestate.
- 3 That N was his only lawful son
- 4 That O died on the 1st April 1896
- 5 That O was never married.

### No 11.

#### ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r 5)

[ *Title as in No 1, supra* ]

The defendant [ *or plaintiff* ] in this suit, for the purposes of this suit only, hereby, admits the several facts respectively hereunder specified subject to the qualifications, or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit.

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [ *or plaintiff* ] on any other occasion or by any one other than the plaintiff [ *or defendant* ] or party requiring the admission ]

E F, pleader [ *or agent* ] for defendant [ *or plaintiff* ]

To G H pleader [ *or agent* ] for plaintiff [ *or defendant* ]

Facts admitted	Qualifications or limitations if any subject to which they are admitted
1 That M died on the 1st January 1892	1
2 That he died intestate	2
3 That N was his lawful son	3 But not that he was his only lawful son
4 That O, died	4 But not that he died on the 1st April 1896
5 That O was never married	5

### No 12

#### NOTICE TO PRODUCE (GENERAL FORM) (O 12 r 8)

[ *Title as in No 1 supra* ]

Take notice that you are hereby required to produce and show to the court at the first hearing of this suit all books papers letters copies of letters and other writings and documents in your custody possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit and particularly

G H, pleader [ *or agent* ] for plaintiff [ *or defendant* ]

To E F, pleader [ *or agent* ] for defendant [ *or plaintiff* ]

## APPENDIX D

### DECREES

#### No 1 \*

#### DECREE IN ORIGINAL SUIT, (O 20 rr 6, 7)

[ *Title* ]

Claim for

This suit coming on this day for final disposal before  
 presence of  
 for the plaintiff and of  
 for the defendant, it is ordered and decree that  
 and that the sum of Rs  
 be paid by the  
 to the  
 on account of the costs of this suit, with interest  
 thereon at the rate of  
 per cent per annum from this date to date of realization.  
 Given under my hand and the seal of the Court, this  
 day of 19

Judge

*Cost of suit*

Plaintiff				Defendant			
	Rs	A	P		Rs	A	P
1 Stamp for plaint				Stamp for power			
2 Do for power				Do for petition			
3 Do for exhibits				Pleader's fee			
4 Pleader's fee on Rs				Subsistence for witnesses			
5 Subsistence for witnesses				Service of process			
6 Commissioner's fee				Commissioner's fee			
7 Service of process							
Total				Total			

No 2 †

## SIMPLE MONEY DECREE, (Section 34)

(Title)

Claim for  
 This suit coming on this day for final disposal before  
 of the plaintiff and of  
 ordered that the do pay to the

in the presence  
 for the defendant, it is  
 the sum of Rs  
 from to  
 , the costs of  
 ent per annum from  
 day of 19 .  
 Judge

*Costs of suit*

Plaintiff				Defendant			
	Rs	A	P		Rs	A	P
1 Stamp for plaint				Stamp for power			
2 Do for power				Do for petition			
3 Do for exhibits				Pleader's fee			
4 Pleader's fee on Rs				Subsistence for witnesses			
5 Subsistence for witnesses				Service of process			
6 Commissioner's fee				Commissioner's fee			
7 Service of process							
Total				Total			

No 3

*Preliminary decree for foreclosure*

Order XXIV rule 2 — Where accounts are directed to be taken  
 (TITLE)

This suit coming on this  
 that it be referred to  
 following —

day etc It is hereby ordered and decreed  
 as the Commissioner to take the accounts

(r) an account of what is due on this date to the plaintiff for principal and  
 interest on his mortgage mentioned in the plaint (such interest to be  
 computed at the rate payable on the principal or where no such rate is

\* For amended form in Calcutta and Patna vide *infra*  
 † For amended form in Calcutta vide *infra*





*\* Costs of suit*

Plaintiff				Defendant			
	Rs	A	P		Rs	A	P
1 Stamp for plaint				Stamp for power			
2 Do for power				Do for petition			
3 Do for exhibits				Pleader's fee			
4 Pleader's fee on Rs				Subsistence for witnesses			
5 Subsistence for witnesses				Service of process			
6 Commissioner's fee				Commissioner's fee			
7 Service of process							
Total				Total			

No 2 †  
SIMPLE MONEY DECREE, (Section 34)  
(Title)

Claim for  
This suit coming on this day for final disposal before  
of the plaintiff and of the defendant, it is  
ordered that the do pay to the the sum of Rs  
with interest thereon at the rate of per cent per annum from to  
the date of realization of the said sum and do also pay Rs , the costs of  
this suit, with interest thereon at the rate of per cent per annum from  
this date to the date of realization  
Given under my hand and the seal of the Court, this day of 19 .  
Judge

*Costs of suit*

Plaintiff				Defendant			
	Rs	A	P		Rs	A	P
1 Stamp for plaint				Stamp for power			
2 Do for power				Do for petition			
3 Do for exhibits				Pleader's fee			
4 Pleader's fee on Rs				Subsistence for witnesses			
5 Subsistence for witnesses				Service of process			
6 Commissioner's fee				Commissioner's fee			
7 Service of process							
Total				Total			

## No 3

*Preliminary decree for foreclosure*

Order XXXIV, rule 2 —Where accounts are directed to be taken  
(TITLE)

This suit coming on this day etc., It is hereby ordered and decreed  
that it be referred to as the Commissioner to take the accounts  
following —

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is

\* For amended form in Calcutta and Patna vide *infra*

† For amended form in Calcutta vide *infra*

fixed, at six per cent per annum or at such rate as the Court deems reasonable),

- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received,
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principle, or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or, permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed.

2 And it is hereby further ordered and decreed that any amount received under clause (i) or adjudged due under clause (iv) above, together with interest thereon shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report of the Commissioner being received it shall be confirmed and countersigned subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4 And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum, as the Court shall find due, and the sum of Rs for the costs of the suit awarded to the plaintiff,
- (ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the Code of Civil Procedure, 1908, the Co do in to if so required, re convey or re transfer the said property free from the said mortgage and clear of and from all encumbrances created by the person under whom he is in possession of the said property from the mortgage and peaceable possession of the said property to the defendant quiet

time to time as they may have occasion, and on such application to the Court as may be made by the plaintiff or the defendant, the Court may give such directions as it thinks fit.

It is hereby further ordered that a final decree shall be made in the suit on the basis of the account annexed hereto and the plaintiff shall be restored to the possession of the said property.

## SCHEDULE.

*Description of the mortgaged property.*

## No. 3A.

*Preliminary decree for foreclosure.*

(Order XXXIV, rule 2—Where the Court declares the amount due)

(TITLE).

This suit coming on this \_\_\_\_\_ day, etc., it is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this \_\_\_\_\_ principal

\_\_\_\_\_ incurred by  
\_\_\_\_\_ eon, and  
the sum of Rs. \_\_\_\_\_ for the costs of this suit awarded to the plaintiff, making  
in all the sum of Rs. \_\_\_\_\_

2. And it is hereby ordered and decreed as follows :—

(i) that the defendant do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for \_\_\_\_\_ payment may be extended by the Court of the said sum of Rs. \_\_\_\_\_ :

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent \_\_\_\_\_ Order XXXIV of the \_\_\_\_\_ 1908, the plaintiff

\_\_\_\_\_ or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear \_\_\_\_\_ created by the plaintiff or any person \_\_\_\_\_ under whom he claims and free from the mortgage or this suit and the defendant quiet and peaceable

\_\_\_\_\_ decreed that, in default of payment for final decree that the defendant \_\_\_\_\_ foreclosed of and from all rights to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

## SCHEDULE

*Description of the mortgaged property.*

## No 4

*Final decree for foreclosure*

(Order XXXIV, rule 3)

(TITLE)

\_\_\_\_\_ in this suit on the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ a final  
\_\_\_\_\_ ected by  
\_\_\_\_\_ n on his

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned,\* [and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property]

of the  
plaint

No 5

*Preliminary decree for sale*

(Order XXIV, rule 4 -Where accounts are directed to be taken)  
(TITLE)

This suit coming on this day, etc , it is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable),
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received,
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date,
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

decreed that any amount received under (iv) above, together with interest thereon paid by the plaintiff under clause (iii), ance, if any, shall be added to the mortgage money or, as the case may be, debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the \_\_\_\_\_ day of \_\_\_\_\_ and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the  
day of \_\_\_\_\_ or any later date up to which, time for payment  
\_\_\_\_\_ ch sum as the Court shall find due  
for the costs of the suit awarded

thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the

Code of Civil Proc  
documents in his  
in the plaint ment  
to the defendant

into Court all  
gaged property  
delivered over  
plaintiff shall,  
rec from the  
the plaintiff  
m he claims  
and peaceable

5  
aforesaid—, payment as  
mortgaged property, and on such application being made, the property or a sale of the  
sufficient part thereof shall be directed to be sold, and for the purposes of such  
sale the plaintiff shall produce before the Court, or such officer as it appoints, all  
documents in his possession or power relating to the mortgaged property

6 And it is hereby further ordered and decreed that the money realised by  
such sale shall be paid into Court and shall be duly applied (after deduction  
therefrom of the expenses of the  
plaintiff under this decree and of  
suit and in payment of any amount  
in respect of such costs of suit,  
payable under rule 10 together  
under rule 11 of Order XXXIV  
1908, and that the balance, if any, shall be  
titled to receive the same

And decreed that, if the money realised by  
ment in full of the amount payable to the plain-  
liberty (where such remedy is open to him  
not barred by any law for the time being in  
force) to apply for a personal decree against the defendant for the amount of the  
balance, and that the parties are at liberty to apply to the Court from time to time  
as they may have occasion, and on such application or otherwise the Court may give  
such directions as it thinks fit

#### SCHEDULE

##### *Description of the mortgaged property*

No 5A

*Preliminary decree for sale*

(Order XXXIV, rule 4—When the Court declares the amount due)

(TITLE)

<p>This suit coming on this amount due to the plaintiff on the mortgage mentioned in the plaint calculated up this day of principal the sum of Rs</p>	<p>day, etc., It is hereby declared that the mentioned in the plaint calculated up this is the sum of Rs for for interest on the said principal, the sum s (other than the costs of he mortgage security toge- for the costs of Rs</p>
---	--

2 And it is hereby ordered and decreed as follows —

- (i) that the defendant do pay into Court on or before the day  
of or any later date up to which, time for payment may  
be extended by the Court, the said sum of Rs
- (ii) that, on such payment and on payment thereafter before such date as the  
Court may fix of such amount as the Court may adjudge due in respect  
of such costs of the suit and such costs, charges and expenses as may be  
payable under rule 10 together with such subsequent interest as may  
be payable under rule, 11, of Order XXXIV of the First Schedule  
to the Code of Civil Procedure 1908 the plaintiff shall bring  
into Court all documents in his possession or power relating to  
the mortgaged property in the plaint mentioned, and all such

documents shall be delivered over to the defendant, or to such persons as he appoints, and the plaintiff shall if so required, re convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property).

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such

points all  
by such  
therefrom of  
under this  
decree and under any further orders that may be passed in this suit and in payment  
of any amount which the Court may adjudge due to the plaintiff in respect of such  
sale under rule  
11, of Order  
3, and that the  
led to receive  
the same

ly realised by  
payable to the  
ly is open to  
he is being  
amount of the  
time to time  
part may give

such directions as it thinks fit.

SCHEDULE

*Description of the Mortgaged Property*

No 6

*Final Decree for Sale*

(Order XXXIV, rule 5)

(TITLE)

day  
day of  
day of  
and it appearing  
that the payment directed by the said decree and orders has not been made by the  
defendant or any person on his behalf or any other person entitled to redeem the  
mortgage

It is hereby ordered and decreed that the mortgaged property in the aforesaid  
preliminary decree mentioned or a sufficient part thereof be sold and that for the  
purposes of such sale the plaintiff shall produce before the Court or such officer as it  
appoints all documents in his possession or power relating to the mortgaged  
property

by such  
therefrom  
iff under  
ave been  
e adjudg  
of this  
rule 10,  
of Order

XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the  
balance, if any, shall be paid to the defendant or other persons entitled to receive  
the same

## No. 7.

*Preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed,*

(Order XXXIV, rule 7)—Where accounts are directed to be taken)

## (TITLE)

This suit coming on this \_\_\_\_\_ day, etc., ; It is hereby ordered and decreed that it be referred to \_\_\_\_\_ as the Commissioner to take the accounts following :—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed at six per cent. per annum or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon (such interest to be computed at the rate agreed between the \_\_\_\_\_ or failing such rate at the same rate as is payable on the \_\_\_\_\_
- (iv) an \_\_\_\_\_ before

or permanently injurious to, the property or by any person to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2. It is hereby further ordered and decreed that any amount received under clause (i) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the account to this Court with all convenient date on or before the \_\_\_\_\_ day of \_\_\_\_\_ Commissioner being received, it shall be on such modification as may be necessary after parties to the suit may make

4 And it is hereby further ordered and decreed—

- (i) \_\_\_\_\_ day of \_\_\_\_\_ tended by the Rs.

for the costs of the suit awarded to the defendant ,

- (ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of \_\_\_\_\_ by the defendant or any person whom he claims and free from mortgage or this suit and shall, \_\_\_\_\_ quiet and peaceable possession



5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely deburred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

### SCHEDULE.

#### *Description of the mortgaged property*

No 7A

*Preliminary decree for redemption where on default payment by mortgagor a decree for sale is passed*

(Order XXXIV rule 7,—Where accounts are directed to be taken).

(TITLE)

This suit coming on this  
decreed that it be referred to  
accounts following —

day, etc., it is hereby ordered and  
is the Commissioner to take the

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed at six per cent per annum or at such rate as the Court deems reasonable),
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received,
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs charges and expenses other than the costs of the suit in respect of the mortgage security together with interest thereon (such interest to be computed at the rate agreed between the parties or failing such rate, at the same rate as is payable on the principal or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused this date by any act or omission of or permanently injurious to, the property of the duties imposed upon him by the terms of the mortgaged deed

2 And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage money, or as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that, upon such report of the Commissioner being received, it shall be confirmed, and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs for the costs of the suit awarded to the defendant,

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in res-

pect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff, or to such person as he appoints and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

6 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same

7 And it is hereby further ordered and decreed that if the money realised  
 of the amount payable  
 erty (where such remedy  
 barred by any law for  
 against the plaintiff for  
 erty to apply to the  
 and on such application or

### SCHEDULE

#### *Description of the mortgaged property*

#### NO. 7B

*Preliminary decree for redemption where on default of payment  
 by mortgagor a decree for foreclosure is passed,*

(Order XXXIV, rule 7—Where the Court declares the amount due)

(TITLE.)

sum of Rs                      for the costs of the suit awarded to the defendant making in all  
 the sum of Rs.

red that the amount  
 calculated up to this  
 principal, the sum of  
 for costs,  
 rily incurred by the  
 rest thereon, and the

2 And it is hereby ordered and decreed as follows —

(a) that the plaintiff do pay into Court on or before the                      day of or any  
 later date up to which time for payment may be extended by the Court  
 the said sum of Rs

(b) that, on such payment and on payment thereafter before such date as the  
 Court may fix of such amount as the Court may adjudge due in

respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall if so required, re convey or re transfer the said property free from the said mortgage and clear of defendant or any person in he claims and free from mortgage or this suit and shall and peaceable possession

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid the defendant may apply to the court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

### SCHEDULE

#### *Description of the mortgage property*

#### No 7C

*Preliminary decree for redemption where on default payment by mortgagor a decree for sale is passed*

(Order XXXIV rule 7—Where the Court declares the amount due)

#### (TITLE)

This suit coming on this day etc It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) proper with to the mortgage security together their ie costs of this suit awarded

the said sum of Rs the day of or any ay be extended by the Court

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall, if so required re convey or re transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall if so required deliver up to the plaintiff quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the application being made, the mortgaged property directed to be sold, and for the purposes of before the Court or such officer as it appoints ver relating to the mortgaged property

4 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the court may give such directions as it thinks fit

### SCHEDULE

#### *Description of the mortgaged property.*

No 7 D

*Final decree for foreclosure in a redemption suit on default of payment by mortgagor,*

(Order XXXIV, rule 8)

(TITLE)

on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ for a final decree of \_\_\_\_\_ the payment as directed by the plaintiff or any person on his behalf

or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the plaintiff and all persons claiming by debarred and foreclosed of in the aforesaid preliminary of the said mortgaged property) d peaceable possession of the

2 And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished

No 7 E

*Final decree for sale in a redemption suit on default of payment by mortgagor*

(Order XXXIV rule 8)

(TITLE)

Upon reading the preliminary decree passed in this suit on the \_\_\_\_\_ day of \_\_\_\_\_ and further orders (if any) dated the \_\_\_\_\_

the defendant dated the \_\_\_\_\_ after hearing the parties decree and orders has not any other person entitled

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

e money realised by suc  
deduction therefrom  
to the defendant und-  
ve bee  
re adj  
is app  
o, tog  
XXXI  
lance,

## No 7F.

*1 in 11 decree in a suit for foreclosure, sale or redemption where  
the mortgagor pays the amount of the decree*

(Order XXXIV, rules 3 5 and 8)

## (TITLE.)

This suit coming on this                      day for further consideration and it appears  
that on the                      day of                      the mortgagor or                      the sar  
being a person entitled to redeem, has paid into Court all amounts due to the mo-  
gagor under the preliminary decree dated the                      day of                      It is here-  
ordered and decreed that —

- (i) the mortgagee do execute a deed of reconveyance of the property in t  
aforesaid preliminary decree mentioned in favour of the mortgagor \* [t  
as the case may be,                      who has redeemed the property or

on a

ecuti

the deed of reconveyance or acknowledgment in the manner aforesaid,—

- (i) the said sum of Rs                      be paid out of Court to the mortgagee ;  
(ii) the said deeds and documents brought into the Court be delivered out  
Court to the mortgagor \* [or the person making the payment] and t  
mortgagee do, when so required, concur in registering, at the cost of t  
mortgagor \* [or other person making the payment] the said deed  
reconveyance or the acknowledgment in the office of the Sub Registr-

- (iii)                      pass  
deliv  
decr  
mentioned to the mortgagor \* [or such person as aforesaid who h  
made the payment]

## No 8

*Decree against mortgagor personally for balance after the sale of  
the mortgaged property*

(Order XXIV, rules 6 and 8A)

## (TITLE)

Upon reading the application of the mortgagee (the plaintiff or defendant  
as the case may be) and reading the final decree passed in the suit on th  
day of                      and the Court being satisfied that th  
net proceeds of the sale held under the aforesaid final decree amounted  
Rs                      and have been paid to the applicant out of the Court  
the                      day of                      and that the balance now due  
him under the aforesaid decree is Rs

And where it appears to the Court that the said sum is legally recoverable from  
that mortgagor (plaintiff or defendant, as the case may be) personally,

It is hereby ordered and decreed as follows —

That the mortgagor (plaintiff or defendant as the case may be) do pay to the mortgagee (defendant or plaintiff as the case may be) the said sum of Rs with further interest at the rate of six per cent per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application

No 9

*Preliminary decree for foreclosure or sale*

[Plaintiff

1st Mortgagee,

Defendant No 1

2/1

Mortgagor

Defendant No 2

2nd Mortgagee ]

(Order XXXIV, rules 2 and 4)

( TITLE )

The suit coming on this day etc, It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal the sum of Rs for interest on the said principal the sum of Rs for

2 It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No 2\* [or (if there are several subsequent mortgagees) that the several parts hereto are entitled in the following order to the payment of the sums due to them respectively —]

3 And it is hereby ordered and decreed as follows —

(a) that defendant or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to the plaintiff and

(b) that defendant No 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to defendant No 2 and

(ii) y defen  
and on  
amount  
suit and

such costs charges and\* expe  
together with such subsequent  
of Order XXXIV of the First

1908 the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the defendant No

(who has made the payment) or to such person  
convey or re  
lear of and  
on claiming  
ree from all  
I shall if so  
(who has  
property

(Similar declarations to be introduced if defendant No 1 pays the amount found or declared to be due to defendant No 2 in the said suit as may be necessary having regard to the nature of his mortgage)

4 And it is hereby further ordered and decreed that in default of payment as aforesaid of the amount due to the plaintiff the plaintiff shall be at liberty to apply to the Court for a final decree—

(i)

or in an annual mortgage mortgage debt is foreclosed severally and the plaintiff and from all right to redeem the debt annexed hereto and

shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property, or

(ii)

that the mortgage property or a part thereof shall be sold and that the proceeds of such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may award due to the plaintiff in respect of such costs of this suit and such costs charges and expenses as may be payable under rule 10 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and if the balance if any, shall be applied in payment of the amount due to defendant No 2 and then if any balance be left it shall be paid to the defendant No 1 or other persons entitled to receive the same and

(iii)

(In the case where a sale is ordered under clause 4 (ii) above) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may award due to the plaintiff in respect of such costs of this suit and such costs charges and expenses as may be payable under rule 10 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and if the balance if any, shall be applied in payment of the amount due to defendant No 2 and then if any balance be left it shall be paid to the defendant No 1 or other persons entitled to receive the same and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No 2 the plaintiff or defendant No 2 or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amounts

decreed—

suit the amount as default in the suit the plaintiff is at liberty to apply to the Court for a final decree in the same manner as the plaintiff might have done under clause 4 above—

\*{(i) that defendant No 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No 2 quiet and peaceable possession of the said property, or

\*(ii)

part thereof be sold and that for the proceeds of such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in

relating to the mortgaged property, and (b) (if on the application of defendant No 2 such a final decree for foreclosure is passed) that the whole of the liability of defendant No 1 arising from the plaintiff's mortgage or from the mortgage of defendant No 2 or from this suit shall be deemed to have been discharged and extinguished

6 And it is hereby further ordered and decreed\*(In the case where a sale is ordered under clause 5 above)—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in

payment of the amount paid by defendant No 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in

(12)

is upon the law for the time being in force) to apply for a decree against defendant No 1 for the amount of the balance

7 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

#### SCHEDULE

*Description of the mortgaged property*

No 10

*Preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage*

[Plaintiff

2nd Mortgagee

vs

Defendant No 1  
Defendant No 2

Mortgagor  
1st Mortgagee]

(Order XXXIV rules 2 4 and 7)

(TITLE)

The suit coming on this day etc It is hereby declared that the amount due to defendant No 2 on the mortgage mentioned in the plaintiff's mortgage is the sum of Rs for interest on the said charges and expenses (other than No 2 in respect of the mortgage security with interest thereon and the sum of Rs for the costs of this suit awarded to defendant No 2 making in all the sum of Rs

*due from defendant No 2 in respect of the mortgage*

2 is entitled to payment of the or if (there are several subsequent mortgages) in the following order to the

1

3 And it is hereby ordered and decreed as follows —

- (a) that the plaintiff or defendant No 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to defendant No 2, and
- (b) that defendant No 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to the plaintiff, and



(iv) that, on payment of the said declared due of defendant No. 2 by the plaintiff and defendant No. 1 or either of them on the date mentioned in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may award in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subscription in respect as may be payable under rule 11, of the order XXIV of the First Schedule to the Code of Civil Procedure, 1908 defendant No. 2 shall bring to Court all documents in his possession or power relating to the said mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whichever has made the payment) or to such person as he appoints and defendant No. 2 shall if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all mortgages created by defendant No. 2 or any person claiming under him or any person claiming under him and also free from all liability whatsoever arising from the mortgage of the said suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whichever has made the payment) possession of the said property.

*(Similar declarations to be introduced if defendant No. 1 pays the amount found or declared due to the plaintiff with suit interest as hereinbefore having regard to the nature of his mortgage)*

4 And it is hereby surmised or held and decreed that in default of payment as aforesaid, of the amount due to defendant No. 2 defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

\* (f) (i)

payable  
of Civil  
in pay  
e left, it  
give the

same; and  
(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their contract) to apply to the Court for an order by any law for the time being in force against defendant No. 1 for the

5 And it is hereby surmised or held and decreed that if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgages alive for his

benefit and to apply for a final decree (in the same manner as the defendant No 2 might have done under clause 4 above)—

\*[(i) 1]

\*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the court or such officer as it appoints all documents in his possession or power relating to the mortgaged property,]

and (b)

nt  
le

No 2 or from this suit shall be deemed to have been extinguished.

the case where a sale is

aid into Court and be duly expenses of the sale) first in n respect of defendant No

2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount, and that the balance, if any shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No 1 or other persons entitled to receive the same, and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No 2's mortgage or the plaintiff's mortgage, defendant No 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amount of the balance

7 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

#### SCHEDULE

##### *Description of the mortgaged property*

No 11

##### *Preliminary decree for sale*

[ Plaintiff—Sub or derivative mortgagee

vs

Defendant No 1 —Mortgagor

Defendant No 2 —Original mortgagee ]

(Order XXXIV rule 4 )

(TITLE)

This suit coming on this day etc. It is hereby declared that the amount due to defendant No 2 on his mortgage calculated up to this day of is the sum of Rs for principle, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest

\* Words not required to be deleted

No 6

## APPLICATION FOR EXECUTION OF DECREE (O 21 r 11)

In the Court of

I, \_\_\_\_\_, decree holder, hereby apply for execution of the decree herein below set forth —

the

No of suit	Names of parties	Date of decree	Whether any appeal preferred from decree	Payment or adjustment made if any	Previous application if any, with date and result	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree	Amount of costs if any awarded	Against whom to be executed	Mode in which the assistance of Court is required
1	2	3	4	5	6	7	8	9	10
789 of 1897	A B—Plaintiff C D—Defendant	October 11 1897	No.	None	Rs 72 4 recorded on application dated the 4th March, 1899	Rs 314 8 2 principal [interest at 6 per cent per annum from date of decree till payment]	Rs A P 47 10 4 8 2 0 TOTAL 55 12 4	Against the defendant C D	<p>[When attachment and sale of moveable property is sought]</p> <p>I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me</p> <p>[When attachment and sale of immovable property is sought]</p> <p>I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me</p>

I declare that what is stated herein is true to the best of my knowledge and belief

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ Signed \_\_\_\_\_ decree holder

[When attachment and sale of immovable property is sought]

## Description and Specification of Property

The undivided one third share of the judgment debtor in a house situated in the village of \_\_\_\_\_ value Rs 40 and bounded as follows —

East by G's house, west by H's house south by public road, north by private lane and J's house

Signed \_\_\_\_\_, decree-holder

No 7

## NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

\* [(O 21, r 16)]

(Title)

To

WHEREAS

has made application to this Court for execution of decree in Suit No  
 of 19 on the allegation that the said decree has been  
 transferred to him by assignment, this is to give you notice that you are to appear  
 before this Court on the day  
 of 19 to show cause why execution should not be  
 granted

GIVEN under my hand and the seal of the Court, this  
 of 19 day

No 8

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A  
DECREE FOR MONEY (O 21, r 30)

(Title)

To

The Bailiff of the Court

WHEREAS

was ordered by decree of this Court passed on the day of 19  
 in Suit No of 19  
 to pay to the plaintiff the sum of Rs  
 as noted in the margin, and whereas the  
 said sum of Rs has not been

DECREE.
Principal
Interest
Costs
Cost of execution
Further interest
TOTAL

\* together with Rs

the costs of this attachment to hold the same until further orders  
 from his Court

You are further commanded to return this warrant on or before the  
 day of 19, with an endorsement certifying the  
 day on which and manner in which it has been executed or why it has not been  
 executed

GIVEN under my hand and the seal of the Court this day of 19  
 Schedule

Judge

No 9

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED  
BY DECREE (O 21, r 31)

(Title)

To

The Bailiff of the Court

WHEREAS

was ordered by decree of this Court passed  
 on the day of 19, in Suit No  
 of 19 to deliver to the plaintiff the moveable property (or a  
 share in the moveable property) specified in the schedule hereunto annexed,  
 and whereas the said property (or share) has not been delivered,

\* This reference was substituted for the precluded reference (O 21, r 22)\* by s 2  
 and Sch 1 of the Repealing and Amending Act 1914 (19 of 1914)

<sup>1</sup>  
to such person

GIVEN under my hand and the seal of the Court this                      day of  
19

*Judge*

Schedule

No 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O 21, r 34)

(Title)

To

TAKE notice that on the                      day of                      19 ,  
the decree-holder in the above suit presented an application  
to this Court that the Court may execute on your behalf a deed of  
whereof a draft is hereunto annexed, of the immoveable property specified here  
under and that the                      day of                      19 , is appointed  
for the hearing of the said application and that you are at liberty to appear on the  
said day and to state in writing any objection to the said draft

*Description of property*

GIVEN under my hand and the seal of the Court this                      of                      19

*Judge*

No 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND ETC

(O 21 r 35)

(Title)

To

The Bailiff of the Court

WHEREAS the undermentioned property in the occupancy of                      has  
been decreed to                      the plaintiff in this suit, You are hereby directed  
to put the said                      in possession of the same, and you are hereby  
authorized to remove any person bound by the decree who may refuse to vacate the  
same

GIVEN under my hand and the seal of the Court this                      day of  
19

*Judge*

Schedule

No 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

(O 21 r 37)

(Title)

To

WHEREAS                      has made application to this Court for execution of  
decree in suit No                      of 19                      by arrest and imprisonment of your person  
you are hereby required to appear before this Court on the                      day of  
19 , to show cause why you should not be committed to the civil prison in execution  
of the said decree

GIVEN under my hand and the seal of the Court this                      day of                      19

No 13

WARRANT OF ARREST IN EXECUTION (O 21, r 38)

(Title)

To

The Bailiff of the Court

WHEREAS                      was adjudged by a decree of the Court  
in Suit No                      of 19                      dated the                      19                      to pay to the decree holder

day of

DECREE			
Principal			
Interest			
Costs			
Execution			
TOTAL			

the sum of Rs \_\_\_\_\_ is noted in the margin and whereas the said sum of Rs \_\_\_\_\_ has not been paid to the said decree holder in satisfaction of the said decree, these are to command you to \_\_\_\_\_ unless \_\_\_\_\_ to you \_\_\_\_\_ together with Rs \_\_\_\_\_ for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_, with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed  
GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_,

*Judge*

No 14

### WARRANT OF COMMITTAL OF JUDGMENT DEBTOR TO JAIL

(O 21, r 40)

(Title)

To

The Officer in charge of the Jail at \_\_\_\_\_

WHEREAS \_\_\_\_\_ who has been brought before this Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, under a warrant in execution of a decree which was made and pronounced by the said Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ and by which decree it was ordered that the said \_\_\_\_\_ should pay \_\_\_\_\_, And whereas the said \_\_\_\_\_ has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody, You are hereby in the name of the King Emperor of India commanded and required to take and receive the said \_\_\_\_\_ into the civil prison and keep him imprisoned there for a period not exceeding \_\_\_\_\_ or until the said \_\_\_\_\_ shall be otherwise \_\_\_\_\_ on \_\_\_\_\_ 58 of the annas per \_\_\_\_\_

during his confinement under this warrant of committal

GIVEN under my signature and the seal of the Court this \_\_\_\_\_

day of \_\_\_\_\_

19 \_\_\_\_\_

*Judge*

No 15

### ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE (Sections 58, 59)

(Title)

To

The Officer in charge of the Jail at \_\_\_\_\_

UNDER orders passed this day you are hereby directed to set free judgment debtor now in your custody

Dated \_\_\_\_\_

*Judge*

\* For amendment and addition of new forms in Lahore Madras and Rangoon  
Vide *infra*.

## No 16

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF  
MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO  
A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION  
THEREOF (O 21, r. 46)

(Title)

To  
WHEREAS  
has failed to satisfy a decree passed against on the  
day of 19 in Suit No of 19, in favour  
of for Rs , It is ordered the the defendant  
be, and is hereby, prohibited and restrained until the further order of this Court  
from receiving from the following property in the possession  
of the said , that is to say to which the defendant  
is entitled, subject to any claim of the said , and the  
said is hereby prohibited and restrained, until the further order  
of this Court, from delivering the said property to any person or persons whom  
soever

GIVEN under my hand and the seal of the Court, this day  
of 19 Judge

## No 17

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS  
NOT SECURED BY NEGOTIABLE INSTRUMENTS

(O 21, r. 46)

(Title)

To  
WHEREAS  
has failed to satisfy a decree passed against on the  
day of 19 in suit No of 19 in favour  
of for Rs , It is ordered that the defendant  
per order of this Court,  
e from you to the said , be  
her order of this Court  
to any person whomso

GIVEN under my hand and the seal of the Court this day  
of 19 Judge

## ATTACHMENT IN EXECUTION

## No 18

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE  
CAPITAL OF A CORPORATION (O 21 r. 46)

(Title)

To  
Secretary of Defendant and to  
Corporation  
WHEREAS  
has failed to satisfy a decree passed  
against on the  
day of 19 in Suit No of 19 in favour of  
for Rs , It is ordered  
that you, the defendant, be and you are hereby prohibited and restrained,  
until the further order of this Court from making any transfer of  
shares in the aforesaid Corporation, namely, or from receiving  
payment of any dividends thereon and you the Secre

of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

\_\_\_\_\_  
No 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF  
RAILWAY COMPANY OR LOCAL AUTHORITY (O 21, r 48)

(Title)

To  
WHEREAS

judgment debtor in the above named case, is a *(describe office of judgment debtor)* receiving his salary *(or allowances)* at your hands, and whereas

decree holder in the said case, has applied in this Court for the attachment of the salary *(or allowances)* of the said \_\_\_\_\_ to the extent of \_\_\_\_\_ due to

him under the decree, You are hereby required to withhold the said sum of \_\_\_\_\_ from the salary of the said \_\_\_\_\_ in monthly instalments of \_\_\_\_\_

and to remit the said sum *(or monthly instalments)* to this Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

\_\_\_\_\_  
No 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT  
(O 21 r 51)

(Title)

To  
The Bailiff of the Court

WHEREAS an order has been passed by this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, for the attachment of \_\_\_\_\_

You are hereby directed to seize the said \_\_\_\_\_ and bring the same into Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

\_\_\_\_\_  
NO 21

ATTACHMENT  
PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF MONEY OR OF  
ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF  
GOVERNMENT (O 21 r 52)

(Title)

To  
Sir,

The plaintiff having applied under rule 53 of Order XXI of the Code of Civil Procedure 1908 for an attachment of certain money now in your hands *(here state how the money is supposed to be in the hands of the person addressed on what account etc)* I request that you will hold the said money subject to the further order of this Court

I have the honour to be,  
Sir,  
Your most obedient Servant

Judge

Dated the \_\_\_\_\_

day of \_\_\_\_\_

19\_\_\_\_



No 22

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT  
(O 21, r 53)

(Title)

To

The Judge of the Court of

SIR

I have the honour to inform you that the decree obtained in your Court on the  
day of 19, by  
in Suit No of 19 in which he was  
and was has  
been attached by this Court on the application of  
the in the suit specified above. You are  
therefore requested to stay the execution of the decree of your Court until you  
receive an intimation from this Court that the present notice has been cancelled or  
until execution of the said decree is applied for by the holder of the decree now  
sought to be executed or by his judgment debtor.

I have the honour etc,

Judge

Dated the day of 19

No 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE  
DECREE (O 21, r 53)

(Title)

To

WHEREAS an application has been made in this Court by the decree holder in  
the above suit for the attachment of a decree obtained by you on the  
day of 19 in the  
Court of in Suit No of 19 in  
which was and was, It is ordered  
that you, the said be, and you  
are hereby prohibited and restrained until the further order of this Court from  
transferring or charging the same in any way

GIVEN under my hand and the seal of the Court, this  
day of 19

Judge

No 24

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE  
PROPERTY (O 21, r 54)

(Title)

To

Defendant

WHEREAS you have failed to satisfy a decree passed against you on the  
day of 19, in suit No  
of 19 in favour of for Rs  
It is ordered that you, the said  
be, and you are hereby prohibited and restrained until the further order of this  
Court, from transferring or charging the property specified in the schedule hereunto  
annexed, by sale, gift or otherwise, and that all persons be and that they are

hereby prohibited from receiving the same by purchase, gift or otherwise

GIVEN under my hand and the seal of the Court this      day of  
19

*Schedule*

*Judge*

No 25

ORDER FOR PAYMENT TO THE PLAINTIFF ETC, OF MONEY ETC,  
IN THE HANDS OF A THIRD PARTY (O 21, r 56)

*(Title)*

To

WHEREAS the following property      has been attached in execution  
of a decree in Suit No      of      19, passed on the      day of  
19, in favour of      for Rs      ; It is ordered  
that the property so attached, consisting of Rs      in money and Rs  
in currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid  
over by you, the said      , to

GIVEN under my hand and the seal of the Court this      day of  
19

*Judge*

No 26.

NOTICE TO ATTACHING CREDITOR (O 21 r 58)

*(Title)*

To

WHEREAS      has made application to  
   placed at your  
   ut No      of 19, this is to give you  
   the  
day of      19, either in person or by a pleader  
of the Court duly instructed to support your claim as attaching creditor  
GIVEN under my hand and the seal of the Court this      day of  
19

*Judge*

No 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR  
MONEY (O 21, r 66)

*(Title)*

To

pre      days'  
proclamation, the      , and after making due  
this Court dated the      day of      property attached under a warrant from  
decree in favour of      in Suit No      19, in execution of a  
so on      of 19, or  
being the

of      19 with an endorsement certifying the manner in which it  
has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this      day of      19

*Judge*

No 6

## APPLICATION FOR EXECUTION OF DECREE (O 21 r 11)

In the Court of

I, \_\_\_\_\_, decree-holder, hereby apply for execution of  
decree herein below set forth —

the

1	2	3	4	5	6	7	8	9	10
No of suit	Names of parties	Date of decree	Whether any appeal preferred from decree	Payment or adjustment made if any	Previous application if any, with date and result	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree	Amount of costs if any awarded	Against whom to be executed	Mode in which the assistance of Court is required
789 of 1897	A B—Plaintiff C D—Defendant	October 11 1897	No.	None	Rs 72 4 recorded on application dated the 4th March, 1899	Rs 314 8 2 principal [interest at 6 per cent per annum, from date of decree till payment]	Rs A P 47 10 4 8 2 0 Total 55 12 4	Against the defendant C D	<p>[When attachment and sale of moveable property is sought] I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me</p> <p>[When attachment and sale of immoveable property is sought] I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me</p>

I declare that what is stated herein is true to the best of my knowledge and belief

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Signed \_\_\_\_\_ decree holder[When attachment and sale of immoveable property is sought]  
Description and Specification of Property

The undivided one third share of the judgment debtor in a house situated in the village of \_\_\_\_\_ value Rs 40 and bounded as follows —

East by G's house, west by H's house south by public road, north by private lane and J's house

Signed \_\_\_\_\_, decree-holder

No 7

## NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

\* [(O 21, r 16)]

(Title)

To

WHEREAS

has made application to this Court for execution of decree in Suit No  
 of 19 on the allegation that the said decree has been  
 transferred to him by assignment, this is to give you notice that you are to appear  
 before this Court on the day  
 of 19, to show cause why execution should not be  
 granted

GIVEN under my hand and the seal of the Court, this  
 of 19 .

day

No 8

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A  
DECREE FOR MONEY (O 21, r 30)

(Title)

To

The Bailiff of the Court

WHEREAS

was ordered by decree of this Court passed on the day of 19

19 ,

DECREE	
Principal	
Interest	
Costs	
Cost of execution	
Further interest	
TOTAL	

s the  
 been  
 paid, These are to command you to  
 attach the moveable property of the said  
 as set forth in the schedule  
 annexed or which shall be

\* together with Rs

the costs of this attachment to hold the same until further orders

from his Court

You are further commanded to return this warrant on or before the  
 day of 19 with an endorsement certifying the  
 day on which and manner in which it has been executed, or why it has not been  
 executed

GIVEN under my hand and the seal of the Court, this day of 19

Schedule

Judge

No 9

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED  
BY DECREE (O 21, r 31)

(Title)

To

The Bailiff of the Court

WHEREAS

was ordered by decree of this Court passed  
 on the day of 19

and where

\* This reference was substituted for the precluded reference '(O 21, r 22)' by s 2  
 and Sch 1 of the Repealing and Amending Act 1914 (10 of 1914)

property (or a  
e plaintiff or to such person

GIVEN under my hand and the seal of the Court, this                      day of  
19

*Judge*

Schedule

No 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O 21, r. 34)

(Title)

To  
TAKE notice that on the                      day of                      19 ,  
the decree holder in the above suit presented an application  
to this Court that the Court may execute on your behalf a deed of  
whereof a draft is hereunto annexed, of the immoveable property specified here  
under and that the                      day of                      19 , is appointed  
for the hearing of the said application and that you are at liberty to appear on the  
said day and to state in writing any objection to the said draft

*Description of property*  
GIVEN under my hand and the seal of the Court this                      of                      19

*Judge*

No 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND ETC

(O 21, r. 35)

(Title)

To  
pancy of                      has  
bee                      You are hereby directed  
to put the said                      in possession of the same, and you are hereby  
authorized to remove any person bound by the decree who may refuse to vacate the  
same

GIVEN under my hand and the seal of the Court this                      day of  
19

*Judge*

Schedule

No 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

(O 21, r. 37)

(Title)

To  
WHEREAS                      has made application to this Court for execution of  
decree in suit No                      of 19                      by arrest and imprisonment of your person  
you are hereby required to appear before this Court on the                      day of  
19 , to show cause why you should not be committed to the civil prison in execution  
of the said decree

GIVEN under my hand and the seal of the Court this                      day of                      19

No 13

WARRANT OF ARREST IN EXECUTION (O 21, r. 38)

(Title)

To  
The Bailiff of the Court  
WHEREAS                      was adjudged by a decree of the Court  
in Suit No                      of 19                      dated the  
day of                      19                      to pay to the decree holder



a  
to such person

GIVEN under my hand and the seal of the Court this                      day of  
19

Schedule

No 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT (O 21, r. 34)

(Title)

To  
TAKE notice that on the                      day of                      19 ,  
the decree holder in the above suit presented an application  
to this Court that the Court may execute on your behalf a deed of  
whereof a draft is hereunto annexed of the immoveable property specified here,  
under and that the                      day of                      19 , is appointed  
erty to appear on the

GIVEN under my hand and the seal of the Court this                      of                      19

No 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC

(O 21, r. 35)

(Title)

To

bee                      pancy of                      has  
to put the said                      in possession of the same, and you are hereby  
authorized to remove any person bound by the decree who may refuse to vacate the  
same

GIVEN under my hand and the seal of the Court this                      day of  
19

Schedule

No 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE

(O 21, r. 37)

(Title)

To

WHEREAS                      I as made application to this Court for execution of  
decree in suit No                      of 19                      by arrest and imprisonment of your person  
you are hereby required to appear before this Court on the                      day of  
19 , to show cause why you should not be committed to the civil prison in execution  
of the said decree

GIVEN under my hand and the seal of the Court this                      day of                      19

No 13

WARRANT OF ARREST IN EXECUTION (O 21, r. 38)

(Title)

To

The Bailiff of the Court

WHEREAS

in Suit No

day of

was adjudged by a decree of  
of 19                      dated the  
19                      to pay to the

DECREE			
Principal			
Interest			
Costs			
Execution			
TOTAL			

the sum of Rs \_\_\_\_\_ is noted in the margin and whereas the said sum of Rs \_\_\_\_\_ has not been paid to the said decree holder in satisfaction of the said decree, these are to command you to unless to you together with Rs \_\_\_\_\_ for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_, with an endorsement certifying the day on which and manner in which it has been executed or the reason why it has not been executed  
GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Judge

No 14

### WARRANT OF COMMITTAL OF JUDGMENT DEBTOR TO JAIL

(O 21, r 40)

(Title)

To

The Officer in charge of the Jail at \_\_\_\_\_

WHEREAS \_\_\_\_\_ who has been brought before this Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, under a warrant in execution of a decree which was made and pronounced by the said Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ and by which decree it was ordered that the said \_\_\_\_\_ should pay \_\_\_\_\_ And whereas the said \_\_\_\_\_ has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody. You are hereby in the name of the King Emperor of India commanded and required to take and receive the said \_\_\_\_\_ into the civil prison and keep him imprisoned therein for a period not exceeding \_\_\_\_\_ or until the said decree shall be fully satisfied or the said \_\_\_\_\_ shall be otherwise on 58 of the annas per \_\_\_\_\_

GIVEN under my signature and the seal of the Court this \_\_\_\_\_

day of \_\_\_\_\_

19 \_\_\_\_\_

Judge

No 15

### ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE (Sections 58, 59)

(Title)

To

The Officer in-charge of the Jail at \_\_\_\_\_

UNDER orders passed this day you are hereby directed to set free judgment debtor now in your custody  
Dated \_\_\_\_\_

Judge

\* For amendment and addition of new forms in Lahore Madras and Rangoon  
Vide *infra*



## No 16

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF  
MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO  
A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION  
THEREOF. (O. 21, r. 46.)

(Title.)

To  
WHEREAS  
has failed to satisfy a decree passed against on the  
day of 19 in Suit No of 19, in favour  
of for Rs. It is ordered the the defendant  
be, and is hereby, prohibited and restrained until the further order of this Court  
from receiving from the following property in the possession  
of the said, that is to say to which the defendant  
is entitled, subject to any claim of the said, and the  
said is hereby prohibited and restrained, until the further order  
of this Court, from delivering the said property to any person or persons whom-  
soever.

GIVEN under my hand and the seal of the Court, this day  
of 19 Judge.

## No 17

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS  
NOT SECURED BY NEGOTIABLE INSTRUMENTS

(O. 21, r. 46.)

(Title.)

To  
WHEREAS  
has failed to satisfy a decree passed against on the  
day of 19 in suit No of 19, in favour  
of for Rs. ; It is ordered that the defendant  
r order of this Court,  
from you to the said  
, be  
or order of this Court  
to any person whomso

GIVEN under my hand and the seal of the Court, this day  
of 19 Judge

## ATTACHMENT IN EXECUTION.

## No 18

PROHIBITORY ORDER, WHERE THE PROPERTY CON-SISTS OF SHARES IN THE  
CAPITAL OF A CORPORATION (O 21 r. 46.)

(Title.)

To  
Secretary of Defendant and to  
WHEREAS Corporation  
has failed to satisfy a decree passed  
against on the  
day of 19, in Suit No of  
19, in favour of for Rs. ; It is ordered  
that you, the defendant, be, and you are hereby, prohibited and restrained,  
until the further order of this Court, from making any transfer of  
shares in the aforesaid Corporation, namely, , or from receiving  
payment of any dividends thereon and you the Secretary

of the said Corporation are hereby prohibited and restrained from permitting any such transfer or making any such payment

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19\_\_\_\_

Judge

No 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY (O 21, r 4<sup>B</sup>)  
(Title)

To

WHEREAS judgment debtor in the above named case, is a (describe office of judgment debtor) receiving his salary (or allowances) at your hands, and whereas decree holder in the said case, has applied in this Court for the attachment of the salary (or allowances) of the said \_\_\_\_\_ to the extent of \_\_\_\_\_ due to him under the decree You are hereby required to withhold the said sum of \_\_\_\_\_ from the salary of the said \_\_\_\_\_ in monthly instalments of \_\_\_\_\_ and to remit the said sum (or monthly instalments) to this Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19\_\_\_\_

Judge

No 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT (O 21 r 51)  
(Title)

To

The Bailiff of the Court  
WHEREAS an order has been passed by this Court on the \_\_\_\_\_ day of 19\_\_\_\_, for the attachment of \_\_\_\_\_  
You are hereby directed to seize the said \_\_\_\_\_ and bring the same into Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19\_\_\_\_

Judge

No 21

ATTACHMENT  
PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT (O 21, r 52)  
(Title)

To  
Sir,

The plaintiff having applied under rule 52 of Order XXI of the Code of Civil Procedure 1908, for an attachment of certain money now in your hands (here state how the money is supposed to be in the hands of the person addressed on what account etc) I request that you will hold the said money subject to the further order of this Court

I have the honour to be,  
Sir,  
Your most obedient Servant,

Judge

Dated the \_\_\_\_\_

day of \_\_\_\_\_

19\_\_\_\_

No 22

## NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT

(O 21, r 53)

(Title)

To

The Judge of the Court of

Sir

I have the honour to inform you that the decree of a \_\_\_\_\_ in your Court on the  
\_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, by  
\_\_\_\_\_ in Suit No \_\_\_\_\_ of 19\_\_\_\_\_ in which the \_\_\_\_\_ was  
\_\_\_\_\_ has  
 been executed by the Court on the application of \_\_\_\_\_  
 the \_\_\_\_\_ of the Court specified above. You are  
 therefore requested to pay the execution of the decree of your Court which you  
 receive and to inform from the Court that the execution has been carried out or  
 until execution of the said decree is accomplished by the holder of the decree now  
 brought to be executed or by his legal representative.

I have the honour etc.,

Dated the

day of

19\_\_\_\_\_

Judge

No 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE  
DECREE (O 21, r 53)

(Title)

To

WHEREAS an application has been made in this Court by the decree holder in  
 the above suit for the attachment of a decree obtained by you on the  
\_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_ in the  
 Court of \_\_\_\_\_ in Suit No \_\_\_\_\_ of 19\_\_\_\_\_ in  
 which \_\_\_\_\_ was \_\_\_\_\_ and \_\_\_\_\_ was \_\_\_\_\_, It is ordered  
 that you, the said \_\_\_\_\_, be and you  
 are hereby prohibited and restrained until the further order of this Court from  
 transferring or charging the same in any way

GIVEN under my hand and the seal of the Court this  
 day of \_\_\_\_\_ 19\_\_\_\_\_

Judge.

No 24

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE  
PROPERTY (O 21, r 54)

(Title)

To

Defendant

WHEREAS you have failed to satisfy a decree passed against you on the  
\_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, in suit No \_\_\_\_\_

I \_\_\_\_\_ the further order of this  
\_\_\_\_\_ in the schedule hereunto  
 annexed, by sale gift or otherwise, and that all persons be and that they are

of the said Corporation are hereby prohibited and restrained from permitting any such transfer or making any such payment

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19

*Judge*

\_\_\_\_\_  
No 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF  
RAILWAY COMPANY OR LOCAL AUTHORITY (O 21, r 48)

(Title)

To

WHEREAS

judgment debtor in the above named case, is a (*describe office of judgment debtor*) receiving his salary (*or allowances*) at your hands, and whereas

decree holder in the said case, has applied in this Court for the attachment of the salary (*or allowances*) of the said \_\_\_\_\_ to the extent of \_\_\_\_\_ due to

him under the decree, You are hereby required to withhold the said sum of \_\_\_\_\_ from the salary of the said \_\_\_\_\_ in monthly instalments of \_\_\_\_\_ and to remit the said sum (*or monthly instalments*) to this

Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19

*Judge*

\_\_\_\_\_  
No 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT

(O 21, r 51)

(Title)

To

The Bailiff of the Court

WHEREAS an order has been passed by this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, for the attachment of \_\_\_\_\_

You are hereby directed to seize the said \_\_\_\_\_ and bring the same into Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19

*Judge*

\_\_\_\_\_  
NO 21

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY ERROR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT (O. 21, r 52)

(Title)

To

Sir,  
The plaintiff having applied under rule 52 of Order XXI of the Code of Civil Procedure 1903, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed on what account etc*) I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient Servant,

*Judge*

Dated the \_\_\_\_\_

day of \_\_\_\_\_

19

No 22.

## NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT

(O 21 r 53)

(Title)

To

The Judge of the Court of

Sir

I have the honour to inform you that the decree obtained in your Court on the  
 day of 19 by  
 in Suit No of 19 in which he was  
 at 1 was  
 been attached by this Court on the application of  
 the in the suit specified above. You are  
 therefore requested to stay the execution of the decree of your Court until you  
 receive an intimation from this Court that the present notice has been cancelled or  
 until execution of the said decree is applied for by the holder of the decree now  
 sought to be executed or by his judgment-debtor.

I have the honour etc

Dated the

day of

19

Judge

No 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE  
DECREE (O 21, r 53)

(Title)

To

WHEREAS an application has been made in this Court by the decree holder in  
 the above suit for the attachment of a decree obtained by you on the  
 day of 19 in the  
 Court of in Suit No of 19 in  
 which was and was, It is ordered  
 that you, the said be and you  
 are hereby prohibited and restrained until the further order of this Court from  
 transferring or charging the same in any way

GIVEN under my hand and the seal of the Court this  
 day of 19

Judge.

No 24

## ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE  
PROPERTY (O 21 r 54)

(Title)

To

Defendant

WHEREAS you have failed to satisfy a decree passed against you on the  
 day of 19, in s

annexed, by sale gift or otherwise, and that all persons be  
 till the in the  
 hi t

of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

*Judge*

No 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY (O 21, r. 48.)

(Title)

To

WHEREAS judgment debtor in the above named case, is a (*describe office of judgment debtor*) receiving his salary (*or allowances*) at your hands, and whereas *decree holder in the said case*, has applied in this Court for the attachment of the salary (*or allowances*) of the said *decree holder* to the extent of \_\_\_\_\_ due to him under the decree, You are hereby required to withhold the said sum of \_\_\_\_\_ from the salary of the said \_\_\_\_\_ in monthly instalments of \_\_\_\_\_ and to remit the said sum (*or monthly instalments*) to this Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

*Judge*

No 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT (O 21, r. 51)

(Title)

To

The Bailiff of the Court  
WHEREAS an order has been passed by this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, for the attachment of \_\_\_\_\_  
You are hereby directed to seize the said \_\_\_\_\_  
and bring the same into Court

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

*Judge*

NO 21

ATTACHMENT

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT (O 21, r. 52)

(Title)

To

Sir,

The plaintiff having applied under rule 52 of Order XXI of the Code of Civil Procedure 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed on what account etc*) I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient Servant,

*Judge*

Dated the \_\_\_\_\_

day of \_\_\_\_\_

19\_\_\_\_

No 22

## NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT

(O. 21, r. 53)

(Title)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the day of 19, by 17, in suit No. of 19, in which the was and was has been attached by this Court on the application of the the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present decree has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by a judge which of

I have the honour etc.

Dated the

day of

19

Judge

No 23

## NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE (O. 21, r. 53)

(Title)

To

WHEREAS an application has been made in this Court by the decree holder in the above suit for the attachment of a decree obtained by you on the day of 19, in the Court of in suit No. of 19, in which was and was, It is ordered that you, the said, be, and you

I the further order of this Court, from

Court, this

day of

19

Judge.

No 24

## ATTACHMENT IN EXECUTION.

## PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY (O. 21, r. 54)

(Title)

To

Defendant,

WHEREAS you have failed to satisfy a decree passed against you on the day of 19, in suit No. for Rs. of 19 in favour of It is ordered that you, the said be, and you are hereby prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule annexed, by sale, gift or otherwise, and that all persons be, in

hereby prohibited from receiving the same by purchase, gift or otherwise  
 GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of  
 19 \_\_\_\_\_

*Schedule**Judge*

No 25

ORDER FOR PAYMENT TO THE PLAINTIFF ETC, OF MONEY ETC,  
 IN THE HANDS OF A THIRD PARTY (O 21, r 56)

(Title)

To

WHEREAS the following property \_\_\_\_\_ has been attached in execution  
 of a decree in Suit No \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_, passed on the \_\_\_\_\_ day of  
 19 \_\_\_\_\_, in favour of \_\_\_\_\_ for Rs \_\_\_\_\_ : It is ordered  
 that the property so attached, consisting of Rs \_\_\_\_\_ in money and Rs \_\_\_\_\_  
 in currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid  
 over by you the said \_\_\_\_\_, to \_\_\_\_\_

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of  
 19 \_\_\_\_\_

*Judge*

No 26

NOTICE TO ATTACHING CREDITOR (O 21 r 58)

(Title)

To

WHEREAS \_\_\_\_\_ has made application to  
 this Court for the removal of attachment on \_\_\_\_\_ placed at your  
 instance in execution of the decree in suit No \_\_\_\_\_ of 19 \_\_\_\_\_, this is to give you  
 notice to appear before this Court on \_\_\_\_\_ the \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, either in person or by a pleader  
 of the Court duly instructed to support your claim as attaching creditor

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of  
 19 \_\_\_\_\_

*Judge*

No 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR  
 MONEY (O 21, r 66)

(Title)

To

The Bailiff of the Court

These are to command you to sell by auction after giving \_\_\_\_\_ days'  
 previous notice by affixing the same in this Court house, and after making due  
 proclamation, the \_\_\_\_\_ property attached under a warrant from  
 this Court dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, in execution of a

has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge*



No. 28.

## NOTICE OF THE DAY FIXED FOR SETTING A SALE PROCLAMATION,

(O 21, r 66)

(Title)

To \_\_\_\_\_ Judgment debtor  
 WHEREAS in the above named suit \_\_\_\_\_, the decree holder, has applied  
 for the sale of \_\_\_\_\_, You are hereby  
 informed \_\_\_\_\_  
 that the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, has been fixed for  
 settling the terms of the proclamation of sale  
 GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_  
 Judge

No 29 \*

## PROCLAMATION OF SALE (O 21, r 66)

(Title)

Notice is hereby given that, under rule 64 of Order XXXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached  
 + suit No \_\_\_\_\_ of 19 \_\_\_\_\_ property mentioned in the annexed schedule, in satis-  
 decided by the \_\_\_\_\_ of \_\_\_\_\_ faction of the claim of the decree holder in the  
 in which \_\_\_\_\_ was plain \_\_\_\_\_ suit + mentioned in the margin, amounting with  
 tiff and \_\_\_\_\_ was defendant \_\_\_\_\_ costs and interest up to date of sale to the  
 sum of \_\_\_\_\_

The sale will be by public auction and the property will be put up for sale in the  
 lots specified in the schedule. The sale will be of the property of the judgment  
 debtors above named as mentioned in the schedule below and the liabilities and  
 claims attaching to the said property so far as they have been ascertained are those  
 specified in the schedule against each lot.

In the absence of any order of postponement the sale will be held by \_\_\_\_\_ at  
 the monthly sale commencing at \_\_\_\_\_ o'clock on the \_\_\_\_\_ at \_\_\_\_\_ In the  
 event, however, of the debt above specified and of the costs of the sale being tendered  
 or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly  
 authorized agent. No bid by, or on behalf of, the judgment creditors above men-  
 tioned, however, will be accepted, nor will any sale to them be valid without the  
 express permission of the Court previously given. The following are the further

*Conditions of Sale*

1 The particulars specified in the schedule below have been stated to the  
 best of the information of the Court, but the Court will not be answerable for any  
 error, misstatement or omission in this proclamation.

2 The amount by which the biddings are to be increased shall be determined  
 by the officer conducting the sale. In the event of any dispute arising as to  
 the amount bid or as to the bidder the lot shall at once be again put up to  
 auction.

3 The highest bidder shall be declared to be the purchaser of any lot,  
 provided always that he is legally qualified to bid, and provided that it shall be  
 in the discretion of the Court or officer holding the sale to decline acceptance  
 of the highest bid when the price offered appears so clearly inadequate as to  
 make it advisable to do so +

4 For reasons recorded, it shall be in the discretion of the officer conducting  
 the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5 In the case of moveable property the price of each lot shall be paid at  
 the time of sale or as soon after as the officer holding the sale directs and in  
 default of payment the property shall forthwith be again put up and re sold.

6 In the case of immovable property, the person declared to be the purchaser  
 shall pay immediately after such declaration a deposit of 25 per cent of the amount  
 of his purchase money to the officer conducting the sale, and in default of such  
 deposit the property shall forthwith be put up again and re sold.

\* For amendment in Allahabad and Madras Vide *infra*

+ Vide A I R 1932 Rang 17-9 Rang 638=135 in I Cas 634

hereby prohibited from receiving the same by purchase, gift or otherwise

GIVEN under my hand and the seal of the Court this

day of

19

*Schedule*

*Judge*

No 25

ORDER FOR PAYMENT TO THE PLAINTIFF ETC, OF MONEY ETC,  
IN THE HANDS OF A THIRD PARTY (O 21, r 56)

(Title)

To

WHEREAS the following property has been attached in execution  
of a decree in Suit No of 19, passed on the day of  
19, in favour of for Rs : It is ordered  
that the property so attached, consisting of Rs in money and Rs  
in currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid  
over by you, the said, to

GIVEN under my hand and the seal of the Court this

day of

19

*Judge*

No 26

NOTICE TO ATTACHING CREDITOR (O 21 r 58)

(Title)

To

WHEREAS has made application to  
this Court for the removal of attachment on placed at your  
instance in execution of the decree in suit No. of 19, this is to give you  
notice to appear before this Court on the  
day of 19, either in person or by a pleader  
of the Court duly instructed to support your claim, as attaching creditor

GIVEN under my hand and the seal of the Court, this

day of

19

*Judge*

No 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR  
MONEY (O 21, r. 66)

(Title)

To

pre. . . . . days'  
procuration, the . . . . . and after making due  
this Court, dated the . . . . . property attached under a warrant from  
decree in favour of day of 19, in execution of a  
so on . . . . . in Suit No . . . . . or  
the

of . . . . . day  
has . . . . . h it

GIVEN under my hand and the seal of the Court, this

day of

19

*Judge*

No. 28.

## NOTICE OF THE DAY FIXED FOR SETTING A SALE PROCLAMATION.

(O. 21, r 65)

(Title)

To \_\_\_\_\_ Judgment debtor,  
 WHEREAS in the above named suit, the decree holder, has applied  
 for the sale of \_\_\_\_\_, You are hereby  
 informed \_\_\_\_\_,  
 that the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, has been fixed for  
 settling the terms of the proclamation of sale  
 GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_ Judge

No. 29 \*

## PROCLAMATION OF SALE (O 21, r. 66)

(Title)

Notice is hereby given that, under rule 64 of Order XXXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached  
 + suit No \_\_\_\_\_ of 19 \_\_\_\_\_ property mentioned in the annexed schedule, in satis-  
 decided by the \_\_\_\_\_ of \_\_\_\_\_ faction of the claim of the decree holder in the  
 in which \_\_\_\_\_ was plain \_\_\_\_\_ + mentioned in the margin, amounting with  
 tiff and \_\_\_\_\_ was defendant \_\_\_\_\_ costs and interest up to date of sale to the  
 sum of \_\_\_\_\_

The sale will be by public auction and the property will be put up for sale in the  
 lots specified in the schedule. The sale will be of the property of the judgment  
 debtors above named as mentioned in the schedule below and the liabilities and  
 claims attaching to the said property so far as they have been ascertained, are those  
 specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by \_\_\_\_\_ at  
 the monthly sale commencing at \_\_\_\_\_ o'clock on the \_\_\_\_\_ at \_\_\_\_\_ In the  
 event, however, of the debt above specified and of the costs of the sale being tendered  
 or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly  
 authorized agent. No bid by, or on behalf of, the judgment creditors above men-  
 tioned, however, will be accepted, nor will any sale to them be valid without the  
 express permission of the Court previously given. The following are the further

*Conditions of Sale*

1 The particulars specified in the schedule below have been stated to the  
 best of the information of the Court, but the Court will not be answerable for any  
 error, mis statement or omission in this proclamation.

2 The amount by which the biddings are to be increased shall be determined  
 by the officer conducting the sale. In the event of any dispute arising as to  
 the amount bid, or as to the bidder, the lot shall at once be again put up to  
 auction.

3 The highest bidder shall be declared to be the purchaser of any lot,  
 provided always that he is legally qualified to bid, and provided that it shall be  
 in the discretion of the Court or officer holding the sale to decline acceptance  
 of the highest bid when the price offered appears so clearly inadequate as to  
 make it advisable to do so +

4 For reasons recorded, it shall be in the discretion of the officer conducting  
 the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5 In the case of moveable property the price of each lot shall be paid at  
 the time of sale or as soon after as the officer holding the sale directs, and in  
 default of payment the property shall forthwith be again put up and re sold.

6 In the case of immovable property, the person declared to be the purchaser  
 shall pay immediately after such declaration a deposit of 25 per cent on the amount  
 of his purchase-money to the officer conducting the sale, and in default of such  
 deposit the property shall forthwith be put up again and re sold.

\* For amendment in Allahabad and Madras Vide *infra*

† Vide A I R 1932 Rang 17=9 Rang 608=135 Inl Cas 654

7 The full amount of the purchase money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if, the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day

8. In default of payment of the balance of purchase money within the period allowed, the property shall be re sold after the issue of a fresh notification of sale. The deposit after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold

GIVEN under my hand and the seal of the Court this                      day of

19

*Judge*

*Schedule of property.*

Number of lot	Description of property to be sold with the name of each owner where there are more judgment-debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government	Detail of any incumbrances to which the property is liable	Claims if any, which have been put forward to the property and any other known particulars bearing on its nature and value

No. 30

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE (O 21, r 66)

(Title)

To

19      made for the sale of the property of the judgment-reunder annexed, and whereas the      day of  
his been fixed for the sale of the said property,  
the proclamation of sale are by this warrant made over to you,

copies of

Dated the

day of

*Schedule* 19

*Judge*

No 31

**CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE  
ON A RE SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT**  
(O 21, r 71)

(Title)

Certified that at the re sale of the property in execution of the decree in the above named suit, in consequence of default on the part of \_\_\_\_\_, purchaser, there was a deficiency in the price of the said property amounting to Rs \_\_\_\_\_, and that the expenses attending such re sale amounted to Rs \_\_\_\_\_ making a total of Rs \_\_\_\_\_, which sum is recoverable from the defaulter

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Officer holding the sale*

No 32

**NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN  
EXECUTION (O, 21, r 79)**

(Title)

To \_\_\_\_\_  
WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree in the above suit of \_\_\_\_\_ now in your possession you are hereby prohibited from delivering possession of the said \_\_\_\_\_ to any person except the said \_\_\_\_\_

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge*

No 33

**PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO  
ANY OTHER THAN THE PURCHASER (O 21, r 79)**

(Title)

To \_\_\_\_\_ and to \_\_\_\_\_  
WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree, in the above suit of \_\_\_\_\_ being debts due from you \_\_\_\_\_ to you \_\_\_\_\_, it is ordered that you \_\_\_\_\_, and you are hereby prohibited from receiving and you \_\_\_\_\_ from making payment of, the said debt to any person or persons except the said \_\_\_\_\_

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge*

NO 34.

**PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.**  
(O 21, r 79)

(Title)

To \_\_\_\_\_ and \_\_\_\_\_, Secretary of \_\_\_\_\_ Corporation,  
WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree, in the above suit of certain shares in the above Corporation that is to say, of \_\_\_\_\_ standing in the name of you \_\_\_\_\_, It is ordered that you \_\_\_\_\_ be and you are hereby, prohibited from making any transfer of the said shares to any person except the said \_\_\_\_\_ the purchaser aforesaid or from receiving dividends thereon and you \_\_\_\_\_ Secretary of the said C

from permitting any such transfer or making any such payment to any person except the said \_\_\_\_\_, the purchaser aforesaid

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_

*Judge*

\_\_\_\_\_  
No 35

**CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE,  
LEASE OR SELL PROPERTY (O. 21, r 83)**  
(Title)

WHEREAS in execution of the decree passed in the above suit an order was made \_\_\_\_\_ 19\_\_\_\_ for the sale of the under-  
ment-debtor, and whereas the Court  
postponed the said sale to  
be by mortgage, lease or private sale of the

ereby authorize the said judgment-debtor  
to make the proposed mortgage, lease or sale within a period of \_\_\_\_\_ from  
the date of this certificate, provided that all monies payable under such mortgage,  
lease or sale shall be paid into this Court and not to the said judgment debtor

*Description of property*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
*Judge*

\_\_\_\_\_  
No 36

**NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE**  
(O. 21 rr 90, 92)  
(Title)

To \_\_\_\_\_  
WHEREAS the under mentioned property was sold on the \_\_\_\_\_ day of \_\_\_\_\_  
in execution of the decree passed in the above named suit, and whereas

Cou  
[ or

not  
day  
\_\_\_\_\_  
19

*Description of property*

*Judge*

\_\_\_\_\_  
No 37

**NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE**  
(O. 21, rr. 91, 92)  
(Title)

To \_\_\_\_\_  
WHEREAS \_\_\_\_\_, the purchaser of the under-mentioned  
\_\_\_\_\_ 19\_\_\_\_, in execution of the  
applied to this Court to set aside the sale  
the judgment-debtor, had no  
show why the said application should  
proofs in this Court on the \_\_\_\_\_ day  
when the said application will be heard  
of \_\_\_\_\_ 19\_\_\_\_  
and determined.

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
*Description of property*

*Judge*

No. 38 \*

## CERTIFICATE OF SALE OF LAND. (O. 21, r. 94)

(Title)

THIS is to certify that \_\_\_\_\_ has been declared  
the purchaser at a sale by public auction on the \_\_\_\_\_ day of  
19\_\_\_\_, of \_\_\_\_\_  
in execution of decree in this suit, and that the said sale has been duly confirmed  
by this Court

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_.

Judge

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT  
A SALE IN EXECUTION. (O. 21, r. 95.)

(Title)

To

The bailiff of the Court

WHEREAS \_\_\_\_\_ has become  
the certified purchaser of \_\_\_\_\_ at a  
sale in execution of decree in Suit No \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_. You are hereby  
ordered to put the said \_\_\_\_\_ the certified purchaser, as aforesaid, in possession  
of the same.

GIVEN under my hand and the seal of the Court, this  
19\_\_\_\_ day of \_\_\_\_\_

Judge

No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION  
OF DECREE. (O. 21, r. 97)

(Title)

To

WHEREAS, \_\_\_\_\_, the decree-holder  
in the above suit, has complained to this Court that you have resisted (or obstructed)  
the officer charged with the execution of the warrant for possession

You are hereby summoned to appear in this Court on the \_\_\_\_\_ day of  
19\_\_\_\_, at \_\_\_\_\_ A M, to answer the said complaint

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

No. 41 †

## WARRANT OF COMMITTAL (O. 21, r. 98)

(Title)

To

\_\_\_\_\_ I that \_\_\_\_\_ without  
any just cause resisted [or obstructed] and is still resisting [or obstructing] the  
said \_\_\_\_\_, in obtaining possession of the property, and whereas the  
said \_\_\_\_\_ has made application to this Court that the said \_\_\_\_\_ be  
committed to the civil prison ;

You are hereby commanded and required to take and receive the said \_\_\_\_\_ into  
the civil prison and to keep him imprisoned therein for the period of \_\_\_\_\_ days

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

\* For amendment in Nagpur and Patna vide *infra*† For amendment in Oudh vide *infra*

from permitting any such transfer or making any such payment to any person except the said \_\_\_\_\_, the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_.

Judge.

No. 35.

**CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE,  
LEASE OR SELL PROPERTY. (O. 21, r. 83.)**

(Title)

WHEREAS in execution of the decree passed in the above suit an order was made on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ for the sale of the under-mentioned property of the judgment-debtor \_\_\_\_\_, and whereas the Court judgment-debtor, postponed the said sale to \_\_\_\_\_  
decree by mortgage, lease or private sale of the

the date of this certificate; provided that \_\_\_\_\_ t-debtor  
lease or sale shall be paid into this Court \_\_\_\_\_ from  
mortgage,

*Description of property*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
Judge

No 36

**NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE  
(O. 21, rr. 90, 92)**

(Title)

To \_\_\_\_\_ WHEREAS the under-mentioned property was sold on the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

*Description of property*

Judge.

No 37

**NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE  
(O. 21, rr. 91, 92)**

(Title)

To \_\_\_\_\_, the purchaser of the under-mentioned  
\_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_, in execution of the  
\_\_\_\_\_ has applied to this Court to set aside the sale  
saleable interest therein; \_\_\_\_\_ the judgment-debtor, had no

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
*Description of property*

Judge



No. 38 \*

## CERTIFICATE OF SALE OF LAND (O. 21, r. 94)

(Title)

THIS is to certify that \_\_\_\_\_ has been declared  
the purchaser at a sale by public auction on the \_\_\_\_\_ day of  
19\_\_\_\_, of \_\_\_\_\_

in execution of decree in this suit, and that the said sale has been duly confirmed  
by this Court.

GIVEN under my hand and the seal of the Court this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_

Judge

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT  
A SALE IN EXECUTION (O. 21, r. 95)

(Title)

To \_\_\_\_\_  
The Bailiff of the Court

WHEREAS \_\_\_\_\_ has become  
the certified purchaser of \_\_\_\_\_ at a  
sale in execution of decree in Suit No. \_\_\_\_\_ of \_\_\_\_\_ You are hereby  
ordered to put the said \_\_\_\_\_ the certified purchaser as aforesaid, in possession  
of the same.

GIVEN under my hand and the seal of the Court this \_\_\_\_\_  
19\_\_\_\_

11 of

Judge

No. 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION  
OF DECREE (O. 21, r. 97)

(Title)

To \_\_\_\_\_, the decree holder  
in the above suit has complained to this Court that you have resisted (or obstructed)  
the officer charged with the execution of the warrant for possession

You are hereby summoned to appear in this Court on the \_\_\_\_\_ day of  
19\_\_\_\_, at \_\_\_\_\_ A.M., to answer the said complaint

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

No. 41 †

## WARRANT OF COMMITTAL (O. 21, r. 98)

(Title)

To \_\_\_\_\_  
The Officer in Charge of the Jail at \_\_\_\_\_  
WHEREAS the undermentioned property has been decreed to \_\_\_\_\_

~~~~~  
You are hereby commanded and required to take and receive the said  
the civil prison and to keep him imprisoned therein for the period of \_\_\_\_\_

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge

\* For amendment in Nagpur and Patna vide *infra*† For amendment in Oudh vide *infra*

No 42.\*

**AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.**  
(Section 72)

(Title)

To

Collector of

SIR,

In answer to your communication No

dated

repre

land

that you are anxious to have the matter decided in the manner recommended by you

honour to inform you the said decree in

I have the honour to be

SIR,

Your most obedient Servant,

Judge

**APPENDIX F**

**SUPPLEMENTAL PROCEEDINGS**

No 1

**WARRANT OF ARREST BEFORE JUDGMENT (O 38, r. 1)**

(Title)

To

The Bailiff of the Court

WHEREAS

the plaintiff in the above suit, claims the sum

of Rs \_\_\_\_\_ as noted in the margin, and  
has proved to the satisfaction of the Court that there  
is probable cause for believing that the defendant  
is about to

These are to command you to demand and  
receive from the said \_\_\_\_\_ the sum of  
Rs \_\_\_\_\_ is sufficient to satisfy the  
plaintiff's claim and unless the said sum of  
Rs \_\_\_\_\_ is forthwith delivered  
to you by or on behalf of the said \_\_\_\_\_

and to bring him before this Court, in order that he may show cause why he should  
not furnish security to the \_\_\_\_\_ into custody  
before the Court until su \_\_\_\_\_  
of, and until satisfaction of \_\_\_\_\_

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_

19

Judge

No 2 †

**SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O 38, r. 2)**

(Title)

WHEREAS at the instance of

the plaintiff in the above suit, the defendant, has been arrested and brought before the Court ;

And whereas on the failure of the said defendant to show cause why he should  
not furnish security for his appearance, the Court has ordered him to furnish such  
security.

\* For amendment in Allahabad vide *infra*  
† Vide 1930 A. I. 121

104  
ORDER FOR COMMITTAL O 38 r 4)  
(Title)

To  
WHEREAS, plaintiff in this suit has made application to the Court that security be taken for the appearance of the defendant, to answer any judgment that may be passed against him in the suit, and whereas the Court has called upon the defendant to furnish such security or to offer a sufficient deposit in lieu of security, which he has failed to do, it is ordered that the said defendant be committed to the civil prison until the decision of the suit, or if judgment be pronounced against him and until satisfaction of the decree  
GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19\_\_.

Judge

No 5

ATTACHMENT BEFORE JUDGMENT WITH ORDER TO CALL FOR SECURITY  
FOR FULFILMENT OF DECREE (O 38, r 5)

(Title)

To  
The Bailiff of the Court  
WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit  
These are to command you to call upon the said defendant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_ either to furnish security for the sum of rupees \_\_\_\_\_ to produce and place at the disposal of the Court when required \_\_\_\_\_ or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him, or to appear and show cause why he should not furnish security, and you are further ordered to attach the said \_\_\_\_\_ and keep the same under

safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ with an endorsement certifying the date on which and the manner in which it has been executed or the reason why it has not been executed

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Judge

### No 6\*

## SECURITY FOR THE PRODUCTION OF PROPERTY. (O 38, r 5) (Title)

WHEREAS at the instance of \_\_\_\_\_, the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs \_\_\_\_\_ to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed,

Therefore I \_\_\_\_\_ have voluntarily become surety and do hereby bind myself my heirs and executors to the said Court, that the said defendant shall produce and place at the disposal of the Court when required, the property specified in the said schedule or the value of the same, or such portion thereof as may be sufficient to satisfy the decree and in default of his so doing I bind myself, my heirs and executors to pay to the said Court at its order the said sum of Rs \_\_\_\_\_ or such sum not exceeding the said sum as the said Court may adjudge

### Schedule

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed)

Witnesses

1  
2

### No 7.

## ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY (O 38, r 6) (Title)

To \_\_\_\_\_  
The Bailiff of the Court  
WHEREAS the plaintiff in this suit has applied to the Court to call upon the defendant to furnish security, to fulfil any decree that may be passed against him in the suit and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security which he has failed to do These are to command you to attach \_\_\_\_\_, the property of the said \_\_\_\_\_ and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Judge

### No 8

## TEMPORARY INJUNCTIONS (O 39, r 1) (Title)

Upon motion made unto this Court by \_\_\_\_\_, Pleader of (or Counsel for) the plaintiff A B \_\_\_\_\_ of the said plaintiff in this matter filed [ this day ] [ \_\_\_\_\_ day of \_\_\_\_\_ ] or the written statement of \_\_\_\_\_ and upon hearing the evidence of \_\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

support thereof [if after notice and defendant not appearing; add, and also the evidence of as to service of notice of this motion in the defendant C. D.]; the defendant C. D., ng to be pulled down ed [or in the written caring of this motion aluk of ed, until the hearing

Dated this      day of      19      .

Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—]

h out of the  
e promissory  
, etc, men-  
motion until

[In Copyright cases] to restrain the defendant C. D., his servants, agents, or workmen, from printing, publishing or vending a book called      or any part thereof, until the, etc.

[Where part      to restrain the  
defendant C. D.,      icking, selling  
and evidence  
hereinafter specified,  
and also that part  
page

[In patent cases] to      of the respective  
agents, servants and workmen, from making      may be] mentioned,  
for      inventions, or either of

them, or making any addition thereto or subtraction therefrom, until the hearing, etc.

[In cases of Trade marks] to restrain the defendant C. D.,

composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[To restrain a partner from in any way interfering in the business.]

agents and servants, from entering      endorsing or negotiating any bill of      of the partnership firm of B. and L., and from contracting      promise, a      in the nai      the said      for the pa      promise or contracting until the, etc.

safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ with an endorsement certifying the date on which and the manner in which it has been executed or the reason why it has not been executed

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Judge

No 6 \*

**SECURITY FOR THE PRODUCTION OF PROPERTY. (O 38, r 5)**

*(Title)*

WHEREAS at the instance of \_\_\_\_\_ the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs \_\_\_\_\_ to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed,

Therefore I \_\_\_\_\_ have voluntarily become suret heirs and executors to the said Court, that the said place at the disposal of the Court when required, \_\_\_\_\_ schedule or the value of the same, or such portion thereof as may be sufficient to satisfy the decree and in default of his so doing, I bind myself, my heirs and executors to pay to the said Court at its order the said sum of Rs \_\_\_\_\_ or such sum not exceeding the said sum as the said Court may adjudge

*Schedule*

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ *(Signed)*

Witnesses

1

2

No 7.

**ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY (O 38 r 6)**

*(Title)*

To

The Bailiff of the Court

WHEREAS the plaintiff in this suit has applied to the Court to call upon \_\_\_\_\_ the defendant to furnish security to fulfil any decree that may be passed against him in the suit and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security which he has failed to do These are to command you to attach \_\_\_\_\_ the property of the said \_\_\_\_\_ and keep the same under safe and secure custody until the further order of the Court and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ with an endorsement certifying the date on which and the manner in which it has been executed or the reason why it has not been executed

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Judge

No 8

**TEMPORARY INJUNCTIONS (O 39, r 1)**

*(Title)*

Upon motion made unto this Court by \_\_\_\_\_ Pledger of (or Counsel for) the plaintiff A B and upon reading the petition of the said plaintiff in this matter filed [ this day ] [ \_\_\_\_\_ day of \_\_\_\_\_ or the written statement ] and \_\_\_\_\_ day in \_\_\_\_\_ and \_\_\_\_\_ in

\* Vide 54B 113=31 Bom L R 1442=A I R 1930 Bom 122

support thereof [ *if after notice and defendant not appearing, add, and also the evidence of* as to service of notice of this motion upon the defendant C D ]  
 . . . . . the defendant C D,  
 . . . . . to be pulled down  
 . . . . . (or in the written  
 . . . . . ing of this motion  
 . . . . . k of  
 . . . . . until the hearing

Dated this       day of       19       .

Judge

[ *Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus —* ]  
 to restrain the defendants       and       from parting with out of the  
 . . . . . , assigning or negotiating the promissory  
 . . . . . ed on or about the       , etc, men  
 . . . . . and the evidence heard at this motion until  
 . . . . . rder of this Court.

[ *In Copyright cases* ]       to restrain the defendant C D, his servants, agents,  
 or workmen, from printing, publishing or vending a book called       ,  
 or any part thereof, until the, etc

[ *Where part only of a book is to be restrained* ]       to restrain the  
 defendant C D, his servants, agents or workmen from printing, publishing, selling  
 or otherwise disposing of such parts of the book in the print [ *or petition and evidence*  
*etc* ] mentioned to have been published by the defendant as hereinafter specified,  
 namely, that part of the said book which is entitled       and also that part  
 which is entitled       [ *or which is contained in page*       to page  
                          both inclusive ] until       etc

[ *In patent cases* ]       to restrain the defendant C D his  
 agents, servants and workmen, from making or vending any perforated bricks  
 [ *or as the case may be* ] upon the principle of the invention in the plaintiff's patent  
 [ *or petition etc, or written statement etc.* ] mentioned

of the respective  
 . . . . . may be ] mentioned,  
 . . . . . tions, or either of  
 . . . . . il the hearing, etc

[ *In cases of Trade marks* ]       to restrain the defendant C D,  
 his servants, agents or workmen from selling or exposing for sale, or procuring  
 to be sold, any composition or blacking [ *or as the case may be* ] described as or  
 purporting to be blacking manufactured by the plaintiff A B, in bottles having  
 affixed thereto such labels as in the plaintiff's plaint [ *or petition etc* ] mentioned,  
 or any other labels so contrived or expressed as, by colourable imitation or otherwise,  
 to represent the composition or blacking sold by the defendant to be the same  
 as the composition or blacking manufactured and sold by the plaintiff A B, and  
 from using trade cards so contrived or expressed as to represent that any compo-  
 sition or blacking sold or proposed to be sold by the defendant is the same as the  
 composition or blacking manufactured or sold by the plaintiff A B, until the, etc

[ *To restrain a partner from in any way interfering in the business* ]

agents       to restrain the defendant C D, his  
 endorsin       and from accepting, drawing,  
 of the       or written security in the name  
 and sell       onracting any debt buying  
 promise,       g into any verbal or written  
 in the name or on the credit of the said partnership firm of B and D or whereby  
 the said partnership firm can or may in any manner become or be made liable to or  
 for the payment of any sum of money, or for the performance of any contract,  
 promise or undertaking until the, etc

safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19 with an endorsement certifying the date on which and the manner in which it has been executed or the reason why it has not been executed

GIVEN under my hand and the seal of the Court this 19

day of

Judge

No 6 \*

### SECURITY FOR THE PRODUCTION OF PROPERTY. (O 38, r. 5)

(Title)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed,

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors to the said Court, that the said defendant shall produce and place at the disposal of the Court when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, and in default of his so doing, I bind myself, my heirs and executors to pay to the said Court at its order the said sum of Rs or such sum not exceeding the said sum as the said Court may adjudge

Schedule

Witness my hand at this day of 19

(Signed)

Witnesses

1  
2

No 7.

### ATTACHMENT BEFORE JUDGMENT ON PROOF OF FAILURE TO FURNISH SECURITY (O 38, r. 6)

(Title)

To

The Bailiff of the Court

WHEREAS the plaintiff in this suit, has applied to the Court to call upon the defendant to furnish security to fulfil any decree that may be passed against him in the suit and whereas the Court has called upon the said to furnish such security which he has failed to do These are to command you to attach the property of the said and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19

with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this 19

day of

Judge

No 8

### TEMPORARY INJUNCTIONS (O 39, r. 1)

(Title)

Upon motion made unto this Court by for] the plaintiff A B matter filed [ this day ] [ or the written statement of ] and

, Pleader of [or Counsel of the said plaintiff in this

day of

and day

\* Vide 54B 113=31 Bom L R 1442=A I R 1930 Bom 122



support thereof [if after notice in defendant not appearing, add, and also the evidence of as to service of notice of this motion upon the defendant C D.] This Court doth order that an injunction be awarded to restrain the defendant C D, his servants, agents and workmen, from pulling down or suffering to be pulled down the house in the plaint in the said suit of the plaintiff mentioned [or in the written of this motion] until the hearing

Dated this      day of      19      .

Judge

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus —]

[In Copyright cases] to restrain the defendant C D, his servants, agents, or workmen, from printing, publishing or vending a book called      , or any part thereof until the, etc.

[Where part only of a book is] defendant C D, his servants agents or otherwise disposing of such parts of etc] mentioned to have been published namely that part of the said book as is entitled      and also that part which is entitled      (as which is contained in page      to page both inclusive) until      et

[In Patent cases] to restrain the defendant C D, his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the invention in the plaintiff's patent [or petition etc, or written statement etc] mentioned

of the respective may be] mentioned, tions, or either of it the hearing, etc

[In cases of Trade marks] to restrain the defendant C D, his servants, agents or workmen from selling or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A B, in bottles having affixed thereto such labels as in the plaintiff's patent [or petition etc] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A B, and from using trade cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A B. until the, etc

[To restrain a partner from in any way interfering in the business]

to restrain the defendant C D, his agents and servants, from entering into any contract and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership firm of B and D, and from contracting any debt buying and selling any good promise, agreement in the name or on the said partnership for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc

No \*[9] †

## APPOINTMENT OF A RECEIVER (O 40, r. 1.)

(Title)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19, in favour of , you are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of the provisions of that order  
 1 proper account of your receipts and on You will be entitled to remuneration at the rate of per cent upon your receipts under the authority of this appointment

GIVEN under my hand and the seal of the Court, this day of 19 ,

Judge

No \*[10] †

## BOND TO BE GIVEN BY RECEIVER. (O. 40 r. 3)

(Title)

KNOW all men by these presents, that we, and of the Court of and in Rs , are jointly and severally bound to to be paid to the said or his successor in office for the time being For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators jointly and severally, by these presents

Dated this day of

19 .

WHEREAS a plaint has been filed in this Court by against for the purpose of [here insert the object of suit]

And whereas the said has been appointed, by order of the above mentioned Court to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named

Now the condition of this obligation is such, shall duly account for all and every the sum and profits the said

the balances which shall from time to time said Court hath directed or shall hereafter

signed and delivered by the above bounden in the presence of otherwise it shall remain in full force

Note—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond

## APPENDIX G

## APPEAL, REFERENCE AND REVIEW

No 1

## MEMORANDUM OF APPEAL (O. 41, r. 1)

(Title)

The above-named appeals to the Court at from the decree of in Suit No of 19, dated the day of 19, and sets forth the following grounds of objection to the decree appealed from, namely—

respectively by s 2 and Sch 1 of

s vide *infra*.

bad, vide *infra*

## No. 2

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION  
OF DECREE (O 41, r 5.)

(Title)

To

THIS security bond on stay of execution of decree executed by  
witnesseth —

That , the plaintiff in Suit No of 19 , having sued  
the defendant, in this Court and a decree having been passed on the day  
of 19 , in favour of the plaintiff, and the defendant having preferred  
an appeal from the said decree in the Court, the said appeal is still pending.  
Now the plaintiff decree holder has applied to execute the decree, the defen-  
and has been called upon  
and security to the extent  
chedule hereunto annexed,  
nfirmed or varied by the  
Appellate Court and shall pay whatever may be payable by him thereunder,  
and if he should fail therein then any amount so payable shall be realized from  
the properties hereby mortgaged, and if the proceeds of the sale of the said  
properties are insufficient to pay the amount due I and my legal representatives  
will be personally liable to pay the balance To this effect I execute this security  
bond this day of 19

Schedule

(Signed)

Witnessed by

1  
2

## No. 3

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF  
APPEAL (O 41 r 6)

(Title)

To

THIS security bond on stay of execution of decree executed by witnesseth —

That , the plaintiff in Suit No of 19 , having sued , the  
defendant, in this Court and a decree having been passed on the day  
of 19 , in favour of the plaintiff, and the defendant having preferred  
an appeal from the said decree in the Court, the said appeal is  
still pending

Now the plaintiff decree holder has applied for execution of the said decree and  
has been called upon to furnish security Accordingly I, of my own free will, stand  
in the sche-  
be reversed  
which may  
accordance  
with the decree of the Appellate Court and shall pay whatever may be payable by  
him thereunder, and if he should fail therein then any amount so payable shall be  
realized from the properties hereby mortgaged, and if the proceeds of the sale of the  
said properties are insufficient to pay the amount due, I and my legal representatives  
will be personally liable to pay the balance To this effect I execute this security  
bond this day of 19

Schedule

Witnessed by

1  
2

(Signed)

## No. 4

## SECURITY FOR COSTS OF APPEAL (O. 41, r. 10.)

(Title)

To  
 THIS security bond for costs of appeal executed by \_\_\_\_\_ witnesseth :—  
 \_\_\_\_\_ of  
 \_\_\_\_\_ Accord-  
 \_\_\_\_\_ mortgaging  
 \_\_\_\_\_ insfcr the  
 \_\_\_\_\_ said properties or any part thereof and in the event of any default on the part of  
 the appellant, I shall duly ca  
 regard to payment of the  
 from the properties hereby n  
 properties are insufficient  
 be personally liable to pay the balance To this effect I execute this security bond  
 this day of 19

Schedule.

Witnessed by

(Signed)

1.  
2.

## No. 5.

## INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL.

(O 41, r. 13)

(Title)

To  
 You are hereby directed to take notice that \_\_\_\_\_, the \_\_\_\_\_ in the above  
 suit, has preferred an appeal to this Court from the decree passed by you therein on  
 the day of 19

You are requested to send with all practicable despatch all material papers in  
 the suit

Dated the day of 19

Judge

## No 6 \*

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING  
OF THE APPEAL (O 47 r 14)

(Title.)

APPEAL from the \_\_\_\_\_ of the Court of \_\_\_\_\_ dated the  
 day of 19

To \_\_\_\_\_ Respondent,

pre \_\_\_\_\_ in this case has been  
 day \_\_\_\_\_, and that the  
 \_\_\_\_\_ Court for the hearing of this appeal,

If no appearance is made on your behalf by yourself, your pleader, or by some  
 one by law authorized to act for you in this appeal, it will be heard and decided in  
 your absence.

GIVEN under my hand and the seal of the Court, this  
 day of 19

Judge.

[Note.—If a stay of execution has been ordered, intimation should be given of  
 the fact on this notice]

\* For local amendment in Madras, vide *infra*

## No 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL,  
BUT JOINED BY THE COURT AS A RESPONDENT

(O 41, r. 20)

(Title)

To

WHEREAS you were a party in Suit No \_\_\_\_\_ of 19\_\_\_\_, in the Court of \_\_\_\_\_, and whereas the \_\_\_\_\_ has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal.

\_\_\_\_\_ be made a respondent in the said appeal and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19\_\_\_\_.

Judge

## No 8

## MEMORANDUM OF CROSS OBJECTION (O 41, r. 22)

(Title)

WHEREAS the \_\_\_\_\_ has preferred an appeal to the Court at \_\_\_\_\_ from the decree of \_\_\_\_\_ in Suit No \_\_\_\_\_ of 19\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and whereas notice of the day fixed for hearing the appeal was served on the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ the \_\_\_\_\_ files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely—

## No 9.\*

## DECREE IN APPEAL (O 41, r. 35)

(Title)

Appeal No \_\_\_\_\_ of 19\_\_\_\_ from the decree of the Court of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Memorandum of appeal.

plaintiff,

Defendant

The \_\_\_\_\_ above named appeals to the \_\_\_\_\_ Court at \_\_\_\_\_ from the decree of \_\_\_\_\_ in the above suit, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, for the following reasons, namely—

This appeal coming on for hearing on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before \_\_\_\_\_, in the presence of \_\_\_\_\_, for the appellant and of \_\_\_\_\_ for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs \_\_\_\_\_ are to be paid by \_\_\_\_\_ The costs of the original suit are to be paid by \_\_\_\_\_

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Judge

\* For local amendment in Patna, vide *infra*

*Costs of Appeal*

| Appellant                        | Amount |    |   | Respondent            | Amount |    |   |
|----------------------------------|--------|----|---|-----------------------|--------|----|---|
|                                  | Rs     | As | P |                       | Rs     | As | P |
| 1 Stamp for memorandum of appeal |        |    |   | Stamp for power       |        |    |   |
| 2 Do for power                   |        |    |   | Do for petition       |        |    |   |
| 3 Service of processes           |        |    |   | Service of processes. |        |    |   |
| 4 Pleader's fee on Rs            |        |    |   | Pleader's fee on Rs   |        |    |   |
| TOTAL                            |        |    |   | TOTAL                 |        |    |   |

No 10.

## APPLICATION TO APPEAL IN FORMA PAUPERIS (O 44, r 1)

(Title)

I the above named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof

Dated the day of 19

(Signed)

Note—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper

No 11

## NOTICE OF APPEAL IN FORMA PAUPERIS (O 44, r 1)

(Title)

WHEREAS the above named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19, and whereas the day of 19, has been fixed for bearing the application notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the aforementioned date.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 12 \*

## NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED (O 45, r. 3)

(Title)

To  
TAKF notice that has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements

— For addition of new form 12 A in Madras vide *infra* —

of sec 107 110 of the Code of Civil Procedure, 1903, or that it is otherwise a fit one for appeal to His Majesty in Council

The day of 19, is fixed for you to show cause why the Court should not grant the certificate asked for

GIVEN under my hand and the seal of the Court, this day of 19.

*Registrar,*

### No 13

#### NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING IN COUNCIL (O 45, r 3)

(Title)

To  
WHEREAS the in the above case,  
has furnished the security and made the deposit required by Order XLV, rule  
7, of the Code of Civil Procedure 1903

TAKE notice that the appeal of the said to His Majesty in Council  
has been admitted on the day of 19

GIVEN under my hand and the seal of the Court, this day of 19.

*Registrar*

### No 14

#### NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED (O 47 r 4)

(Title)

To  
TAKE notice that has applied to this Court for a review of its decree  
passed on the day of 19 in the above case The  
day of 19, is fixed for you to show cause why the Court should  
not grant a review of its decree in this case

GIVEN under my hand and the seal of the Court this day of  
19

*Judge*

## APPENDIX H

### MISCELLANEOUS

#### No 1

#### AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED

(O 14, r 6)

(Title)

.. . . . suit are agreed as to the question of  
and the point at issue between us is  
the  
as Exhibit in the said suit is  
day of 19 or is not beyond the statute of limitation (or state the point at issue whichever it  
may be)

We therefore severally bind ourselves that upon the finding of the Court in the  
negative [or affirmative] of the sum of Rupees the  
and I, the said sum as the Court shall hold to be

aforesaid [or that upon such finding I, the said  
etc., etc.]

will do or abstain from doing

Plaintiff  
Defendant

Witnesses.—

I

2

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
No. 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER  
COURT FOR TRIAL (SECTION 24)

In the Court of the District Judge of \_\_\_\_\_ No \_\_\_\_\_  
of 19 \_\_\_\_\_

To

WHEREAS an application, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, has been made to this Court by \_\_\_\_\_ of 19\_\_\_\_, now pending the \_\_\_\_\_ in Suit No \_\_\_\_\_, in which \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, for the transfer of the suit for trial to the \_\_\_\_\_ Court of the \_\_\_\_\_ at \_\_\_\_\_

You are hereby informed that the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this                      day of  
19

*Judge*

No 3

NOTICE OF PAYMENT INTO COURT (O 24, r 3)  
(Title)

TAKE notice that the defendant has paid into Court Rs 500 and says that that sum is sufficient to satisfy the plaintiff's claim in full.

*X Y, Pleader for the defendant*  
*To Z, Pleader for the plaintiff*

No 4

NOTICE TO SHOW CAUSE (GENERAL FORM)  
(Title)

To

WHEREAS the above named \_\_\_\_\_ has made application  
to this Court that \_\_\_\_\_

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, to show cause against the application, failing wherein the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge*





TAKE notice that the examination of the said witness  
will be taken by the Court on the day of 19  
Dated the day of 19

Judge,

No 7 \*

COMMISSION TO EXAMINE ABSENT WITNESS (O 26 r 4, 18)

(Title)

To  
WHEREAS the evidence of is required by the in the above  
suit, and whereas, you are requested to take the evidence on interrogatories  
(or *viva voce*) of such witness, and you are hereby appointed Commissioner  
for that purpose. The evidence will be taken in the presence of the parties or  
their agents if in attendance, who will be at liberty to question the witness on the  
points specified, and you are further requested to make return of such evidence as  
soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court  
having jurisdiction on your application.

A sum of Rs, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19.

Judge

No 8

LETTER OF REQUEST (O 26 r 5)

(Title)

(Heading —To the President and Judges of, etc, etc  
or as the case may be)

WHEREAS a suit is now pending in the in which A B is plaintiff  
and C D is defendant. And in the said suit the plaintiff claims

(Abstract of claim)

And whereas it has been represented to the said Court that it is necessary for the  
purposes of justice and for the due determination of the matters in dispute between  
the parties that the following persons should be examined as witnesses upon oath  
touching such matters that is to say

E F, of

G H, of

I J of

and

And it appearing that such witnesses are resident within the jurisdiction of your  
honourable Court,

Now I, as the of the said Court have the honour to  
request and of the said Court and for the assistance  
of the said Court or more of you, or some one  
as the agents of the said Court, and such other witnesses  
so to request you in writing  
one or Court,  
witness.  
request agents of the plaintiff and defendant, or such of them as shall, on due notice given  
attend such examination.

\* For local amendment in Patna vide 12/72

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same together with such request in writing, if any, for the examination of other witnesses to the said Court

(Note—If the words "through His Majesty's Sec - - - - - sion" should be inserted after the w - - - - -

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(O. 26, rr. 9, 11.)

(Title)

To

WHEREAS it is deemed requisite for the purposes of this suit, that a commission should be issued, You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application

A sum of Rs - - - - - being your fee in the above is herewith forwarded  
GIVEN under my hand and the seal of the Court, this - - - - - day of 19 - - - - -

Judge

No 10

COMMISSION TO MAKE A PARTITION. (O 26 r 13)

(Title)

To

sho  
and  
the  
for

parties You  
ther party for

Process to compel the attendance before you of any witness, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application

A sum of Rs - - - - - being your fee in the above, is herewith forwarded  
GIVEN under my hand and the seal of the Court, this - - - - - day of 19 - - - - -

Judge

No 11 \*

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O 32 r. 3)

(Title)

To

Minor Defendant  
Natural Guardian

WHEREAS an application has been presented on the part of the plaintiff in

infra \* For local amendments in Allahabad, Madras Nagpur and Patna vide

the above suit for the appointment of a guardian for the suit to the minor defendant you, the said minor, and you\* , are hereby required to take notice that unless within \_\_\_\_\_ days from the service upon you of this notice an application is made to this Court for the appointment of you\* or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit

GIVEN under my hand and the seal of the Court this \_\_\_\_\_ day of 19 .

*Judge*

---

No 12

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE  
OF PAUPERISM (O 33, r 6)  
(Title)

To

WHEREAS \_\_\_\_\_ has applied to this Court for permission to institute a suit against \_\_\_\_\_ *in forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908, and whereas the Court sees no reason to reject \_\_\_\_\_ day of 19 , \_\_\_\_\_ ch evidence as the applicant may adduce in proof \_\_\_\_\_ any evidence which may be adduced in disproof thereof .

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant you may do so on appearing in this Court on the said \_\_\_\_\_ day of 19

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19

*Judge*

---

No 13

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE  
(Section 145)  
(Title)

To \_\_\_\_\_ WHEREAS you \_\_\_\_\_ did on \_\_\_\_\_ become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit, and whereas a decree was passed on the \_\_\_\_\_ day of 19 \_\_\_\_\_ payment of \_\_\_\_\_ against the said defendant for the execution of the said decree against you, and whereas application has been made

TAKE notice that you are hereby required on or before the \_\_\_\_\_ day of 19 \_\_\_\_\_ to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court an order for its execution will be forthwith issued in the terms of the said application

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of 19

*Judge*

---

\* Here insert the name of guardian

No 14\*

## REGISTER OF CIVIL SUITS (O 4, r 2)

Court of the \_\_\_\_\_ at \_\_\_\_\_  
 REGISTER OF CIVIL SUITS in the year 19 .

| PLAINTIFF                      |                | DEFENDANT | CLAIM       | APPEARANCE         | JUDGMENT | APPEAL      | EXECUTION          | RETURN OF EXECUTION                                                  |
|--------------------------------|----------------|-----------|-------------|--------------------|----------|-------------|--------------------|----------------------------------------------------------------------|
| Date of presentation of plaint | Number of suit | Name      | Description | Place of residence | Name     | Description | Place of residence | Particulars                                                          |
|                                |                |           |             |                    |          |             |                    | Amount or value                                                      |
|                                |                |           |             |                    |          |             |                    | When the cause of action accrued                                     |
|                                |                |           |             |                    |          |             |                    | Day for parties to appear                                            |
|                                |                |           |             |                    |          |             |                    | Plaintiff                                                            |
|                                |                |           |             |                    |          |             |                    | Defendant                                                            |
|                                |                |           |             |                    |          |             |                    | Date                                                                 |
|                                |                |           |             |                    |          |             |                    | For whom                                                             |
|                                |                |           |             |                    |          |             |                    | For what or in amount                                                |
|                                |                |           |             |                    |          |             |                    | Date of decision of appeal                                           |
|                                |                |           |             |                    |          |             |                    | Judgment in appeal                                                   |
|                                |                |           |             |                    |          |             |                    | Date of appointment                                                  |
|                                |                |           |             |                    |          |             |                    | Date of order                                                        |
|                                |                |           |             |                    |          |             |                    | Against whom                                                         |
|                                |                |           |             |                    |          |             |                    | For what and amount if money                                         |
|                                |                |           |             |                    |          |             |                    | Amount of costs                                                      |
|                                |                |           |             |                    |          |             |                    | Amount paid into court                                               |
|                                |                |           |             |                    |          |             |                    | Arrested                                                             |
|                                |                |           |             |                    |          |             |                    | Manner of order Return in payment or arrest and date of every return |

NOTE.—Where there are numerous plaintiffs or numerous defendants the name of the first plaintiff only, or the first defendant only as the case may be need be entered in the register.

\* For local amendment in Calcutta vide *infra*

No 15\*

REGISTER OF APPEALS (O 41 r 9)

## COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES IN THE YEAR 19

| APPELLANT |             | RESPONDENT         |      |             |                    | DECREE APPEALED FROM |                         |             |                 | APPEARANCE                |           | JUDGMENT   |      |                                 |                    |
|-----------|-------------|--------------------|------|-------------|--------------------|----------------------|-------------------------|-------------|-----------------|---------------------------|-----------|------------|------|---------------------------------|--------------------|
| Name      | Description | Place of residence | Name | Description | Place of residence | Of what Court        | Number of Original Suit | Particulars | Amount or value | Day for parties to appear | Appellant | Respondent | Date | Confirmed or reversed or varied | For what or amount |
|           |             |                    |      |             |                    |                      |                         |             |                 |                           |           |            |      |                                 |                    |

\* For addition of new forms 16, 17 and 18 in Allahabad *vide infra*

## THE SECOND SCHEDULE.

## ARBITRATION.

*Arbitration in Suits.*

1. [S. 506] (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

Parties to suits may apply for order of reference

Court for an order of reference.

- (2) Every such application shall be in writing and shall state the matter sought to be referred.

Second schedule—Provisions of Schedule 2 are recommendatory. A I R. 1928 Mad 1025=55 M L J 429=28 L W 321=51 M W N 113 Ind Cas 632. Object of Schedule II, is that parties having made reference must stick to it. A I R. 1928 All 674=(1929) A. L. J. 31=111 Ind Cas 452. This schedule applies also to cases where parties intend to refer to arbitration without Court's intervention. A I R. 1926 Cal 116=90 Ind Cas 624. Schedule II does not extend to execution proceedings. A I R. 1925 Cal 812=29 C W N 286=52 C 559=42 C L J 26=87 Ind. Cas. 633. Main provisions of Schedule II are only permissive and not compulsory or exhaustive. A I R. 1927 Bom 565=51 B 903=29 Bom L R 1254 (F B)=105 Ind Cas. 516. Party seeking benefit of Schedule II must comply with provisions of it. 110-16. A I R. 1927 Bom 565=51 B 903=29 Bom L R 1254=105 Ind Cas. 516. Procedure taken under Schedule II regarding matter converted into one under Arbitration Act, is without jurisdiction. A I R. 1926 Cal 730=43 C L J 292=74 Ind Cas 177. Suits of a public nature are under s 92 cannot be referred to arbitration. A I R. 1923 Nag 112=6 N L J 7=72 Ind Cas 1016. Provisions of the Schedule II are permissive and not mandatory. A I R. 1931 Oudh 127=8 O. W N 71=131 Ind Cas 443.

Scope—The court can refer to arbitration only matters in difference in suit itself, and not all matters in dispute between the parties. A I R. 1921 Mad 709=14 L W 666=(1921) M W N 756=65 Ind Cas 92. A court can restrain the when an action brought impeaches the reference. 155 L R 5=70 Ind Cas 264. If itself invalid gives no rights either as

an award

754=65 Ind

tion of a

necessary party to the reference. 64 Ind Cas 169. An agreement to refer to arbitration even if relating to an office is not necessarily unlawful or opposed to public policy but the court must ascertain whether it is in violation of the trusts of the institution or affects adversely the interests of the public. A I R. 1922 Mad 429=15 L W 111=31 M L T 52=(1921) M W N 423=79 Ind Cas 410. Where a pleader signs a reference on behalf of a party but his *vahatalnama* does not contain a power to refer to arbitration, the reference is not valid so far as that party is concerned. 25 C W N 832. Absence of one of the arbitrators at one of the meetings at which nothing material was done, does not make the award invalid. 12 L W 505=60 Ind Cas 181. Without the consent of the other party a portion of the

C L J 275=46

a suit between

19 M L T 228

Where a reference to arbitration in a suit is a general one of the whole case, the power of dealing with costs rests with the arbitrator. 46 Ind Cas 182. An agreement of arbitration entered into by his predecessor in title binds the minor. 23

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Cas 827=42 M 625=36 M L J 291=(1919) M W N 221=25 M L T 397. Parties to a pending litigation can not make a reference to private arbitration without reference to Court. 46 Ind Cas 902, *contra* (1916) 1 M W N 203=19





reasonable and for the benefit of the minor 44 B 202=22 Bom L R 266=56 Ind Cas 399, see also 56 Ind Cas 593 A Court cannot make an order of reference to arbitration unless all the parties interested assent to such reference. An order of reference made without such assent is invalid and an award based thereupon can be set aside 14 S L R 156=61 Ind Cas 451, 64 Ind Cas 221, A I R 1924 Cal 353=71 Ind Cas 326, 73 Ind Cas 202=A I R 1923 Mad 502=44 M L J 359=17 L W 424=(1923) M W N 296=32 M L T (H C) 298=73 Ind Cas 202, A I R 1925 Mad 621=48 M L J 142=21 L W 498=(1925) M W N 97=86 Ind Cas 839, A I R 1925 Mad 1209=50 M L J 100=22 M L W 395=(1925) M W N 744=91 Ind Cas 313, A I R 1929 Lah 477=119 Ind Cas 235 "Parties interested in the suit" need not be restricted to persons against whom relief is claimed. A person against whom no relief is claimed may be interested in the result of the suit A I R 1925 Mad 621=48 M L J 142=21 L W 498=86 Ind Cas 839. Some parties not joining in making reference does not make award invalid or ineffectual as between the persons making the reference A I R 1921 Nag 176=71 Ind Cas 860  
 just as  
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 agree  
 3

any reference to the guardian *ad litem* of the minor the other parties to the suit refer their disputes to arbitration the award cannot bind the minor A I R 1930 All 646=(1930) A L J 923=128 Ind Cas 437 It is a question of fact whether any particular person is interested in the specific dispute referred to arbitration or not and that question is to be decided from the whole circumstances of the case and the Court is not merely to be guided by the written statements 124 Ind Cas 374=A I R 1930 Sind 256 see also A I R 1929 All 763=52 A 84 The award binds parties to the reference even if some of the parties interested were not parties thereto 10 P L T 53=115 Ind Cas 680 An award not contemplated or authorised by the order of reference is an invalid one and the same arbitration cannot be held as to matters within the jurisdiction of the Court and matters without the jurisdiction of the Court between the parties to the suit and between them and other persons and partly upon an order of reference and partly under an agreement A I R 1925 P C 293=28 Bom L R 217=49 M L J 812=43 C L J 14=27 P L R 35=1926 M W N 96=53 I A. 1=53 C 258 (P C)=92 Ind Cas 633

in  
 192  
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 the  
 himself from subsequent proceedings he is not interested in the suit A I R 1925 Oudh 201=80 Ind Cas 821 Where a Judge refers a case to arbitration without the consent of parties interested he exercises a jurisdiction not vested in him by law A I R 1925 Mad 1209=50 M L J 100=22 L W 395=91 Ind Cas 313 No private reference to arbitration can be allowed unless consented by 9=33 C W  
 N 390=1041 inager of a  
 joint Hindu sons unless  
 the father's one in bad  
 faith A I R 1927 Lah 362=8 Lah 693=9 Lah L J 569=104 Ind Cas 202 The section is not mandatory but is permissive The Court must keep control over the proceedings only where the parties apply to the Court for an order for reference A I R 1924 Pat 488=3 Pat 443=(1924) Pat 110=6 P L T 122=3 P L R 52 Civ =81 Ind Cas 994 Parties must agree to make a reference to arbitration otherwise than under orders of a Court A I R 1925 Nag 203=83 Ind Cas 22 Reference to arbitration only by parties interested in subject matter in difference is good A I R 1934 Pat 19 Reference by one partner is not good 56 C W N 8=A I R 1932 Cal 343=138 Ind Cas 386, see also 34 Bom L R 1112=A I R 1932 Bom 516 An attorney of a firm can not refer in the absence of a special authority *Ibid* When

M L T 228=33 Ind. Cas 67 So where a matter in dispute in pending suit is referred to arbitration without the intervention of the Court the reference does not fall within schedule II, but the award may be recorded as an agreement adjusting or compromising

49 Ind Cas 746

which it is asked

had already referred the matter in dispute in the pending suit, it amounts to a request to make reference to arbitrator

of arbitration is made by the Court

the defendant it is legal 64 Ind

as per award whether the court does or does not give proper opportunities for hearing all the objections to the award or whether it is right or wrong in deciding

that the objection put in was not a proper application to set aside the award does

not matter A I R 1922 Mad 429=15 L W 111=31 M L T 52=(1921) M W

N 423=70 Ind Cas 410 Arbitrators acting under an order made in pursuance of

paras 1 and 2 must comply with its terms An award made otherwise than in

accordance with the authority by the order conferred upon them is an award

which is "otherwise invalid" and which may accordingly be set aside by the

court under para 15 A I R 1925 P C 393=28 Bom L R 217=49 M

L J 812=24 A L J 13=43 C L J 14=53 I A 1=53 C 258 (P C)=92

Ind Cas 633 Where parties are litigating for title and possession of mutt

in their own right, and the mutt is

between parties interested can be ref

is doubtful whether death of the

itself is enough to bring their agreement to an end 143 Ind Cas 635=A I R 1933

Sind 68 Reference by unauthorised person is not valid A I R 1933 All 924

It is not open to party to an agreement of reference to revoke it after submis

sion except for good cause and sufficient cause is not confined to cases of

fraud, coercion and undue influence 143 Ind Cas 635=A I R 1933 Sind

68, see also A I R 1932 All 348=1932 A L J 331 When reference is

made by some of the parties the reference is not a valid one A I R

1933 Oudh 384=10 O W N 790 Where all the parties and arbitrators

agree to withdraw reference arbitration should one superseded A I R 1934 All 95

All the parties interested agree—Where there is no agreement of all the

parties at the time of reference a subsequent agreement cannot make the reference

valid A I R 1926 All 238=48 A 239 24 A I J 235 91 Ind Cas 930 86

Ind Cas 839=A I R 19 25 Mal 611=48 M L J 142 An award passed on

reference to which all the parties interested in the dispute are not parties is illegal

and should be set aside A I R 1930 Mad 646=126 Ind Cas 735 Where all the

parties to the proceeding do not join in the reference to arbitration but the court

passes an order of reference all the same the order of reference is invalid 31 P L R

not not all the parties to the

of reference A I R 1928

s 343, see also A I R

at 33=76 Ind Cas 2=2 Pat

all parties to the suit except

119=45 C L J 458=103 Ind

must be clear

L J 514=23

did not sign

cise sent to

38 Ind Cas

only if all the parties interested in

of reference is invalid against all

not valid and no decree can be

based upon it 25 C L J 330=21 C W N 387=41 Ind Cas 295 A Court cannot

make an order of reference without the consent of all the parties including the

parties who does not appear 47 C 555=31 C L J 150=55 Ind Cas 747, see

also 42 M 632=56 M L J 538=51 Ind Cas 155, 43 Ind Cas 169=27 C L J

339 It is a question of fact who are the parties interested in the litigation

45 Ind Cas 321 Where some of the defendants to a suit do not join in a reference

to arbitration, the Court should examine the facts of each case before coming to

the conclusion that the arbitration is invalid since no reliefs may have been claimed

against them 39 A 489=15 A L J 427=41 Ind Cas 357 A natural guardian

can on behalf of a minor enter into an arbitration to bind the minor if it is proper,

reasonable and for the benefit of the minor 44 B 202=22 Bom L R 266=56 Ind Cas 399, see also 56 Ind Cas 593 A Court cannot make an order of reference to arbitration unless all the parties interested assent to such reference An order of reference made without such assent is invalid and an award based thereupon can be set aside 14 S L R 156=61 Ind Cas 451, 64 Ind Cas 271, A I R 1924 Cal 353=71 Ind Cas 326, 73 Ind Cas 202=A I R 1023 Mad 502=41 M L J 339=17 L W 424=(1923) M W N 296=32 M L T (H C) 298=73 Ind Cas 202, A I R 1925 Mad 621=48 M L J 142=21 L W 498=(1925) M W N 97=86 Ind Cas 839, A I R 1925 Mad 1209=50 M L J 100=22 M L W 395=(1925) M W N 744=91 Ind Cas 313, A I R 1929 Lah 477=119 Ind Cas 235 Parties interested in the suit need not be restricted to persons against whom relief is claimed A person against whom no relief is claimed may be interested in the result of the suit A I R 1925 Mad 621=48 M L J 142=21 L W 498=86 Ind Cas 839 Some parties not joining in making reference does not make award invalid or ineffectual as between the persons making the reference A I R 1921 Nag 176=71 Ind Cas 860

A I R 1930 Lah 523=31 P L R 192=121 Ind Cas 100 A guardian *ad litem* for the minor alone can represent the minor in all proceedings in that suit If without other parties to the suit minor A I R 1930 on of fact whether any arbitration or not and

that question is to be decided from the whole circumstances of the case and the Court is not merely to be guided by the written statements 124 Ind Cas 374=A I R 1,30 Sind 256 see also A I R 1929 All 763=52 A 84 The award binds parties to the reference even if some of the parties interested were not parties thereto 10 P L T 53=115 Ind Cas 680 An award not contemplated or authorised by the order of reference is an invalid one and the same arbitration cannot be held as to matters within the jurisdiction of the Court and matters without the jurisdiction of the Court between the parties to the suit and between them and other persons and partly upon an order of reference and partly under an agreement A I R 1925 P C 293=28 Bom L R 217=49 M L J 812=43 C L J 14=27 P L R 35=1926 M W N 96=53 I A 1=53 C 258 (P C)=92 Ind Cas 633

One partner of a firm has no power to enter into an agreement to refer a matter in dispute to arbitration on behalf of a firm unless all partners join in it A I R 1926 Lah 91=7 Lah L J 603=92 Ind Cas 705 see also A I R 1927 Mad 1154=102 Ind Cas 2, 118 Ind Cas 906 A I R 1930 Sind 40=117 Ind Cas 782

Oudh 201=80 Ind Cas 821 Where a Judge refers a case to arbitration without the consent of parties interested he exercises a jurisdiction not in him by law A I R 1925 Mad 1209=50 M L J 100=22 L W Ind Cas 313 No private reference to arbitration can be allowed without the consent of all parties interested A I R 1925 Mad 1209=50 M L J 100=22 L W joint Hindu the father's faith A I R 1927 Lah 362=8 Lah 693=9 Lah L J 569=104 I section is not mandatory but is permissive The Court may refer proceedings only where the parties apply to the Court for reference R 1924 Pat 488=3 Pat 443=(1924) Pat 110=6 P Ind Cas 974 Parties must agree to make a reference under orders of a Court A I R 1925 Pat 19 Reference by one partner is valid Cal 343=158 Ind Cas 386 see also 34 I An attorney of a firm can not refer in the name of the firm

reference is made by some of the partners it is binding on them 134 Ind Cas 99, see also 1931 A L J 442=A I R 1931 All 43=133 Ind Cas 31

**Matter of difference**—A dispute implies an assertion of a right by one party and a repudiation thereof by another A I R 1921 Cal 342=33 C L J 545=64 Ind Cas 798 A mere failure to pay claim amounts to a difference between the parties to a submission, A I R 1924 Sind 105=17 S L R 15=80 Ind Cas 967, see also A I R 1924 Sind 117=17 S L R 86=80 Ind Cas 1007 Where the parties agree to refer all disputes out of a contract, the right to submit is not exhausted though one dispute is finally decided Successive disputes as they arise can be referred and successive awards passed 24 C W N 775=60 Ind Cas 195 Existence of difference or dispute is essential condition for arbitrator's jurisdiction A I R 1931 Bom 164=33 Bom L R 51=130 Ind Cas 588 Any agreement as contemplated by Schedule II para 1 regarding matters in difference between the parties should be set forth clearly in the form of issues A I R 1930 All 319=125 Ind Cas 583 There is no provision in Schedule II providing for reference regarding future disputes A I R 1930 All 319=125 Ind Cas 583 Whether or not the Court can legally enquire into any question on which the parties join issue is a dispute coming under para 1 26=29 C W N 886=87 Ind C to partition and the parties allotment between them these matters can be referred to arbitration A I R 1927 Pat 135=7 P L T 739=95 Ind Cas 321

**What matter can be referred to arbitration**—Judge can not allow arbitration regarding a dispute relating to the genuineness of a will in a probate proceedings pending before him A I R 1930 All 840=1930 A L J 1584=128 Ind Cas 817 A suit which relates to personal rights between the parties cognizable by civil court can be referred to arbitration A I R 1930 Sind 195=121 Ind Cas 164 An executor can not make any reference to arbitration against the terms of the will A I R 1928 Cal 275=32 C W N 108=107 Ind Cas 70 Though a will directs that a legatee should take his share on attaining a particular age the decision of the arbitrators appointed by other legatees and executors empowering the legatee to take his share before the particular age is valid A I R 1928 Pat 7=6 Pat 556=109 Ind Cas 821 A court can not refer to arbitrators a proceeding in insolvency 50 P R 1916=135 P W R 1916=151 P L R 1916=34 Ind Cas 549 Suit cognizable by a Civil Court under Civil Procedure Code may be referred to arbitration A I R 1926 S al 118=6 S L R 116=98 Ind Cas 550, see also A I R 1930 S al 125 121 Ind Cas 164 A criminal complaint cannot be referred to arbitration and the award following it cannot be made a rule of a civil court A I R 1929 Lah 394=(1929) Lrh 471=30 P L R 122=11 Lah L J 89=116 Ind Cas 215

**Application shall be in Writing**—That the application shall be in writing is not a mandatory provision All the parties need not sign the application It is enough if it is proved that all the parties consented A I R 1928 Mhd 48=105 Ind Cas 105, see also 27 C 61, 43 C 290=43 A 1=20 C W N 137=30 M L J 67=14 A L J 97=19 M L T 108=23 C L J 130=18 Bom L R 308 (P C)=32 Ind Cas 161 Oral statements by the parties or their pleaders recorded by the court is an agreement in writing and supplies the place of a written application by the parties or pleaders A I R 1924 All 540=46 A 208=27 A L J 67=79 Ind Cas 816, see also 38 Ind Cas 226 If the parties want to have the award made a decree of the Court they have to get the award reduced to writing and to be filed in Court A I R 1921 Rang 60=2 Bur L J 163=79 Ind Cas 742 Where a reference is not signed by one of the parties, but is signed by his son and verified by his pleader and he himself appeared before the arbitrator the award is valid A I R 1924 All 457=84 Ind Cas 640, see also A I R 1927 Lah 362=8 Lah 693=9 Lah L J 567=104 Ind Cas 202 Clause (2) of para 1 of the second Schedule is not merely directory but the parties are estopped from raising the plea that application for reference was not in writing in order to defeat the entire arbitration proceedings and the award following it where the matter had advanced a stage further and the order had actually been made A I R 1924 Ouh 400=11 O L J 142=78 Ind Cas 373 A written application to refer a pending suit to arbitrator is not neces

not bound by the reference. 130 Ind. Cas 291=1931 A L J. 100=A I R 1931 All 242

**Award**—Where the award is according to agreement it is valid though incomplete. A I R 1929 Lih 831=117 Ind Cis 89 Court has no jurisdiction to refer dispute or award made by arbitrator outside Court so as to modify award. It has either to file it or to dismiss application for filing award. A I R 1929 Sind. 107=23 S L R 347=116 Ind Cis 102 An arbitrator, reading a letter eventually rejected as evidence, is not prejudiced by the letter, and is not guilty of any misconduct and as such his award cannot be set aside. A I R. 1928 Bom. 55=30 Bom L. R 90=108 Ind. Cis 18 The forms and steps for a reference to arbitration and for the award made by the arbitrator to be embodied in the decree of the Court, must be complied with. Where the petition of compromise does not contemplate any award to be made by the arbitrator and to be embodied in the judgment of the Court provisions of Sch II do not apply. A I R. 1928 Cal 108=46 C I J 353=106 Ind Cis 509 A Court referring a matter to arbitration at the request of some only of the parties, acts without jurisdiction and if an award is passed on such reference, and a decree is passed, a revision lies. A I R. 1927 All. 563=49 A 812=25 A L J. 606=102 Ind Cas. 256 Application to file an award is not a suit. A I R. 1927 Sind. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

2. [S 507 para 1] The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

**Scope**—A pleader cannot clients, without instructions substitute on. A I R. 1922 Nag 879 A pleader can refer a strength of his *vakalatnama* a pleader a party appoints himself as arbitrator without authority and that party joins in the reference. *Ibid* der's conduct is objectionable. *Ibid* part of all the parties are absolutely c 635

3 [S. 503.] (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

on the whole award of the arbitrators or on the facts determined by the arbitrators decide whether or not it should exercise its discretion in favour of the plaintiff. A I Lah L J 105=125 Ind Cas 610 Where a Sch II it should pass an order to that ward and also for objections being filed. The provisions of para 3 is mandatory. To leave the arbitrators collectively with a free hand as to time subject to no limitation by the Court, is exactly what the Act is taking measure to avoid. A reasonable time must be fixed for the making of the award. A I R 1923 Cal 310=27 C W N 420=80 Ind Cas 459. See also 14 A 347; 30 A 139, 13 A 300 (P C)=18 I A 55 Court should appoint a date to make the award. Where it does not do so, but fixes a date for the filing of the award in award made before but filed beyond the date can be received. 5 O L J 205=46 Ind Cis 324 see also 37 Ind

reference is made by some of the partners in submitting on them 134 Ind. Cas 91. see also 1931 A L J 441 = A I R 1931 All 43 = 133 Ind Cas 31.

**Matter of difference**—A dispute implies an assertion of a right by one party and a refusal of it thereof by another. A I R. 1921 Cal 342 = 33 C L J 545 = 64 Ind Cas 71. A mere failure to pay a sum amounts to a difference between the parties to a submission. A I R 1924 Sind 117 = 17 S L R 15 = 80 Ind Cas 60. see also A I R 1924 Sind 117 = 17 S L R 86 = 80 Ind Cas 1007. Where the parties agree to refer all disputes excepted though one dispute is finally decided can be referred and successive awards possible. A difference or dispute is essential. A I R 1930 Bom 164 = 33 Bom L R 51 = 130 Ind Cas 588. Any agreement as to a difference. Schedule II para 1 regarding matters in difference between the parties shall be set forth clearly in the form of 1930. A I R. 1930 All. 319 = 125 Ind Cas 50. There is no provision in Schedule II providing for reference regarding future disputes. A I R 1930 All 319 = 125 Ind Cas 583. Whether or not the Court can lawfully enquire into any question on which the parties join issue is a dispute coming under para 1. 26 = 29 C W N 6 = 87 Ind C.

to partition and the parties allotment between them these matters can be referred to arbitration. A I R. 1927 Pat 135 = 7 P L T 739 = 95 Ind Cas 321.

**What matter can** . . . . . arbitrations proceedings pending before him. A . . . . . 15 817

A suit which relates to partition . . . . . civil court can be referred to arbitration. A I R 1930 Sind 195 = 121 Ind Cas 164. An executor can not make any reference to arbitration against the terms of the will. A I R 1928 Cal 75 = 32 C W N 108 = 107 Ind Cas 70. Though a will directs that a legatee should take his share on attaining a particular age, the decision of the arbitrators appointed by other legatees and executors empowering the legatee to take his share before the particular age is valid. A I R 1928 Pat 7 = 6 Pat 556 = 109 Ind Cas 821. A court cannot refer to arbitrators a proceeding in insolvency. 50 P R 1916 = 135 P W R 1916 = 151 P L R 1916 = 34 Ind Cas 547. Suit cognate arbitration. R 1930 Si arbitration. 1929 Lah 394 = (1929) Lah 471 = 30 P L R 122 = 11 Lah L J 89 = 116 Ind Cas 215.

in writing is it is enough 15 Ind Cas, 105, see also 27 C 61, 43 C 290 = 43 I A 1 = 20 C W N 137 = 30 M L J 67 = 14 A L J 97 = 19 M L T 108 = 23 C L J 130 = 18 Bom L R 308 (P C) = 32 Ind Cas 161. Oral statements by the parties or their pleaders recorded by the court is an agreement in writing and supplies the place of a written application by the parties or pleaders. A I R 1924 All 540 = 46 A. 208 = 27 A L J 67 = 79 Ind Cas 816, see also 38 Ind Cas 226. If the parties want to have the award made a decree of the Court they have to get the award reduced to writing and to be filed in Court. A I R 1924 Rang 60 = 2 Bur L J 163 = 79 Ind Cas 743. Where a reference is not signed by one of the parties, but is signed by his son and verified by his pleader and he himself appeared before the arbitrator the award is valid. A I R 1924 All 457 = 84 Ind Cas 640, see also A I R 1927 Lah 362 = 8 Lah 693 = 9 Lah L J 569 = 104 Ind Cas 202. Clause (2) of para 1 of the second Schedule is not merely directory but the parties are estopped from raising the plea that application for reference was not in writing in order to defeat the entire arbitration proceeding and the award following it where the matter had advanced a stage further.

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**Award**—Where the award is according to agreement it is valid though incomplete. A I R 1929 Lih 831=117 I L Crs 89 Court has no jurisdiction to refer dispute on award made by arbitrator outside Court so as to modify award. It has either to file it or to dismiss application for filing award. A I R 1929 Sind 107=23 S L R 349=116 Ind Crs 102 An arbitrator, reading a letter eventually rejected as evidence is not prejudiced by the letter, and is not guilty of any misconduct and as such his award cannot be set aside. A I R 1928 Bom 55=50 Bom L R 90=108 Ind Cas 18 The forms and steps for a reference to arbitration and for the award made by the arbitrator to be embodied in the decree of the Court, must be complied with. Where the petition of compromise does not contemplate any award to be made by the arbitrator and to be embodied in the judgment of the Court provisions of Sch II do not apply. A I R 1923 Cal 108=46 C I J 353=106 Ind Cas 509 A Court referring a matter to arbitration at the request of some only of the parties acts without jurisdiction and if an award is passed on such reference and a decree is passed, a revision lies. A I R 1927 All 563=41 A 812=25 A L J. 606=102 Ind Cas 236 Application to file an award is not a suit. A I R 1927 Sind 103=19 S L R 202=99 Ind Crs 178 An award is final and cannot be questioned except upon such grounds as corruption or apparent illegality. 1917 U B R 36=34 Ind Crs 622 Parties to a suit pending in Court having jurisdiction can refer the subject matter to arbitration without Courts intervention but award cannot be filed either under Sch II or Arbitration Act. A I R 1911 Sind 65=16 S. L R 174 (F B)=81 Ind Crs 653

**Appointment of arbitrator** 2 [S 507 para 1] The arbitrator shall be appointed in such manner as may be agreed upon between the parties

**Scope**—A pleader cannot revoke the appointment of arbitrators made by his clients, without instructions from the client, and appoint a new arbitrator in substitution. A I R 1922 Nag 39=5 N L J 229=18 N L R 140=65 Ind Cas 879 A pleader can refer a matter to arbitration without special authority on strength of his *validatnama*. A I R 1930 Sind 190=123 Ind Cas 694 Where a pleader a party appoints himself as arbitrator without authority and that party joins in the reference, neither such reference nor the pleader's conduct is objectionable. *Idem* In the section of arbitration good faith on the part of all the parties are absolutely essential. A I R 1933 Sind 68=143 Ind Cas 635

3 [S 503.] (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit

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139, 13 A 300 (P C)=18 I A  
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not bound by the reference 130 Ind Cas 291=1931 1 L J 100=A I R 1931 All 242

**Award**—Where the award is according to agreement it is valid though incomplete A I R 1929 Lah 831=117 111 Cis 89 Court has no jurisdiction to refer dispute or award made by arbitrator or outside Court so as to modify award. It has either to file it or to dismiss application for filing award A I R 1929 Sind 107=23 S L R 349=116 Ind Cis 102 An arbitrator, receiving a letter eventually rejected as evidence is not prejudiced by the letter, and is not guilty of any misconduct and as such his award cannot be set aside A I R 1928 Bom 35=30 Bom L R 90=108 Ind Cis 18 The forms and steps for a reference to arbitration and for the award made by the arbitrator to be embodied in the decree of the Court, must be complied with Where the petition of compromise does not contemplate any award to be made by the arbitrator and to be embodied in the judgment of the Court provisions of Sch II do not apply A I R 1928 Cal 108=46 C I J 353=106 Ind Cas 509 A Court referring a matter to arbitration at the request of some only of the parties acts without jurisdiction and if an award is passed on such reference and a decree is passed, a revision lies A I R 1927 All 563=49 A 812=25 A L J 606=102 Ind Cas 236 Application to file an award is not a suit A I R 1927 Sind 103=19 S L R 202=99 Ind Cis 178 An award is final and cannot be questioned except upon such grounds as corruption or apparent illegality 1917 U B R 36=54 Ind Cis 612 Parties to a suit pending in Court having jurisdiction can refer the subject matter to arbitration without Courts intervention but award cannot be filed either under Sch II or Arbitration Act A I R 1921 Sind 65=16 S L R 174 (F B)=81 Ind Cas 633

**Appointment of arbitrator** 2 [S 507 para 1] The arbitrator shall be appointed in such manner as may be agreed upon between the parties

**Scope**—A pleader cannot revoke the appointment of arbitrators made by his clients, without instructions from the client, and appoint a new arbitrator in substitution A I R 1922 Nag 39=5 N L J 229=18 N L R 140=65 Ind Cas 879 A pleader can refer a matter to arbitration without special authority on strength of his *vakalatnama* A I R 1930 Sind 190=123 Ind Cas 694 Where a pleader a party appoints himself as arbitrator without authority and that party joins in the reference, neither such reference nor the pleader's conduct is objectionable *Ibid* In the section of arbitration on good faith on the part of all the parties are absolutely essential A I R 1933 Sind 68=143 Ind Cas 635

3 [S 503.] (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit

A I R 1930 Lah 707=31 P L R 380=12 Lah L J 105=125 Ind Cas 610 Where a Court wants to appoint an arbitrator under Sch II it should pass an order to that effect and fix a date for the return of the award and also for objections being filed A I R 1929 Mad 789=123 Ind Cas 5 The provisions of para 3 is mandatory To leave the arbitrators collectively with a free hand as to time subject to no limitation measure to avoid A reasonable R 1923 Cal 310=27 C W N 39, 13 1 300 (P C)=18 I A Where it does not do so but fixes a date for the filing of the award an award made before but filed beyond the date can be received 5 O L J 205=46 Ind Cis 374 see also 37 Ind

reference is made by some of the partners it is binding on them 134 Ind. Cas 297. see also 1931 A I J 442=A I R 1931 All 453=133 Ind Cas 31.

**Matter of difference**—A dispute implies an assertion of a right by one party and a repudiation thereof by another. A I R 1921 Cal 342=33 C L J 545=64 Ind Cas 728. A mere failure to pay claim amounts to a difference between the parties to a submission, A I R 1924 Sind 105=17 S L R. 15=80 Ind Cas 17.

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Existence of difference or dispute is essential 130 Ind Cas 588. Any agreement A I R 1931 Bom 164=31 Bom L R 51=130 Ind Cas 588. Schedule II part 1 regarding matters in difference between the parties shall be set forth clearly in the form of issues. A I R 1930 All 319=125 Ind Cas 58. There is no provision in Schedule II providing for reference regarding future disputes. A I R. 1930 All 319=125 Ind. Cas 583. Whether or not the Court can legally enquire into any question on which the parties join issue is a dispute coming under part 1. A I R 1925 Cal 312=32 C 557=42 C L J 26=29 C W N 86=87 Ind Cas 633. Where the plaintiff claims a legal right to partition and the parties are in dispute both as to articles to be divided and the allotment between them these matters can be referred to arbitration. A I R. 1927 Pat 135=71 I I 739=95 Ind Cas 321.

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can be referred to arbitration. A I R 1930 Sind 195=121 Ind Cas 164. An executor can not make any reference to arbitration against the terms of the will. A I R 1928 Cal 753=3 C W N 108=107 Ind Cas 70. Though a will directs that a legatee should take his share of an annuity a particular age the decision of the arbitrators appointed by the testator will be valid if the will empowers the legatee to take his share before the particular age is valid. A I R 1928 Pat 7=6 Pat 556=107 Ind Cas 81. A suit can not refer to arbitration a proceeding in insolvency. 50 I R 1916 133 I W R 1916 151 P L R 1916=34 Ind Cas 549. Suit can not refer to arbitration. 50 I R 1916 151 P L R 1916=34 Ind Cas 549. Arbitration. A I R 1905 Cal 118=105 I I 116=98 Ind Cas 550. see also A I R 1920 S I 125=121 I I 114. A criminal complaint cannot be referred to arbitration and the award follows. It cannot be made a rule of a civil court. A I R 1929 Lah 394=(1929) Lah 47=30 I L R 122=11 Lah L J 89=116 Ind Cas 215.

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That the application shall be in writing is  
need not sign the application. It is enough.

A I R 1928 Mid 48=105 Ind Cas

105, see also 27 C 61 43 C 290=43 I A 1=20 C W N 137=30 M L J 67=

14 A L J 97=19 M L T 108=23 C L J 130=18 Bom L R 308 (P C)=32

Ind Cas 161. Oral statements by the parties or their pleaders recorded by the  
court is an agreement in writing an 1 application

by the parties or pleaders. A I R 1927 Cal 312=32 C 557=42 C L J 67=79

Ind Cas 816, see also 38 Ind Cas  
a decree of the Court they have to get the award reduced to writing and to be filed

Ind Cas 742. Where a  
by his son and verified

the award is valid A  
I R 1924 All 457=84 Ind Cas 640, see also A I R 1927 Lah 362=8 Lah

693=9 Lah L J 567=104 Ind Cas 202. Clause (2) of part 1 of the second Schedule

is not merely directory but the parties are estopped from raising the plea that appli-  
cation for reference was not in writing in order to defeat the entire arbitration pro-  
ceeding and the award following it where the matter had advanced a stage further

not bound by the reference 130 Ind Cas 291=1931 A L J 100=A I R 1931 All 242

**Award**—Where the award is according to agreement it is valid though incomplete. A I R 1929 Lih 831=117 Ind Cas 89 Court has no jurisdiction to refer dispute on award made by arbitrator outside Court so as to modify award. It has either to file it or to dismiss application for filing award A I R 1929 Sind. 107=23 S L R 349=116 Ind Cas 102 An arbitrator, reading a letter eventually rejected as evidence is not prejudiced by the letter, and is not guilty of any misconduct and as such his award cannot be set aside A I R 1928 Bom 55=30 Bom L R 90=108 Ind Cas 18 The forms and steps for a reference to arbitration and for the award made by the arbitrator to be embodied in the decree of the Court, must be complied with Where the pension of compromise does not contemplate any award to be made by the arbitrator and to be embodied in the judgment of the Court provisions of Sch II do not apply A I R 1928 Cal 108=46 C L J 353=106 Ind Cas 509 A Court referring a matter to arbitration at the request of some only of the parties, acts without jurisdiction and if an award is passed on such reference and a decree is passed, a revision lies A I R 1927 All 563=49 A 812=25 A L J. 606=102 Ind Cas 236 Application to file an award is not a suit A I R 1927 Sind 103=19 S L R 202=99 Ind Cas 178 An award is final and cannot be questioned except upon such grounds as corruption or apparent illegality 1917 U B R 36=54 Ind Cas 622 Parties to a suit pending in Court having jurisdiction can refer the subject matter to arbitration without Courts intervention but award cannot be filed either under Sch II or Arbitration Act A I R 1921 Sind 65=16 S L R 174 F B)=81 Ind Cas 633

2 [S 507 para 1] The arbitrator shall be appointed in such manner as may be agreed upon between the parties

**Scope**—A pleader cannot revoke the appointment of arbitrators made by his clients, without instructions from the client and appoint a new arbitrator in substitution A I R 1922 Nag 39=5 N L J 229=18 N L R 140=65 Ind Cas 879 A pleader can refer a matter to arbitration without special authority on strength of his *vacatnana* A I R 1930 Sind 190=123 Ind Cas 694 Where a pleader a party appoints him self as arbitrator without authority and that party joins in the reference, neither such reference nor the pleader's conduct is objectionable *Ibid* In the section of arbitration good faith on the part of all the parties are absolutely essential A I R 1933 Sind 68=143 Ind Cas 635

3 [S 503.] (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit

**Scope of sub-section (1)**—The Court can not refer the question as to restitution of conjugal rights to arbitration but other matters in dispute between the parties as distinct from the suit for the said purpose can be so referred and the Court can, on the whole award of the arbitrators or on the facts determined by the arbitrators decide whether or not it should exercise its discretion in favour of the plaintiff A I R 105=125 Ind Cas 610 Where a court should pass an order so that also for objections being filed A I R 1929 Mad 789=123 Ind Cas 5 The provisions of para 3 is mandatory To leave the arbitrators collectively with a free hand as to time subject to no limitation by the Court, is exactly what the Act is taking measure to avoid A reasonable time must be fixed for the making of the award A I R 1923 Cal 310=27 C W N 470=20 Ind Cas 459, See also 14 A 347, 30 A 139, 13 A 300 (P C)=18 I A 55 Court should appoint a date to make the award Where it does not do so, but fixes a date for the filing of the award an award made before but filed beyond the date can be received 5 O L J 205=46 Ind Cas 324, see also 37 Ind,

Cas 844, 27 A 459 8 C W N 916 26 A 105 By referring matters to arbitration under Sch II parties should in the suit A I R 1923 Cal 83=28 C W N . . . made by the arbitrators is impeached on the revision will lie A I R 1928 All 740=26 A L J 1009=50 A 955=110 Ind Cas 881 Where a reference to arbitration by Court is not in express terms action of Court and of parties may establish a substantial reference by Court A I R 1922 Mad 429=15 L W 111=31 M L T 52=(1921) M W N 423=70 Ind Cas 410 A payment to arbitrator does not amount to payment of money into Court A I R 194 Rang 263=3 Bur I J 6=80 Ind Cas 238 In giving leave to revoke a submission the Court will be satisfied that a substantial miscarriage of justice will take place in event of its refusal Leave to revoke should be granted where the arbitrators are exceeding their jurisdiction or refusing jurisdiction or failing to do all that their jurisdiction requires them to do Unless a substantial miscarriage of justice will take place leave ought not to be given A I R 1925 All 202=78 Ind Cas 1350 see also 29 A 13, 29 C 278=6 C W N 235 Otherwise a submission to arbitration is ordinarily irrevocable 7 W R 269, see also 10 W R 51 (P C) 7 A 3 M 112 Where a matter is referred to arbitration by court, the scope of the reference is the scope of the suit as disclosed by the pleadings 38 L W 927=11 L R 1933 Mad 862=6, M L J 755, see also 139 Ind Cas 842=A I R 1932 Sind 77 4 A 207=A I R 1932 All 665 The question of jurisdiction cannot be referred to arbitration 54 A 297=A I R 1932 All 665

**Scope of sub para 2) —**Provisions of para 3(2) are imperative A I R 1926 Nag 37=89 Ind Cas 75 see also 10 B 381 After a Court has referred a pending suit to arbitration is precluded further deal with the case is of a very limited nature A I R 1930 Lah 26 111 All 34=31 P L R 66 186, 9 A 186 74 A 31 4 A 546 The C interval between the submission of an award and of it and also where an arbitrator is proceeding with a reference On the latter case save in exceptional circumstances Court should not exercise its powers A I R 1925 Sind 102=18 S I R 303=78 Ind Cas 84 Where compromise is arrived at between the parties after reference but there is no order superseding the arbitration, Court cannot record the compromise A I R 194 Cal 72=51 C 432=83 Ind Cas 606 But in a proper case and for good cause the Court has inherent power to cancel the order A I R 1925 Pat 710=6 P L T 488=86 Ind Cas 540 After reference the Court becomes *functus officio* and cannot even award cost to parties which were incurred prior to reference 54 A 122=136 Ind Cas 789=1931 A L J 1155=A I R 1932 All 183

Where reference is to two or more order to provide for difference of opinion among two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

- (a) by the appointment of an umpire, or
- (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act

**Scope —**On a reference to arbitration by Court, an award by majority of arbitrators is valid if so agreed upon A I R 1925 Oudh 712=88 Ind Cas 547 A majority award can be maintained even in the absence of a specific provision to that effect 101 Ind Cas 646, but arbitrators fail to agree, an umpire if the arbitrators be appointed 44 A 472=20 A L J 219=A I R 1922 A 377=67 Ind Cas 487 Appointment of the same person as arbitrator as well as umpire cannot be allowed 138 Ind Cas 651=36 C W N 332=A I R 1932 Cal 491 In case of difference an umpire may be competent to decide a case entirely on his own opinion, 6 I R Lah 48=144 Ind Cas 1020=A I R 1933 Lah 587 Where a dispute is

referred to three arbitrators and one of them is appointed *Sirpanch* but no provision is made for difference between them, unanimous decision is necessary for valid award. A I R 1934 All 109

Power of Court to appoint arbitrator in certain cases. 5. [Ss 507 (2) 510, 511] (1) In any of the following cases, namely:—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

Scope—Court can appoint arbitrator or umpire or make order superseding arbitration if cl. 1 of para 5 is complied with and if party serves required notice A I

resignation, an arbitrator is not competent to make an award. A I R 1930 Lah 125=31 P L R 386=124 Ind Cas 676; see also A I R 1929 All 144=51 A. 501=(1929) A L J 182=115 Ind Cas 611 Order of Court thrusting arbitrator on unwilling party and ordering parties to pay costs of reference is void A I R 1929 All 144=51 A. 501=(1929) A L J. 182=115 Ind

Court under para 5 (2) does not make award invalid A I R 1924 Cal 665=28 C W N 624=81 Ind Cas 174 Where one arbitrator refuses to act, Court can

s 459 Where arbitration has

672=1 Pat L T 416=57 Ind

A I R 1927 Mad 910=39

M L T 195=(1927) M W. N 921=105 Ind Cas 92 No appeal lies for mistake in construing original reference A I R 1925 Oudh 361=12 O L J 174=2 O W N 64=86 Ind Cas 613 'Appoint' means concur in appointing A I R 1925 Oudh 261=12 O L J 174=2 O W N 64=86 Ind Cas 613 Application by party to appoint surviving arbitrator as sole arbitrator is written notice within para 5 A I R 1925 Oudh 361=12 O L J 174=2 O W N 64=86 Ind Cas 613 Court cannot take any action where no notice has been given to other party for removal of arbitrator. A I R 1925 Lah 374=7 Lah L J 163=26 P L R 476=88 Ind Cas 975 An award is not bad simply because one party is purposely absenting himself from hearing 29 C W N 895=40 Ind Cas 646. Finding that arbitrator resigned because of obstruction by plaintiff and that arbitrator is willing will justify Court in extending time

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 mise is arrived at  
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But to record the compromise A I R 1904 Cal 72=51 C 432=83 Ind Cas 606 But in a proper case and for good cause the Court has inherent power to cancel the order A I R 1925 Pat 720=6 P L T 488=86 Ind Cas 540 After reference the Court becomes *functus officio* and cannot even award cost to parties which were incurred prior to reference 54 A 122=136 Ind Cas 780-1931 A L J 1155-A I R 1932 All 183

Where reference is to two or more or to provide for difference of opinion

4 [S 509] (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

- (a) by the appointment of an umpire, or
- (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act

Scope—On a reference to arbitration by Court, an award by majority of arbitrators is valid

A I R 1925 Oudh 712=88 Ind Cas maintained even in the absence of a specific provision 21 C W N 895=40 Ind Cas 646, but power is given to appoint an umpire if the arbitrators do not agree such umpire can be appointed of the same person as arbitrator as well as umpire cannot be allowed 138 Ind Cas 651=36 C W N 332=A I R 1932 Cal 491 In case of difference an umpire may be competent to decide a case entirely on his own opinion 6 I R Lah 48=144 Ind Cas 1020-A I R 1931 Lah 587 Where a dispute is

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Power of Court to appoint arbitrator in certain cases. 5 [Ss 507 (2) 510, 511] (1) In any of the following cases, namely:—

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(b) where an arbitrator or umpire—

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(ii) refuses or neglects to act or becomes incapable of acting, or

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(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit

Scope—Court can appoint arbitrator or umpire or make order superseding arbitration if cl 1 of para 5 it is complied with and if party serves required notice A I R 1928 All 674=(1929) A L J 31=111 Ind Cts 552 Court should decide first whether arbitrator had died or refused to act and whether it should give chance to parties to appoint a new arbitrator A I R 1928 All 740=50 A 955=26 A L J 1009=110 Ind Cas 881 Where the arbitrators refuse to act and the Court acting *suo motu* supersedes the reference to arbitration the order superseding the arbitration is contrary to law and should be set aside 7 O W N 1043=129 Ind Cts 162 After resignation, an arbitrator is not competent to make an award A I R 1930 Lah 125=31 P L R 386=124 Ind Cts 676; see also A I R 1929 All 144=51 A 501=(1929) A L J 182=115 Ind Cts 611 Order of Court thrusting arbitrator on unwilling party and ordering parties to pay costs of reference is void A I R 1929 All 144=51 A 501=(1929) A L J 182=115 Ind Cas 612 Appointment of new arbitrators must be made by both parties 112 P R 1918=139 P L R 1918=48 Ind Cas 395 Appointment of fresh arbitrator without

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Court under para 5 (2) does not make award invalid A I R 1924 Cal 665=28 C W N 634=81 Ind Cts 574 Where one arbitrator refuses to act, Court can appoint new arbitrator 19 A L J 823=64 Ind Cts 459 Where arbitration has not been superseded Court cannot try a case 5 P L J 672=1 Pat L 1 416=57 Ind Cas 473 Court can revoke arbitration but not a case A I R 1927 Mad 910=39 M L T 195=(1927) M W N 921=105 Ind Cts 92 No appeal lies for mistake in construing original reference A I R 1925 Oudh 361=12 O L J 174=2 O W N 64=86 Ind Cts 613 "Appoint" means concur in appointing A I R 1925 Oudh 261=12 O L J 174=2 O W N 64=86 Ind Cas 613 Application by party to appoint surviving arbitrator as sole arbitrator is written notice within para 5 A I R 1925 Oudh 361=12 O L J 174=2 O W N 64=86 Ind Cas 613 Court cannot take any action where no notice has been given to other party for removal of arbitrator A I R 1925 Lah 374=7 Lah L J 163=26 P L R 476=88 Ind Cas 975 An award is not binding simply because one party is purposely absenting himself from hearing 22 C W N 835=40 Ind Cas 646 Finding that arbitrator resigned because of obstruction by plaintiff and that arbitrator is willing will justify Court in extending time

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- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

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Power of Court to appoint arbitrator in certain cases

5. [Ss 507 (2) 510, 511] (1) In any of the following cases, namely :—

- (a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or
- (b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

- (c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit

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of hearing A I R 1928 All 740=50 A 955=26 A L J 1000=110 Ind Cas 881 Where parties agreed to arbitration but named arbitrators refused to act, the Court can appoint other arbitrators in the absence of any provision in the reference as to what to happen on refusal A I R 1934 All 368 But if the second batch of arbitrators also refuses to act, the proceeding come to an end and further proceedings can be continued only after due notice to parties under this rule 1931 A L J 682=A I R 1931 A L J 761 In case of refusal the Court can appoint new arbitrators only after observing the formalities mentioned in this para *Ibid.*, see also 134 Ind Cas 733-33 Bom L R 1022=A I R 1931 Bom 529 In case of refusal by arbitrator to act the Court can not, in acting *suo motu* supersede the reference 129 Ind Cas 162=7 O W N 1043 Appointment of new arbitrator by Court without observing the formalities prescribed by this para is without jurisdiction and can be set aside in revision A I R 1933 Oudh 540-146 Ind Cas 493

Powers of arbitrator or umpire appointed under paragraph 4 or 5

6 [S 512] Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

7. [S 513] (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

Summoning witnesses and default

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court

Scope—The words 'refusing to give evidence' in clause 2 of para 7 of Schedule II of the Code of Civil Procedure Code 1903, refer to the case of a person who refuses to give evidence when placed on oath and is required to answer questions put to him and not to a case where a person elects not to produce any evidence in his case 11 Ind Cas 259=8 A L J 929

8 [S 514] Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period, or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Scope—Award submitted after fixed time is void 55 Ind Cas 221 But it can extend time to file award although time first fixed has expired 52 Ind Cas 352, see also 50 Ind Cas 52=4 Pat L J 265, 45 B 1071=23 Bom L R 614=63 Ind Cas 929; 19 C W N 165=31 Ind Cas 597 In case of arbitrators not submitting award within time Court can supersede award and try the case 57 Ind Cas 890 Award though filed after fixed time is not void 44 P W R 1916=56 P L R

Pat L T 416=57 Ind Cas 473 "Making the award" includes announcement of award and filing it in Court A I R 1928 Lah 753=110 Ind Cas 748 Where award was not filed on fixed date and the Court issued *taluk* to file it on certain date, the *taluk* may be construed as an order for extending time A I R 1925 Cal at once to try a case if award t 115=3 P L T 346=65 Ind extension of time, the Court is case into consideration, inclusion of the arbitrators. 146 Ind extend the time even where the not refuse to act 54 All 297=

Where an umpire may be appointed, he may enter on the reference in the place of the arbitrators,—

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree

**Scope**—An agreement to refer to arbitration was filed in court and in accordance therewith two arbitrators were appointed on each side and an umpire. The court made an order fixing a date at which the award was to be filed, but before the expiry of the time the two arbitrators of the arbitrators retired. Subsequently to their retirement, the umpire forwarded a document to the court, which was of the nature of a compromise and which he recommended should become the subject of a decree. *Held* that the decree could be based upon such document inasmuch as it is not an award. **A I R 1923 A W N 1904 41**. An umpire can act without arbitrators. **111 Ind Cas 559 A I R 1923 All 64 1229 A L J 31**

**10 [S. 516.]** Where an award in a suit has been made, the persons who

Award to be signed and made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

**Scope**—Award must be signed by all arbitrators and presented personally. **A I R 1929 Pat 178 118 Ind Cas 66** see also **54 Ind Cas 333 38 M L J 145 33 C 423 3 M 50 107 Ind Cas 53 A I R 1929 All 231** Award is not a compromise. **A I R 1928 All 231 107 Ind Cas 532** Award is void if it is not signed and filed. **A I R 1929 All 30 56 M L J 35 22 I W 727 114 Ind Cas 818** Where award made by some arbitrators only acceptance of such award is tantamount to error of law or fact. **A I R 1929 Cal 831 125 Ind Cas 273** Knowledge of award being filed is not sufficient. Notice must be given to the parties or to their counsels or pleaders. **A I R 1931 All 228 119 Ind Cas 331 107 Ind Cas 638 A I R 1928 Nag 166 91 Ind Cas 115 A I R 1926 Cal 1018 A I R 1927 Cal 619 45 C I J 458 103 Ind Cas 625 95 Ind Cas 547 A I R 1926 Bom 312 28 Bom L R 511 A I R 1931 Oudh 148 24 O C 234 8 O I J 626 64 Ind Cas 50 89 Ind Cas 210 A I R 1925 Lah 619 (1921) M W N 793 15 L W 160 45 M 466 71 Ind Cas 266 A I R 1922 Mad 179 62 Ind Cas 649 24 O C 263 8 O I J 280** Where arbitrators do not sign award before filing it, decree thereon is illegal. **1 Pit L J 306 2 Pat L W 377 35 Ind Cas 358** Arbitrators are presumed to commit to writing depositions but are not bound to preserve them. **A I R 1929 Nag 24 119 Ind Cas 694** Award is not void for mere failure to file document or deposition. **A I R 1931 Cal 446** An award is L J 90 2 which are of the Court 1933 Lah 777

**11. [S. 517.]** Upon any reference by an order of the Court, the arbitrator

or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order, such opinion to be added to and to form part of the award.

**Scope**—In case of difference between the arbitrators, the question of law may be referred to the Court in the form of a special case. **35 B 13 12 Pat L R 852 8 Ind Cas 171**; see also **24 Ind Cas 378 42 B 63 26 Bom L R 136** Refusal by an umpire to state a special case cannot constitute a ground for making a decree against him. **134 Ind Cas 1020 24 C L J 372 33 Bom L R 1535 31 L W 676 35 C W N 1267 1931 A L J 1116 A I R 1931 P C 209 61 M L J 623 (P. C.)**

Power to modify or correct award. 12 [S 518] The Court may, by order, modify or correct an award.—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred ; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision , or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission

Scope—This paragraph is applicable in case of imperfection in form in award A I R 1930 Lah 26=11 Lah 342=31 P L R 658=124 Ind Cas 339 After reference to arbitrators Court's power to deal further with the case is very limited It can act under para 12 only A I R 1930 Lah 26=11 Lah 342=31 P L R 668=124 Ind Cas 339 Court may correct or modify partly valid award If some portion of award refers to matters not referred to it can be separated A I R 1924 Pat 33=2 Pat 777=(1923) Pat 225 =2 Pat L R 76=5 P L T 239=76 Ind Cas 2, see also 76 Ind Cas 1007=A I R 1923 Lah 411 Award based on arithmetical mistake in document cannot be corrected Proper remedy is appeal or revision A I R 1927 Mad 720=53 M L J 38=(1927) M W N 242=103 Ind Cas 829 Court cannot enter into merits of dispute A I R 1921 Bom 191=45 B 512=59 Ind Cas 785 Court has no jurisdiction to modify or correct award more than what is confined to para 12 78 P R 1916=124 P W R 1916=40 P L R 1917=35 Ind Cas 887 Arbitrator is fully authorised to direct payment by instalments and their order though harsh or erroneous is an error of substance and not of form and as such Court has no power to amend it A I R 1930 Lah 26=11 Lah 342=31 P L R 668=124 Ind Cas 339 Award can not be set aside except for mis conduct of arbitrator or payment in stake though arbitrator is an officer of Court A I R 1925 Sind 89=78 Ind Cas 60 see also 80 Ind Cas 10=A I R 1925 Cal 332 In a suit for dissolution of partnership and accounts arbitrator can award interest also 56 Ind Cas 941 see also 46 C 584=54 Ind Cas 285=23 C W N 704 Arbitrator cannot review his own award 99 P R 1917=173 I W R 1917=43 Ind Cas 350 A court may modify or correct an award passed by an arbitrator under conditions prescribed by clauses (a) (b) and (c) of para 12 of Sch II of the Code of Civil Procedure A decree passed on an award which has been so modified is a proper decree according to the award under para 16 A I R 1933 Lah 572 34 I L R 34 A I R 1933 Lah 139=141 Ind Cas 72 Where a prayer is only for the modification or removal of an award the prayer comes within para 12 or 14 and consequently Art 158 of the Limitation Act is not applicable A I R 1933 A 290=1933 A L J 519 A I R 1933 All 648

13 [S 519] The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them

Order as to costs of arbitration  
Where award contains no sufficient provision concerning them

Scope—In case of omission of costs in award, Court can make order regarding costs A I R 1930 Oudh 89=7 O W N 97=5 Luck 678=126 Ind Cas 508, see also 6 S L R 226=19 Ind Cas 611 Court has power to reduce excessive costs which are not part of award, but award cannot be questioned A I R 1930 Sind 190=123 Ind Cas 694

14 [S 520] The Court may remit the award or any matter referred to arbitration to the reconsideration of the same

Where award or matter referred to arbitration may be remitted  
arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated from the determination of the matters referred ;

(b) where the award is so indefinite as to be incapable of execution ;

(c) where an objection to the legality of the award is apparent upon the face of it.

Scope—Remittal of part of award is not proper A I R 1926 All 567=24 A. L J 706=96 Ind Cas 531. It is open to parties to accept incomplete award A I R 1926 Ind Cas 290. Where award decides some of the remaining matters have been decided 874=29 P L R 531=110 Ind Cas 738 based on personal knowledge with consent

of parties A I R 1925 Oudh remitting to same arbitrators

arbitration A I R 1921 Pat 11

370 It is not competent to Co

18 A L J 952=43 A 101=59 I

render it illegal 42 A 277=2 U P L R (A) 104=18 A L J 241=58 Ind Cas 585

An order remitting an award for reconsideration of the arbitrators is not open to challenge on appeal 146 Ind Cas 22=A I R 1933 Lah 530 In the absence of any

objection, the Court is not bound to scrutinise the terms of the award and satisfy itself before the passing of its decree, that the award disposed of all the matters referred

to arbitration and if the award did not so dispose of them *suo motu* to remit the award under para 14 A L R 1933 Mad 559=A I R 1933 Mad 697=38 L W

350=65 M L J 376=1933 M W N 831 Where a case is transferred after order of reference and before award, award should be filed before court to which case is

transferred 146 Ind Cas 582=10 O W N 1196=A I R 1933 Oudh 546 An award submitted by the arbitrators is final and the only exceptions are the

cases where the award is the result of corruption or fraud and one other where the question of law necessarily arises on the face of the award or upon some paper

accompanying and forming part of the award 10 O W N 1196=A I R 1933 Oudh 547, see also 145 Ind Cas 465=27 S L R 96=A I R 1933 Sind 260

Where the arbitrators determine matter not referred to them it is open to court to remit the award to them again 12 Lah L J 314=A I R 1931 Lah 215=131 Ind Cas 303

Clause (a)—Award exceeding terms of reference is void regarding exceeding portion when it is separable from and independent of the rest 22 C L J 237=31

Ind Cas 33 Award on matters beyond terms of reference is without jurisdiction and Court can remit it A I R 1926 Mad 201=49 M L J 523=91 Ind Cas 745,

A I R 1931 Lah 215=12 Lah L J 314, A I R 1928 Lah 915=110 I C 401 Award is valid only to the extent of matters referred to it if they are separable

10 Pat L T 53=115 Ind Cas 680, see also A I R 1928 Sind 144=108 Ind Cas 791, A I R 1923 Rang 130=1 Bur L J 265=4 U B R 157=72 Ind

Cas 193 Court is not competent to amend arithmetical error in private award and remit it for reconsideration A I R 1925 Lah 86=78 Ind Cas 1042 Power to

make partition include right to award maintenance A I R 1924 Oudh 84=10 O L J 226=73 Ind Cas 39 Slip is not material irregularity in award, A I R

1925 Cal 599=52 C 100=88 Ind Cas 49 Award is vitiated where arbitrator leaves some matter undetermined A I R 1934 All 493 Where the award is

incomplete it should be remitted for reconsideration 146 Ind Cas 22=A I R 1933 Lah 530

Clause (b)—Court is empowered to set aside award if uncertain 3 O L J 137=34 Ind Cas 355 Under clause (b), the award is to be remitted when it is indefinite as to be incapable of execution 35 Ind Cas 761=3 O L J 258 But

where award is returned for modifying certain part only and this to remove indefiniteness, the whole award cannot be altered A I R 1929 Sind 164=116 Ind Cas

590 But where amount is not ascertained but can be made certain, arbitration cannot be held as uncertain A I R 1930 Lah 22=119 Ind Cas 726 Where

extra amount is given to eldest son for services rendered mere use of word *jashtha bhagum* does not make award void A I R 1930 Mad 38=30 L W 868=124 Ind Cas

209, 78 Ind Cas 238=A I R 1925 Mad 301 Award is not uncertain if rate of exchange is not mentioned A I R 1924 Sind 117=17 S L R 86=80 Ind

Cas 1009 Award not specifying sum to be paid is not good ground for remittal if arbitrator has given rule for calculating amounts to be paid A I R 1922 Cal 447=49 C 646=69 Ind Cas 995

Clause (c)—Court is empowered to remit an award if there is error of law patent on face of it 44 I R 20=21 Bom L R 1037=13 Ind Cas 799, see also 101 P R means erroneous legal 597=52 C 100=88 Ind. 124 Ind. Cas. 209, A I R 101 of law by arbitrator M L J 323=24 M L T the evidence before him

and the arguments of pleaders and then makes the award, mere mistake in construing contract referred to in award but not incorporated in it is not error on face of award. A I R 1927 P C 164=53 C 126=54 I A 427=53 M L J 18=29 Bom L R 1150=46 C L J 9=31 C W N 1027=39 M L T 61=21 S L R 101 (P C)=104 Ind Cas 476 An error in law on the face of the award must be found in the award or a document actually incorporated therein and which is the basis of the award A I R 1926 All 501=48 A 475=24 A L J 480=95 Ind Cas 416.

15. [S 521] (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it But no award shall be set aside except on one of the following grounds, namely —

- (a) corruption or misconduct of the arbitrator or umpire.
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire,
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit

Scope—Paragraph 15 contemplates the entertaining by the first Court of all possible grounds which can be urged against the validity of the award A I R 1926 All 20=48 A 226 23 A L J 997=90 Ind Cas 904 Paras 15 and 16 depend for their operation on a valid reference A I R 1925 Cal 812=52 C 555=42 C L J 26 9 C W N 886 81 Ind Cas 633 It is only the party prejudicially affected by the exercise of excessive authority by the arbitrator who is entitled to object to the award by reason of it A I R 1927 Sind 206=107 Ind Cas 277 An award should not be set aside merely upon the ground that the decree based on it would not be one which would have been ordinarily passed by the court in which that suit was instituted A I R 1928 Oudh 1=3 Luck 1=4 O W N 1085 (F B)=107 Ind Cas 545 Where parties and arbitrator agree to withdraw reference arbitration should be superseded Reference can be revived only by fresh agreement not by resiling from previous resolve by one of the parties A I R 1934 All 95 Award not warranted by terms of reference and going beyond it is not enforceable A I R 1934 All 117 A clause in a compromise petition providing that any of the parties thereto may object to the award on any account is contrary to para 15 1 Pat L J 305=2 Pat L W 377=35 Ind Cas 358 Agreement to object to award does not preclude parties from objecting on the ground of fraud or bad faith of arbitrators If arbitrators imparted their personal knowledge without giving an opportunity of testing such knowledge it is misconduct on their part 107 P W R 1916=117 P R 1916=34 Ind Cas 192 The filing of a suit regarding the same subject matter does not *ipso facto* render the arbitrators *functus officio* A I R 1924 Sind 105=17 S L R 15=80 Ind Cas 969 The only time for entertaining the charge of misconduct is when the award has been filed A I R 1923 Cal 410=27 C W N 420=80 Ind Cas 459 Words arbitration and award and "award in s 14 Arbitration Act and para 15 Sch 2, C P Code respectively allow of no distinction L R 389=54 B 676=176 Ind Cas 303 the award if it exceeds scope of the award dealing with the matter referred to is separable from the rest 10 P L T 53=115 Ind Cas 680 Though one of the parties is minor represented by guardian there is nothing wrong in parties agreeing to

abide by award of majority A I R 1929 Mad 144=114 Ind Cas 367 Where reference under para 2, Sch II in a partition suit was with regard to "dispute in suit" and where parties during arbitration proceedings by consent suggested certain method for partition the question being not in dispute at the time of reference, award based on such future agreement is not invalid. A I R 1926 All 567=24 A L J 705=96 Ind Cas 531 One and the same arbitration can not be held as to matters within the jurisdiction and matters without the jurisdiction between the parties to the suit and between them and other persons and partly upon an order of reference and partly under agreement A I R 1925 P C 293=28 Bom L R 217=92 Ind Cas 613=53 I A 1=53 C 258=27 P L R 35=3 P L R 330=43 C L J 14=49 M L J 812=24 A L J 13 P C An arbitrator is not entitled to adopt the procedure of a special nature unless all parties affected by it agree to the adoption of such procedure 93 Ind Cas 840 Fact that the award is not given within specified time is not sufficient for refusing to file agreement in Court, especially where there

25 Bom L R 392=85 Ind Cas 424 If an arbitrator consults strangers on question of law or as to the style syntax or grammar of his award he is quite within his rights as an arbitrator but if he arrives at any findings of fact consulting people and if he allows them to affect his decision as assessors then there is misconduct A I R 1925 Pat 465=3 Pat L R 57=6 P L T 544=86 Ind Cas 773 Where defendants are not present to prosecute their application to set aside their award decree issued by them is no *ex parte* A I R 1924 Pat 603=(1924) Pat 170=3 Pat 839=6 I L J 17 53 Ind Cas 26 An award cannot be set aside merely because evidence is not in writing A I R 1925 Oudh 269=11 O L J 570=28 O C 74=80 Ind Cas 7

**Remitted under paragraph 14**—Award remitted by Court for reconsideration of arbitrators becomes void on their failure to reconsider it 7 W R 403, 16 C 168

**When award can be set aside**—An award can be set aside only on the grounds mentioned in this para 81 Ind Cas 574=28 C W N 634=1924 Cal 665; see also 119 Ind Cas 726=A I R 1930 Lah 22, 30 C 397=7 C W N 545

**Corruption or misconduct**—Decision based on secret enquiry and opinion of strangers amounts to misconduct on part of arbitrator A I R 1931 Lah 111=131 Ind Cas 220, see also A I R 1931 Lah 65=130 Ind Cas 833 Failure to record evidence when indispensable, is misconduct A I R 1931 Lah 65=130 Ind Cas 833 Strict compliance with para 1

award A I R 1931 Cal 51=58 C 269=34 C W M 689=129 Ind Cas 128 But

A L J 540=117 Ind Cas 371 Arbitrators can not be held behind back of parties If they do so their awards are open to be set aside

9 P L T 271=109 Ind Cis 21 The word 'misconduct' in this para does not necessarily imply fraud. But it may include cases where the arbitrator has failed to perform the essential duties which are cast upon him as an arbitrator. A I R 1928 Bom 49=52 B 116=30 Bom L R 92=107 Ind. Cas 707 Where the award has been made by an arbitrator according to his own views as to what was right and proper in the circumstances, the award cannot be attacked on the ground of a technical misconduct in so far as he applied a perverse view of law. A I R 1929 Oudh 1=5 O W V 1001=113 Ind Cis 785 Decision without giving notice to parties or hearing their comments on evidence is legal misconduct. A I R 1927 Lah 44=100 Ind Cis 896 Where umpire makes enquiries behind back of parties he is guilty of misconduct. A I R. 1927 Lah 425=8 Lah 329=2 L J 218=23 P L R 425=101 Ind Cis 153 Unless parties consent no arbitrator has a right to decide the matter on his personal knowledge and the award based on such knowledge is vitiated. A I R 1926 Mad 752=50 M L J 514=23 L W 681=(1926) M W V 415=95 Ind Cas 740 But where particular arbitrator has been selected only because of his personal knowledge in the matter in dispute it would not be a misconduct on his part to use his personal knowledge in coming to a certain decision. A I R 1926 Bom 527=28 Bom L R. 986=97 Ind Cas 673

When parties have agreed to abide by decision of a tribunal of their own selection, unless there has been something radically must not be set aside. An award should technical error. A I R 1925 Rang arbitrator, who makes secret inquiry and of misconduct. A I R 1931 Lah 111=1.

out of the hearing of the parties amounts to misconduct. A I R 1931 Mad. 619 = 1931 M W N 451=34 L W 507=133 Ind Cas 522 Omission to examine witnesses may also amount to misconduct. A I R 1931 Lah 65=130 Ind Cas 833. Taking legal advice upon the general rules of law bearing upon the case does not amount to misconduct. 1931 A L J 1116=51 C L J 372=61 M L J 623 (P C) =23 Bom I R 1516=27 C W N 1287=24 L W 676=8 O W N 1066=A I R

less so palpable and gross  
ground for interference by Court

133 Ind Cas 522=34 L W

Where the parties appointed two  
abide by the decision of the

agree with one arbitrator but

court accepted the award of the majority. *Held* even though the award was of no avail because there was no majority the decree cannot be changed under s 115 C P Code. 1931 A L J 906 34 Ind Cis 30 An arbitrator is guilty of misconduct if he delegates his functions and his award is invalid. 22 C L J 237=31 Ind

Cas 33 An arbitrator who has got personal interest not known to the party, can not act as such unless the interest is very small. 19 C W N 165=31 Ind Cas 597

Arbitrators with expert knowledge of the trade in relation to which a question is pending before

of that trade. 41 B 518=11 dge of the usages

604 The presence of all the parties is necessary. see also 57 Ind Cas

meeting when the final award is made. see all at the last

Arbitrator deciding dispute upon his own personal knowledge and without taking 49 Ind Cas 522

evidence is fatal to the award in the absence of special agreement. 42 A 181=18

A L J 78=54 Ind Cis 443, 57. Refusal of an arbitrator

irrevocable or conclusive refusal of an arbitrator, need not give notice but

Arbitrators must not receive or would render their award utterly unfair and worthless. An arbitrator can act

*ex parte* in some cases. 13 S L R 75=53 Ind Cas 337 Refusal of an arbitrator

nothing to show that the arbitrator has the exercise of a wise and prudent Ind Cas 767. Where arbitrator takes of one party without giving notice he give any further notice when defendant of repeated notice of withdrawal. 33 Ind Cis 467 see also 49 Ind Cas



03, A I R 1925 Lah 407=7 Lah L F 463=26 P L R 706=88 Ind Cas 161

Where award is impealed owing to defendants having given false evidence supporting fraudulent accounts, it is open to review but is not liable to be set aside by s. 193 P L R 1915=173 P W N 1915=31 Ind Cas 195 An arbitrator has power to determine a matter relating to a joint family business and to award share in favour of even a stranger where finding is recorded with full consent of parties. 18 A L J 241=42 A 277=58 Ind Cas 585 Where both arbitrators are pleaders the mere fact that one has appeared for the other in various cases without fees does not show that the latter would not take a fair view of the matter under arbitration A I R 1930 Sind 190=123 Ind Cas 674 Where an award does not decide the real question at issue it is

Cas 824 Where

them but parties

show that it was within their contemplation while entering into contract to refer that they should thus give evidence award is not invalid A I R 1931 Cal 53=34 C W N 609=48 C 263=127 Ind Cas 428 Mere fact of questioning the parties on different dates does not amount to misconduct so long as the parties are given an opportunity of meeting the representation is made by the other side A I R 1926 Mad 1158=24 L W 482=97 Ind Cas 478 Where the order of reference implies that no further evidence was to be put forward by the parties and that parties have sufficiently stated their case absence of notice by arbitrators that they were prepared to receive evidence does not render award invalid A I R 1927 Mad 1010=106 Ind Cas 332

The Court will set aside an award where a patent of law patent on the face of it legitimises only a minor's interest. It is in the judicial sense of the word not from a moral point of view and a person does not lose his right of duty cause a patent of law patent on the face of it legitimises only a minor's interest and is cancelled by the court on account of error of law patent on the face of the award and this can amount to legitimising only a minor's interest A I R 1924 Sind 75=17 S L R 355 Whether the arbitrator can import their own personal knowledge into the consideration of the case depends upon the terms of submission to arbitration A I R 1925 Mad 1086=49 M L J 115=(1925) M W N 503=88 Ind Cas 660 No arbitrator performing his functions can listen to confidential information adverse to one or the other party without committing grave misconduct A I R 1925 Pat 465=6 P L T 544=86 Ind Cas 773 Where an arbitrator refuses to allow evidence under honest belief of want of jurisdiction to admit it the award is not vitiated by misconduct A I R 1924 Oudh 400=11 O L J 142=78 Ind

Cas

based

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a fact

that the decision of the arbitrator was based exclusively on the evidence recorded in the presence of both parties there is no ground for interference A I R 1923 Oudh 235=26 O C 107=74 Ind Cas 401 It is improper on the part of an arbitrator to get information from one side in the absence of the other, but consent of the parties will cure the defect A minor's guardian can not waive the minor's right A I R 1923 Mad 301=47 Mad 30=17 M L J 71=(1923) M W N 7=32 M L F 32=44 M L J 263=73 Ind Cas 470, see also A I R 1923 Rang 187=1 Rang 15=2 Bur L J 30=74 Ind Cas 6 Irregularities in procedure of arbitration may be waived provided parties knew of them 10 L W 57=51 Ind Cas

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277=6 Pat L J 287=(1921) Pat 170=61 Ind Cas 390 Where the reference is made by the award has no power to look at the award subsequently submitted and the award is valid.

conduct except when reference authorises such be set aside L R 3 A 84 An arbitrator to who property is referred by a Hindu joint family, so long should decide only according to Hindu Law, can take into consideration the interests of all parties and decide in accordance therewith A I R 1921 Lah 34=2 Lah 114=3 Lah L J 349=73 P I R 1921=61 Ind Cas 628 Award given after time fixed is not valid A I R 1933 Lah 173=145 Ind Cas 129 Even before the award is made the Court can deal with the misconduct of the arbitrators 146 Ind Cas 1081=A I R 1933 Pat 566 Arbitrators can accept a compromise by the parties under rule 32 rule 7 145 Ind Cas 329=34 P L R 397=A I R 1933 Lah 538 Award based on reference without authority of a party can be challenged in a suit 1933 M W N 1475 Court should summon arbitrators as witnesses at the instance of a party who impugns the award on the ground that the arbitrator held his enquiry in the absence of the objector 34 P L R 397=A I R 1933 Lah 538=145 Ind Cas 329 An award can be set aside if the arbitrators grants excessive costs 27 S L R 327=A I R 1933 Sind 295=146 Ind Cas 439 The fact that an award has been filed after the time allowed by Court may be set aside by Court but if not set aside it is a valid one 10 O W N 177=A I R 1933 Oudh 563

Clause (b)—Where the litigation a party knows going to be referred is duty of arbitrator to see that the award is in accordance with the law Luck 139=13 O L J 224=3 O W N 279=63 Ind Cas 446, see also 25 C 141 29 C 678

Clause (c)—In cl (c) sub para have same bearing as word invalid 211=52 C L J 298=35 C W N 2 W N 813=130 Ind Cas 137 Gr mentioned A I R 1934 All 95 cover award where reference is made L J 1009=110 Ind Cas 881 treats person not a party to the litigation between parties and such person invalid A I R 1937 Sind 193=1 in accordance with A I R 1925 P C L J 13=43 C L I A 1=53 C 251 imply that any award or on the ground of an A I R 1924 Bom 324=26 B otherwise invalid in para 15 are herein but are meant to include mentioned 34 M L J 71=23 M L T 89=495 Ind Cas 763

proceedings a suit or a reference against an order of reference is not open to revision 107 P W R 1916=117 P R 1916=70 P L R 1917=34 Ind Cas 192 An objection to the validity of a reference is not an objection within para 15 Any order passed on such objection is open to revision A I R 1936 All 258= to give notice of the A I R 1926 Cal 1 to be final Therefore an order of reference is not open to revision A I R 1938 M L J 48=105 Ind Cas 105 Revision is interference in revision A I R 1938 M L J 48=105 Ind Cas 105

against order refusing to set aside award A I R 1932 Lah 569=111 Ind Cas 14. Where reference itself is impugned owing to dissent of parties judgment and decree is appealable under para 15 A I R 1931 Cal 109=34 C W N 813=130 Ind Cas 137. High Court in revision cannot set aside decree in accordance with award on ground that one of three *judges* refused to sign award. A I R 1927 All 573=13 All 566=23 A L J 655=89 the course of a trial of a suit

do not constitute a separate case within s 115 and therefore an order setting aside an award is not open to revision A I R 1926 Lah 191=26 P L R 253. Revision does not lie where Court supersedes award on misinterpretation of terms of reference. A I R 1922 All 64=20 A L J 117=65 Ind Cas 779. If the judgment of the Court is pronounced according to the award under paragraph 16 there is neither appeal nor revision A I R 1929 Sind 1=15 S L R 165=65 Ind Cas 50. Where award was set aside on ground that reference ought not to have been made, *held* that revision lay A I R 1921 All 16=43 A 302=19 A L J 33=60 Ind Cas 857. When objection to an award is disallowed, a decree based on award cannot be questioned either in revision or in appeal 10 O W N 669=A I R 1933 Oudh 527. Where some of the arbitrators took part in the hearing but no objection was taken and thereby the award was not affected in merits an order confirming such an award can not be questioned in appeal or in revision 38 I W 927=A I R 1933 Mad 862=65 M L J 725.

**16 [S. 522] (1)** Where the Court sees no cause to remit the award or any judgment to be accorded on any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application the Court shall after the time for making such application has expired proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

**Scope**—Para 16 contemplates award made in cases where there has been valid submission. Where reference itself is impugned for want of consent or any other cause an appeal will lie against the decree passed on the invalid award A I R 1931 Cal 109=34 C W N 813=130 Ind Cas 137, see also A I R 1931 Cal 211=35 C W N 238=58 C 628=52 C L J 293, but see A I R 1929 Lah 479=10 Lah 871=31 P L J 162=116 Ind Cas 559, A I R 1927 Lah 362=8 Lah 693=9 Lah L J 569=104 Ind Cas 202. Para 16 (1) does not prevent the court from

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Court should not *suo motu* fix the date for to an award filed in the court. It is for the purpose A I R 1926 Lah 584=96 Ind Cas 108. Where Court without further trial passed decree immediately after a report is filed, procedure is wholly irregular whether report is considered as award or as commissioner's report A I R 1929 Mad 789=129 Ind Cas 5. The question whether a party is interested must be decided on the facts of each case A I R 1931 Lah 126=32 P L R 44=131 Ind Cas 348.

A decree must be passed in accordance with the award after the application for setting it aside on grounds of misconduct and illegality has been dismissed A I R 1924 All 788=46 A 686=22 A L J 676=L R 5 A 46, Civ=82 Ind Cas 16. Oral award has the same effect as the written one. It also bars a fresh suit for dealing with the same subject matter A I R 1924 Rang 60=Bur L J 163=79 Ind Cas 742. An agreement not to object to the award on ground other than those of fraud cannot prevent party to the agreement from moving to set it aside.

on 9=45 M 466=  
 15 t aside award is  
 not to set it aside  
 =56 Ind Cas 677 Passing of decree in terms of  
 to restore on merits application of objections to  
 A L J 756=2 U P L R (A) 253=57 Ind Cas

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Where invalid part of the award cannot be separated from the valid part, the whole award is bad and is therefore, null and void A I R 1922 Cal 399=34 C L J 253=66 Ind Cas 342 When one of the parties takes an objection to the award and agrees to indemnify the other, latter can sue him for damages on breach of the agreement 38 M L J 470=57 Ind Cas 952 A suit on the original cause of action is barred after award has been made 13 S L R 75=53 Ind Cas 337 Time for filing objections to an award cannot be extended 13 N L R 172=42 Ind Cas 266 Award can be pleaded as a defence in a Civil suit regarding the matter in respect of which award was made 173 P W R 1917=99 P R 1917=43 Ind Cas 350, see also 8 L B R 157=33 Ind Cas 554 Court acts with material irregularity when it does not give time to adduce evidence in support of  
 3 O L J 583=37 Ind Cas 400  
 interpretation should be interpreted in  
 the award 3 O L J 258=33  
 Ind Cas 761 Award is to be regarded as submitted on the date fixed by the Court for filing it and the time for objection to the filing of the award is to be consulted from such date 14 P W R 1916=34 Ind Cas 250 Decree in terms of the award before the expiry of time allowed for making an application to set aside the award is illegal Decree in terms of award is not binding on the minor unless the Court finds it beneficial to the minor 9 S L R 183=34 Ind Cas 845

**Sub section (2)**—Though decree based on award is not appealable it is open to revision if Court acts without jurisdiction or fails to exercise jurisdiction or acts with material irregularity in dealing with award 31 Ind Cas 458 Omission of sanction under order 32 r 7 is no basis for revision 99 P R 1915=207 P W R 1915=32 Ind Cas 250 Appeal does not lie from an order recording an award 1 Pat L J 90=2 Pat L W 411=34 Ind Cas 105 see also 1 Pat L J 306=2 Pat L W 377=35 Ind Cas 358 Appeal does not lie against decree passed in terms of an award unless it is in excess or not in terms of an award 15 A L J 452=39 A 401=39 Ind 730 see also 35 Ind Cas 914 46 Ind Cas 785 Decree made in terms of the award  
 49 Ind Cas 26  
 out giving the  
 Lah L J 487  
 decree passed  
 it But the High Court may exercise its jurisdiction under s 115 A I R 1921 Bom 32=45 B 832=59 Ind Cas 811  
 appealed against A I R 1922 La  
 1922 Mad 429=15 L W 111=3

that the party appealing was  
 =32 P L R 44=131 Ind Cas  
 minor's behalf without court's  
 N 238=58 C 628=138  
 llow award except on  
 132 Ind Cas 180 But  
 for objection A I R

1930 Rang 303=128 Ind Cas 847 Where objections against award are decided by trial court, no appeal lies against decree in accordance with terms of award A I R 2 29 Nag 264=26 R L R 163=119 Ind Cas 694, see also A I R 1927 All 120=49 A 178=24 A L J 1036=98 Ind Cas 993, A I R 1927 Pat 135=(1926) Pat 161=7 Pat L T 759=95 Ind Cas 321, A I R 1925 All 541=86 Ind Cas 942, A I R 1929 Rang 225=7 Rang 269=149 Ind Cas 212 Decree passed in

to adduce evidence  
925 Rang 238=4 Bur  
other than those in  
para 16 (2) does not lie A I R 1926 Pat 164=7 Pat L T 264=(1925) Pat  
324=91 Ind Cas 799 Where part of award is remitted for re consideration but  
the arbitrators failing to do so, decree based partly on award and partly on courts  
finding can be appealed against A I R 1926 All 567=24 A L J 70,=76 Ind  
Cas 531 No appeal lies from award made on reference, to which one of the  
parties  
812=1 A I R 1926 Pat 164=7 Pat L T 264=(1925) Pat  
parties  
tions,

=104 Ind Cas 202  
it local inspection  
Ind Cas 762

Though no appeal lies against the decree passed on an award yet a revision is  
competent where the court which passed the decree missed the jurisdiction conferred  
upon it 118 Ind Cas 906 Where parties agreed that trial Judge should decide  
a case on certain documentary evidence and local inspection and further agreed to  
accept the decision, there is no appeal from decision of the court A I R 1929  
All 577=51 A 835=(1922) A I J 1024=117 Ind Cas 107, see also 11 N L J.  
217=113 Ind Cas 365 Rule prohibiting an appeal against a decree based on  
award does not apply where the objection is to the inherent jurisdiction of the  
Court to entertain suit A I R 1938 Lah 730=101 Ind J 242=112 Ind Cas 262  
Where trial Court sets aside award and the lower appellate Court decrees suit in terms  
of it second appeal lies A I R 1938 Outh 131=4 O W N 108, (F B)  
=107 Ind Cas 54, B1 no second appeal lies from order recording award as compro-  
mise A I R 1930 Lah 860=31 P L R 115=127 Ind Cas 70, A point against  
an award which could have been taken in the lower Court cannot for the first time  
be taken in revision A I R 1929 Cal 831=115 Ind Cas 74

Decree in accordance with award can be appealed against only if the arbitrators  
or the Courts have exceeded their jurisdiction or acted with material irregularity  
A I R 1925 Cal 475=78 Ind Cas 335 Award made upon reference to arbitration  
made by a pleader having no authority in that behalf is invalid and decree there-  
4 Nag 338=79 Ind  
ard, the decree which  
is liable to be set  
aside in revision A I R 1925 Rang 103=76 Ind Cas 307 Decree based on  
award except when not based on valid award is not appealable but judgments or  
order passed on award are open to revision if there is material irregularity in the  
passing of it 11 P W R 1916=28 P R 1916=31 Ind Cas 700 No appeal  
is competent where the decree is in accordance with the award The mere  
fact that in appeal the validity of the award is impeached on the ground that  
the party appealing was not a party to the reference does not take out the case  
out of this rule 12 Lah 408=32 P L R 41=A I R 1931 Lah 126=131 Ind Cas  
348 see also A I R 1937 Lah 239=33 P L R 163=136 Ind Cas 11=13 Lah  
528 138 Ind Cas 848=36 C W N 1069=A I R 1932 Cal 713, 137 Ind Cas  
151=9 O W N 191=A I R 1932 Outh 156, I R 1932 Lah 625, A I R 1933  
Rang 38=142 Ind Cas 835 Where a decree has been passed in accordance with the  
award it cannot be interfered  
some  
excess or defect of jurisdiction  
W W N 831=38 I W  
1933  
146 Ind Cas 582=10 O W N  
e also  
A I R 1933 Lah 69=143 Ind Cas 507  
651=

### *Order of reference on agreements to refer*

- 17 [S 523] (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court

Application to file in Court  
agreement to refer to arbitra-  
tion

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

**Scope**—The scope of this para is no more than this that where an agreement of reference to arbitration has been entered into by the parties but the arbitrators have not so far functioned the Court has power to enforce to agreement against the parties where the arbitrators are ready and willing to act in terms of the reference.

n, predicates that the arbitrators  
Court should step in and ask  
y are agreeable to do so 1932

provides that an application to file in Court an agreement to refer to arbitration shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and others or other of them as defendant or defendants. This provision does not convert the application into a suit for all purposes. When the law says that the application shall be numbered as a suit, it is to be registered as a suit. It is to be with an application under by the second schedule and Ind Cas 266=53 P L R 508= A I R 1932 Lah 374. Question as regards the title to revenue paying bill is within the jurisdiction of civil court and as such question might well be referred to arbitration. A I R 1930 Lah 836=11 Lah 470=122 Ind Cas 724. Mortgage decree in terms of award made under para 17 is not a decree under order 34 rules 4 and 5 has therefore no application. A I R 1927 Sind 103=19 S L R 202=99 Ind Cas 178. Award is not valid unless concurred in by all the arbitrators. Court cannot change original agreement between parties to refer dispute to certain number of arbitrators and order that in case of disagreement opinion of the majority of arbitrators should prevail. A I R 1926 Mad 1183=51 M. L. J 440=24 L W 384=97 Ind Cas 824.

All parties must consent to and sign reference to make it binding. It is otherwise null and void even as to those who have executed it. Authority of arbitrator begins when all parties have executed the reference. 9 Bur L T 253=38 Ind Cas 577. Dispute regarding claim as *mutawalli* to public trust can not be settled by arbitrators and should be decided by Court. 1 P L W 260=(1917) Pat 93=38 Ind Cas 296. Party in whose favour the award is made can sue for a decree in terms of award. Agreement to refer to arbitration can be filed when it is valid. Arbitrator can proceed with the reference even if one party refuses to submit. Once a valid reference has been made, clerical error as regards the date of agreement W R 19 clauses of 94 Ind C . . . . .

R 1917=39  
land, to fill  
1917=166 P  
Act applies  
L J 292=  
.. .. . filed under



para 17 of the schedule II

junction with other disputes

L J 131=40 Ind Cas 38

numbered and registered as

277=6 Pat L J, 287=61 Ind Cas 390, see also A I R 1924 Sind 23=17 S L R

178=83 Ind Cas 598

to obtain an order of reference under para 17 Sch II C P. Code. 44A

523=A I R

All 188=19

to arbitrator

when parties

cannot agree. A I R 1921 Pat 161=2 Pat L T 277=6 Pat L J 287=(1921) Pat

ing abortive Court cannot

A I R 1921 Pat 161=

51 Ind Cas 390 Parties

securing case before arbitri-

tration cannot afterwards challenge award on ground of want of jurisdiction in

tribunal chosen by themselves 42 A 661=18 A L J 644=59 Ind Cas 801

Muhammadan mother is not competent to agree to arbitration regarding minors

W N 246=47 C 713=57 Ind Cas 945

misconception as to authority of mother

entitled to withdraw from agreement

if it is found that mother has no authority to enter in such agreement A I R 1921

Cal 818=26 C W N 246 Death of some arbitrators before agreement is made

rule of Court renders agreement inoperative and it cannot be filed in Court 71 P R

1918=44 Ind Cas 866, see also 42 Ind Cas 911=11 Bur I T 160 But where

there is distinct provision that party selecting arbitrators would be competent to

appoint another in case of disability resignation or death of arbitrator agreement is

rendered void by resignation of one of them nor is it sufficient to justify refusal to

file it in Court 3 Lah 276, see also 51 Ind Cas 636=155 P W R 1919=55

P W R 1919 Agreement to refer is cancelled by conduct of parties coupled with

long and unexplained delay of six years and it cannot be filed 54 Ind Cas 126

Party induced to refer by misrepresentation is at liberty to revoke reference and such

an agreement cannot be filed in Court 50 Ind Cas 637 Schedule II, para 20

applies to application for filing award already made and not for filing one which has

been passed even till date of application To the latter case para 17 applies 90

P W R 1918=45 Ind Cas 647 The use of the word 'may' to the rule shows

chedule are permissive and not mandatory A

1=14 O L J 181=131 Ind Cas 443 There

6 to 20 of the Code are not to be considered

jurisdiction in the matter to which agreement

the Second Schedule 32 P L R 464=132

33 Lah 18 If in a

the court cannot

The court has no

one who is dead

1931 Mad 28=60

M L J 676=129 Ind Cas 638=54 M 469=1930 M W N 1028

Sub para (2) (v)

called upon

him to show

silent and to

when made

going on with proceedings foredoomed to futility A L R 1933 Sind 449

The cause for revoking submission should be urged when a notice is issued under

para 17 and need not be deferred till the award is completed 143 Ind Cas 635=A

I R 1933 Sind. 68

Sub para (4)—It is not open to a party to an agreement of reference to re  
the submission to arbitration except for good cause The words sufficient

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

**Scope**—The scope of this para is no more than this that where an agreement of reference to arbitration has been entered into by the parties but the arbitrators have not so far functioned the Court has power to enforce to agreement against the parties where the arbitrators are ready and willing to act in terms of the reference. Para 17, far from implying an ouster of jurisdiction predicates that the arbitrators have the jurisdiction to act on the reference and the Court should step in and ask

provides that an application to file in Court an agreement to refer to arbitration shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and others or other of them as defendant or defendants. This provision does not convert the application into a suit for all purposes. When the law says that the application shall be numbered and registered as a suit it implies that it is not in fact a suit. If it were really a suit it must *proprio rigore* have all the attributes of a suit and it would be wholly redundant to enact that it shall be numbered and registered as a suit. It so be observed that the proceeding which commences with an application under para 17 is governed by the special procedure prescribed

1672=137  
regards the  
id as such  
11 Lah 470  
17 is not

a decree under order 34 rules 4 and 5 has therefore no application. A I R 1927 Sind 103=19 S L R 202=99 Ind Cas 178 Award is not valid unless concurred in by all the arbitrators. Court cannot change original agreement between parties to refer dispute to certain number of arbitrators and order that in case of disagreement opinion of the majority of arbitrators should prevail. A I R 1926 Mad 1183=55 M L J 440=24 L W 384=97 Ind Cas 814

All parties must consent to and sign reference to make it binding it is otherwise null and void even as to those who have executed it. Authority of arbitrator begins when all parties have executed the reference. 9 Bar L T 253=38 Ind Cas 377 Dispute regarding claim as *mufavalli* to public trust can not be settled by arbitrators and should be decided by Court. 1 P L W 260=(1917) Pat 93=38 Ind Cas 295 Party in whose favour the award is made can sue for a decree in terms of award. Agreement to refer to arbitration can be filed when it is valid. Arbitrator can proceed with the reference even if one party refuses to submit. Once a valid reference has been made, clerical error as regards the date of the enquiry can not be taken advantage of by a party. 12 P R 1917=39 Ind Cas 349 Application relating to partition of revenue paying land, to fill agreement to refer can not be entertained by Civil Court. 91 P L R 1917=165 P W R 1917=42 Ind Cas 261 To submission to which the Arbitration Act applies clauses of this schedule are not applicable. A I R 1926 Cal 730=43 C L J 292=94 Ind Cas 177 Agreement to refer disputes in pending suit cannot be filed under

para 17 of the schedule II Nor can such disputes be referred under para 17 in conjunction with other disputes A I R 1926 Sind 5=89 Ind Cas 335, but see 4 O L J 131=40 Ind Cas 38 Application presented under para (i) though it has to be numbered and registered as a suit is not a suit A I R 1921 Pat 161=2 Pat L T 277=6 Pat L J 287=61 Ind Cas 390, see also A I R 1924 Sind 23=17 S L R 178=83 Ind Cas 598

to obtain an order of reference under para 17 Sch II C P Code. 44A 523=A I R Cas 739, see also A I R 1921 All 188=19

cannot refuse to make reference to arbitrator It can exercise discretion only when parties cannot agree. A I R 1921 Pat 161=2 Pat L T 277=6 Pat L J 287=(1921) Pat 170=61 Ind Cas 390 On first order of arbitration proving abortive Court cannot make another order of reference without consent of parties A I R 1921 Pat 161=2 Pat L T 277=6 Pat L J 287=1921 Pat 170=61 Ind Cas 390 Parties accepting Court's decision to refer and appearing and prosecuting case before arbitration cannot afterwards challenge award on ground of want of jurisdiction in tribunal chosen by themselves 42 A 661=18 A L J 644=59 Ind Cas 801 Muhammadan mother is not competent to agree to arbitration regarding minors properly though a *de facto* guardian 26 C W N 246=47 C 713=57 Ind Cas 945 Party entering into agreement to refer under misconception as to authority of mother of minors who are among the other party is entitled to withdraw from agreement if it is found that mother has no authority to enter in such agreement A I R 1921 Cal 818=26 C W N 246 Death of some arbitrators before agreement is made rule of Court renders agreement inoperative and it cannot be filed in Court 71 P R 1918=44 Ind Cas 866, see also 42 Ind Cas 911=11 Bur L T 160 But where there is distinct provision that party selecting arbitrators would be competent to appoint another in case of disability resignation or death of arbitrator agreement is rendered void by resignation of one of them nor is it sufficient to justify refusal to file it in Court 3 Lab 276, see also 51 Ind Cas 636=155 P W R 1919=55 P W R 1919 Agreement to refer is cancelled by conduct of parties coupled with long and unexplained delay of six years and it cannot be filed 54 Ind Cas 126 Party induced to refer by misrepresentation is at liberty to revoke reference and such

637 Schedule II, para 20 for filing one which has as para 17 applies 90 may to the rule shows and not mandatory A

I R 1931 Oudh 127=8 O W N 71=14 O L J 181=131 Ind Cas 443 There is no authority for holding that ss 16 to 20 of the Code are not to be considered in determining which Court had jurisdiction in the matter to which agreement relates for the purpose of para 17 of the Second Schedule 32 P L R 464=132 33 Lah 18 If in a the court cannot The court has no one who is dead 1931 Mad 28=60

M L J 676=129 Ind Cas 638=54 M 469=1930 M W N 1028

Sub para called upon him to show silent and to when going The para

award is completed 143 Ind Cas 635=A

I R 1933 Sind. 68

Sub para (4)—It is not open to a party to an agreement of reference to revoke the submission to arbitration except for good cause The words 'sufficient cause'

should not be confined within the narrow compass of the fraud, coercion, and undue influence. There are other causes besides these, which may be sufficient for the reversal of an order under Sch II, para 17 C P Code. A I R 1933 Sind 449=A I R 1933 Sind 68=143 Ind Cas 635. The death of the parties may itself be enough to bring their agreement to re- 933  
Sind 449. When good cause is shown, see  
A I R 1933 Rang 331. As regard side  
A I R 1933 Lah 18. Where plaintiff of  
reference nearly three years after its in  
the meanwhile to get it carried into effect be  
considered to have lapsed and the Court art  
33 Bom L R 1022=A I R 1931 Bom 529=134 Ind Cas 733, but see A I R  
1933 Lah 18. Agreement referred the dispute between the parties to two persons  
and in case of difference between the arbitrators an umpire was appointed to give  
the final decision. On one of the arbitrators refusing to act the Court appointed  
the umpire as the sole arbitrator. Objection being taken to such appointment held  
that (1) Sch II para 17 (4) was not intended to meet the case of an arbitrator  
named in the agreement refusing to act. Para 5 of the Schedule being  
expressly framed to meet cases of that kind, (2) that the Court had  
no power under Sch II, para 17 (4) to appoint the umpire sole arbitrator  
inasmuch as the appointment was not in accordance with the provisions of the  
agreement and it could not be said that there was no such provision in the  
agreement for the appointment of the arbitrators. 33 Bom L R 1022=A I R  
1931 Bom 529 134 Ind Cas 733. If sole arbitrator dies Court can appoint a  
new arbitrator if that be the intention of the parties. A I R 1933 Lah 18,  
see also A I R 1934 Oudh 67.

### 18 Where any party to any agreement to refer to arbitration, or any

Stay of suit where there is an agreement to refer to arbitration

person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party

to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit, and the Court if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration and that the applicant was at the time when the suit was instituted and still remains ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the suit.

Scope.—Where parties refer disputes to arbitration but subsequently one of them files suit in respect of that dispute the arbitrators lose their authority. Defendant still desiring arbitration must obtain stay of the suit under para 18. On refusal to stay the remedy by arbitration ceases to be available. If the suit is stayed and the arbitrators have not yet made an award they are free to bring their proceedings to a termination and make an award in accordance with law. If they have made an award after the institution of the suit, the award can not be pleaded as bar to the suit. The award so made should be brought up before the court under para 20, the court will refuse to enforce it under para 21 read with para 14 (c), and as the award will thus stand cancelled because without jurisdiction, the arbitrators will be left free thereafter to resume their proceedings on the basis of the original reference. A I R 1923 Cal 135=35 C L J 482=26 C W N 967=69 Ind Cas 863, see also A I R 1933 Lah 669. Stay should be granted unless plaintiff shows absence of sufficient reason. 3 U P L R Lah 48=61 Ind Cas 322. Burden of showing reason against stay is on plaintiff and not on defendant. A I R 1922 Lah 97=2 Lah 19=3 Lah L J 61=69 P L R 621=60 Ind Cas 776. Stay of suit can be removed if arbitrator refuses to act. 23 Bom L R 511=45 B 1181=64 Ind Cas 289. Where there is suit by a party against other subsequent to the reference, if the later party deliberately has  
have waived right to it  
20 A L J 128=65 Ind  
under para 18 or s 19 of

A. I R. 1926 Sind 86=95 Ind Cas 481. Schedule II is applicable to the Bombay Court of Small Causes and therefore stay of suit can be ordered under para 18, Sch

III 19.3 Bom 275=52 B 470=30 Bom L R 661 In order to entitle a party to a stay order the subject before the arbitrators and the Court must be the same. A I R of . . . . .  
But . . . . .  
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ma  
sede the arbitration and render award unenforceable. A I R 1922 Oudh 158=25 O C 63=68 Ind Cas 235 The existence of the award is a complete bar to the suit. 3 U B R (19.0) 210=57 Ind Cas 891 But an agreement to refer is not bar to a suit but Court has discretion to stay suit. 46 C 1041 =23 C W N 716=29 C  
proceedings should be stayed if  
suit. 22 C W N 535=46 Ind Cas  
stay order  
to refer it or  
is no within  
refusing to stay proceedings when the main subject of the action is within the arbitration clause in such a case the claim may be split up. 35 C W N 514 =38 C 1107=134 Ind Cas 529=53 C L J 321=A I R 1931 Cal 772

## 19 [S. 524]

Provisions applic  
proceedings under para  
graph 17

. . . . . consistent with  
graph 17, shall  
under the order  
of reference made by the Court under that  
paragraph and to the award and to the decree

following thereon

Notes—The words so far as they are consistent with any agreement so filed do not mean that the agreement must contain in every case an express provision as to what ought to be done if any arbitrator is unwilling to act in order that the judge may act in conformity to it and that para 5 has otherwise no application. The reasonable construction is that the action of the Judge under para 5 should not be inconsistent with the agreement, if it contains any special provision on the subject. 17 M 493 The Court is competent to set aside award on the ground of misconduct. 6 M 368 No appeal lies against an order passed under this para setting aside an award. 8 S L R 260

*Arbitration without the intervention of a Court.*

## 20. [S 525] (1) Where any matter has been referred to arbitration

Filing award in matter without the intervention of a Court, and an award  
referred to arbitration with has been made thereon, any person interested  
out intervention of Court in the award may apply to any Court having  
jurisdiction over the subject matter of the  
award that the award be filed in Court

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as a plaintiff and the other parties as defendants

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed

Scope—This para enables parties who have agreed to refer their differences to arbitration and have obtained an award to file the award in Court. 27 A 53=1 A L J 398 Upon an application the Court has jurisdiction to and is bound to enquire whether the parties had or had not referred the matter in question to arbitration. 1906 126=28 A 621 The Court has full power to set aside an award if the validity of the cause showing against the filing of the award is proved. This para does not lay down that no award shall be binding upon the parties if it is not filed in Court. 9 C 597 In them to bar a regular suit in Court. This para is purely a device to avail themselves of a decree of a Court for suit

should not be confined within the narrow compass of the fraud, coercion, and undue influence. There are other causes besides these, which may be sufficient for the reversal of an order under Sch II, para 17 C P Code. A L R 1933 Sind 449=A I R 1933 Sind 68=143 Ind Cts 635. The death of the parties may itself be

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plaintiff seeks to file in Court an agreement of

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considered to have lapsed and the Co.

33 Bom L R 1022=A I R 1931 Bom 529=134 Ind Cas 733, but see A I R 1933 Lah 18. Agreement referred the dispute between the parties to two persons and in case of difference between the arbitrators an umpire was appointed to give the final decision. On one of the arbitrator's refusing to act the Court appointed the umpire as the sole arbitrator. Objection being taken to such appointment held that (1) Sch II para 17 (4) was not intended to meet the case of an arbitrator named in the agreement refusing to act. Para 5 of the Schedule being expressly framed to meet cases of that kind, (2) that the Court had no power under Sch II, para 17 (4) to appoint the umpire sole arbitrator inasmuch as the appointment was not in accordance with the provisions of the agreement and it could not be said that there was no such provision in the agreement for the appointment of the arbitrators. 33 Bom L R 1022=A I R 1931 Bom 529=134 Ind Cts 733. If sole arbitrator dies Court can appoint a new arbitrator if that be the intention of the parties. A I R 1933 Lah 18, see also A I R 1934 Oudh 67.

# 18 Where any party to any agreement to refer to arbitration, or any

Stay of suit where there is an agreement to refer to arbitration

person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party

to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit and the Court if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration and that the applicant was at the time when the suit was instituted and still remains ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the suit.

Scope.—Where parties refer dispute to arbitration but subsequently one of them files suit in respect of that dispute the arbitrators lose their authority. Defendant still desiring arbitration must obviatory of the suit under para 18. On refusal to stay the remedy by arbitration ceases to be available. If the suit is stayed and the arbitrators have not yet made an award they are free to bring their proceedings to a termination and make an award in accordance with law. If they have made an award after the institution of the suit, the award can not be pleaded as bar to the suit. The award so made should be brought up before the court under para 20, the court will refuse to enforce it under para 21 read with para 14 (c), and as the award will thus stand cancelled because without jurisdiction the arbitrators will be left free thereafter.

1923 Cal 1

1931 Lah

reason 3

stay is on plaintiff and not on defendant. A I R 1922 Lah 97=2 Lah 19=3 Lah L J 61=69 P L R 621=60 Ind Cts 776. Stay of suit can be removed if arbitrator refuses to act. 23 Bom L R 511=45 B 1181=64 Ind Cas 289. Where there is suit by a party against other subsequent to the reference, if the later party deliberately has

have waived right to a

20 A L J 128=65 Ind

under para 18 or s 19 of

A I R 1926 Sind 86=95 Ind Cts 481. Schedule II is applicable to the Bombay Court of Small Causes and therefore stay of suit can be ordered under para 18, Sch

III 19.8 Bom 275=52 B 420=30 Bom L R 661 In order to entitle a party to a stay order the subject before the arbitrators and the Court must be the same A I R 1927 Lah 4  
of superseding  
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sede the arbit

O C. 63=68 Ind Cas 235 The existence of the award is a complete bar to the suit 3 U B R (1920) 210=57 Ind Cas 894 But an agreement to refer is not bar to a suit but Court has discretion to stay suit 46 C 1041 =23 C W N 716=29 C L J 399=51 Ind Cas 80 Arbitration proceeding should be stayed if agreement to refer is challenged in separate suit 22 C W N 535=46 Ind Cas 173 Refusal by one arbitrator to act vacates stay order 23 C W N 293=50 Ind Cas 879 Where parties have agreed to refer their disputes to arbitration, the fact that a small portion of the relief claimed is not within the scope of the arbitration clause is not itself sufficient reason for refusing to stay proceedings when the main subject of the action is within the arbitration clause in such a case the claim may be split up 35 C W N 514 =58 C 1107=154 Ind Cas 529=53 C L J 321=A I R 1931 Cal 772

### 19 [S 524]

Provisions applic  
proceedings under para of reference made by the Court under that paragraph, and to the award and to the decree following thereon

Notes—The words so far as they are consistent with any agreement so filed do not mean that the agreement must contain in every case an express provision as to what ought to be done if any arbitrator is unwilling to act in order that the judge may act in conformity to it and that para 5 has otherwise no application The reasonable construction is that the action of the Judge under para 5 should not be inconsistent with the agreement if it contains any special provision on the subject 17 M 498 The Court is competent to set aside award on the ground of misconduct 6 M 368 No appeal lies against an order passed under this para setting aside an award 8 S L R 260

### *Arbitration without the intervention of a Court*

### 20. [S 525] (1) Where any matter has been referred to arbitration

Filing award in matter without the intervention of a Court, and an award referred to arbitration with has been made thereon, any person interested out intervention of Court in the award may app'y to any Court having jurisdiction over the subject matter of the award that the award be filed in Court

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as a plaintiff and the other parties as defendants

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed

Scope—This para enables parties who have agreed to refer their differences to arbitration and have obtained an award to have that award filed in Court 27 A 53=1 A L J 398 Upon an application made to Court under this para the Court has jurisdiction to and is bound to enquire into the question whether the parties had or had not referred the matter in question to arbitration A W N 1906 126=28 A 621 The Court has full power to enter into the question of the validity of the cause showing against the filing in Court of an award 9 C 597

of a summary procedure for obtaining the sanction of a decree of a Court for such

arbitration award as have been made under a private agreement without the intervention of a Court of justice A W N 1884 148 Where an application is made under this para the jurisdiction of the Court, to order the award to be filed and to allow proceedings to be taken under it, is not taken away by a mere denial of the reference to arbitration, on an objection to the validity of the reference 29 C 278=6 C W N 235

An award which is provisional that is to say, which does not completely and once for all determine the dispute between the parties can not be filed under this para and it cannot be made rule of the court 6 A L J 467=2 Ind Cas 304 If a person objects to the filing of the award on the ground that there has been no reference to arbitration, the court has jurisdiction as to the genuineness and validity of the award 16 M L J 474; see also 7 Ind Cas 31 It is no part of the duty of court acting under this para to enter into the merits of the award 7 Ind Cas 333

22 C W N 66=27

court must determine

be valid or decide on

W R 1916=33 Ind

Cas 494 Proceedings under paras 20 and 21 are not proceedings in suit A I R 1921 Bom 389=45 B 329=59 Ind Cas 755 Award made after commencement of suit is invalid if it deals with question in controversy in suit A I R, 1922 Lah 369=3 Lah 295=69 Ind Cas 583 Award made prior to decision of suit can be recorded under r 3 order XXIII A I R 1921 Bom 310=45 B 245=59 Ind Cas 53 1 being reduced to writing R 1921=55 Ind Cas 845 has b 6 O L J 81=58 Ind Civil

Cas 193 Small Cause Court is not competent to file award which goes on to declare dissolution of marriage between parties 10 L W 57=51 Ind Cas 53 Civil Court is competent to file private award not partitioning agricultural land but only stating shares of parties 81 P W R 1918=79 P L R 1918=45 Ind Cas 166, 34 P L R 454=A I R 1933 Lah 732 Court's powers come to end when it decides either to file award or refuse to file it 5 O L J 471=47 Ind Cas 960 Rejection of petition to file award does not amount to decision that award is illegal 43 A 108=2 U P L R (All) 310 18 A L J 960=60 Ind Cas 626 Decision of arbitrators cannot be re-opened to point out mistake in account in the absence of fraud 38 M L J 247=27 M L T 242-(1020) M W N 270=11 L W 405=43 M 439=56 Ind Cas 358 Arbitrator's award must be final A I R 1928 Sind 144=108 Ind Cas 791 Court cannot go into the question of reasonableness of award if it is no ground of setting aside award A I R 1930 Lah 22=119 Ind Cas 726

Subject matter of award must be within the jurisdiction of Court entertaining application under para 20 A I R 1929 Lah 24=10 Lah L J 500=113 Ind Cas 899, see also A I R 1931 Sind 47=131 Ind Cas 182, A I R 1933 All 151=144 Ind Cas 701, 55 A 542 Award relating to caste question for which no suit lies cannot be enforced A I R 1929 Sind 1=23 S L R 297=111 Ind Cas 425 This para does not apply to arbitration pending suit A I R 1927 Bom 565=51 B 908=29 Bom L R 1254=105 Ind Cas 516 Decree on invalid award is nullity and cannot be executed A I R 1930 Rang 337=8 Rang 544=129 Ind Cas 519 Award accepted and signed by parties should be filed A I R 1930 Lah 860=31 P L R 225=127 Ind Cas 705 Agreement to refer entered into after decree and before filing appeal is not in pending suit. A I R 1930 Oudh 433=7 O W N 815=128 Ind Cas 748 Effect of signing award in arbitration pending suit must be considered A I R 1930 Lah 860=127 Ind Cas 705

Section 10 does not apply to application under para 20 as not being a suit A I R 1929 Lah 533=30 P L R 395=117 Ind Cas 94 Filing of award is not necessary to make it valid A I R 1927 All 733=100 Ind Cas 762 Arbitration Act does not require judgment and decree on award to make it executable as under para 20 A I R 1926 Cal 562=31 C W N 517=45 C L J 597=102 Ind Cas 108, see also A I R 1928 Mid 107=39 M L T 567 Award on reference to arbitration pending suit though not enforceable under para 20 is so under Order XXIII, rule 3 as adjustment A I R 1928 Nag 173=24 N L R 55=107 Ind Cas 525; see also A I R 1926 Nag 405=23 N L R 100=9 N L J 97=95 Ind Cas 89, A I R 1926 All 50=48 A 475=24 A L J 480=75 Ind Cas 419



Umpire has no *locus standi* and he can not apply to file award A I R 1922 Oudh 26-9 O L J 410=26 O C 1=69 Ind Cas 714 Secretary usurping power of association is not competent to file award A I R 1929 Lah 826=11 Lah L J 366=123 Ind Cas 871, an application under para 20 when numbered and registered becomes a suit for purposes of Order XXXVIII A I R 1927 Bom 259=29 Bom L R 342 For the purpose of Order IX, rule 13, proceedings under para 20 are suits A I R 1928 Mad 969=29 L W 490=112 Ind Cas 691 Separable portion of award in excess of authority can be expunged A I R 1929 Sind 200=119 Ind Cas 529 Award can be requested to be filed in part A I R 1929 Bom 193=31 Bom L R 349=117 Ind Cas 523 Pendency of probate proceedings does not affect validity of arbitration in respect of the same estate A I R 1923 Bom 365=25 Bom L R 437 Before filing award court must satisfy itself about existence of dispute

4 Pat 670=7 P L T 644=93 Ind Cas 261 Court can decide about fact of reference and existence of dispute A I R 1926 Lah 91=7 Lah L J 603=92 Ind Cas 705 Where award related not to property but family questions reference of the members beyond the jurisdiction of court filing award, whole proceeding is vitiated A I R 1924 P C 95=7 N L J 62=(1924) M W N 79=34 M I T 62=19 L W 549=20 N L R 33=51 A 72=22 A L J 386=51 C 361=46 M L J 628=26 Bom L R 56=28 C W N 77 (P C)=83 Ind Cas 531 Institution of a suit deprives private arbitrators of their jurisdiction Their knowledge is not essential A I R 1928 Mad 371=111 Ind Cas 555 Award on private reference cannot be corrected It must either be filed or rescinded A I R 1926 Lah 370=7 Lah L J 473=76 P L R 706=83 Ind Cas 161 Absence of application under para 20 is no bar to suit to enforce award A I R 1925 Bom 418=27 Bom L R 652 89 Ind Cas 68 The power given by para 20 to any person interested to apply to a court is not to be understood as overriding the general power given to parties under order XXIII rule 3 to a just their disputes A I R 1925 Mad 50=76 Ind Cas 502 Para 20 of the second schedule prohibits only an adjudication of the same matter by two different tribunals of co-ordinate jurisdiction A I R 1933 Pesh 18=141 Ind Cas 83 Where the reference to arbitration was made during the pendency of the suits in which the matters were *sub judice* but without the intervention of the courts concerned, the award cannot be filed under para 20 34 P L R 310=A I R 1933 Lah 746=142 Ind Cas 195 There is no provision in the Land Revenue Act or in the C P Code which would give a court hearing cases under the Land Revenue Act jurisdiction to entertain an application under para 20 14 L R 35 (Rev)=17 R D 36 Where the dispute is regarding money obtained by bribes taken dishonestly from public award thereon cannot be filed in court nor decree can be passed thereon A I R 1934 All 493 Subsequent suit not barred by application to file award under Schedule II para 20 A I R 1934

force award by

\* d 68 Where

joined the award

for filing arbitration award, where arbitration is without intervention of court in representative action, two separate notices under order 1, rule 8 and Sch II, para 20 (3) are not necessary A I R 1934 Bom 6 The rejection of an application to have an award filed in court is no bar to a regular suit to enforce the rights created by the award 55 M 689=139 Ind Cas 877=1931 M W N 234=

Mad 462=62 M L J 550 The court to

be under para 20 Schedule II should be one

whole subject matter of the award 55 M 689

=130 Ind Cas 877=1932 M W N 234=35 L W 565=A I R 1932 Mad 462=

62 M L J 550 There is nothing illegal in two or more persons agreeing to refer

future disputes to arbitration in pending suit 137 Ind Cas 807=38 P L R

934=A I R 1932 Lah 459 In the case of a decree passed by a British Indian

Court in terms of an award where the subject matter of the award is partly in

Burma partly in Madras and partly in French territories and the case being one of

partition it is impracticable to regard partition affecting properties in British India

as valid without bringing into consideration the affecting properties in the French

territories, the decree is without jurisdiction as regards both the property over

which the Court has jurisdiction and that over which the Court has no jurisdiction.

A I R 1931 Rang 252=9 Rang 480 (F B), see also 25 S I R 204=131 Ind Cas 182 The parties consenting to an award cannot be allowed to object to its being filed on the ground that the award is partial and incomplete 32 P L R 754

**Appeal**—Where parties file petition for decree on award is modified by lawful compromise, no appeal lies from such decree A I R 1922 Oudh 189=9 O L J 219=25 O C 213=68 Ind C1s 209 *Ex parte* decree under para 20 is appealable A I R 1928 Mad 699=55 M L J 262=29 L W 490=112 Ind Cas 691 Order under para 20 can be appealed against even though passed along with the decree on the award A I R 1928 Mad 969=53 M L J 262=29 L W 490=112 Ind Cas 691

**Limitation**—Application under para 20 is not a suit for the purpose of s 6 Limitation Act A I R 1923 Rang 226=76 Ind Cas 493 Petition for filing award under para 20 beyond six months after date of award is time barred by Art 178 Sch I of Limitation Act 38 A 85=13 A L J 1115=31 Ind Cas 899

21 (x) [S 526] Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award

**Scope**—Court is not competent to go behind conditions in para 21 (1) in refusing filing of award (1916) 1 M W N 203=19 M L T 228=33 Ind Cas 67 Where award is partly valid, valid portion can be separated from bad one subsequently if parties ask for reconsideration 53 Ind Cas 992 Award is not illegal because of error in law A I R 1931 Oudh 6=7 O W N 1095=129 Ind Cas 322 gh it interferes with stranger's rights A I Ind Cas 70 Validity of award is all matters A I R 1928 Pat 7=6 matters outside reference cannot award need not be within 10 days after notice of filing award A I R 1928 Mad 371=111 Ind C1s 555 The Arbitration Act does not contain any provision for making a decree on an award such as is contained in Schedule II para 21 C P Code and if such a decree is made it is one without jurisdiction and therefore a nullity 60 I A 71=60 C 670=142 Ind C1s 324=35 Bom L R 327=57 C L J 143=1933 A L J 343=1933 M W N 178=37 C W N 401=A I R 1933 P C 61=64 M L J 341 (P C)

When under para 21 the Court is satisfied that the matter in dispute has been referred to arbitration and that an award has been made thereon and that no grounds are mentioned or referred to in para 14 or para 15 exists the Court should in the first instance order that the award be filed and then pronounce judgment according to the award A decree should also be passed accordingly A I R 1933 All 166=1933 A L J 40

In case of uneven number of arbitrators parties are presumed to abide by the decisions of the majority unless other wise settled 42 B 669=19 Bom L R 618=41 Ind Cas 264 Oral award has same effect as award in writing 34 M L J 184=45 Ind C1s 813 In question of partition where all members of joint families are not parties, the award is illegal (1919) Pat 141=48 Ind C1s 953 A person who is a party to the award but not to the decree based on it cannot enforce the decree 6 O L J 322=52 Ind Cas 849 Validity of award is condition precedent before Court should enforce award 42 A 525=18 A L J 652=59 Ind Cas 75 Finality of award must be presumed by Court A I R 1928 Sind 144=108 Ind C1s 791 No suit lies to set aside an award 26 C W N 940=70 Ind C1s 985 Where one of the parties dies during award, award is binding on his legal representatives even though not substituted A I R 1922 Cal 226=26 C W N 804=70 Ind C1s 459 Arbitrators are empowered to decide existence of contract 24 C W N 567=59 Ind C1s 457 Where filing of award is rejected by Appellate Court suit can be brought to enforce award A I R, 1921 All 384=43 A 108=60 Ind C1s 626 Award may be modified by compromise and decree may be passed accord

ingly A I R 1921 Lah 34=2 Lah 114=3 Lah L J 349=73 P L R 1921=61

1931 Oudh 6=129 Ind Cas 322 A matter clearly outside the power of an arbitrator would render the award invalid unless portion is separable from the rest 1931 A L J, 1087 In case of awards made by arbitrators appointed without intervention of Court, no writing is required nor need they be signed by the arbitrators All that is required is (i) that the Court should be satisfied that the matter has been referred to arbitration on which an award has been made and (ii) that the award is not liable to be attacked on grounds set out in paras 14 or 15 of Schedule II 12 P L T 733 Subsequent oral agreement cannot modify the effect of written agreement to refer to arbitration 1931 A L J 1087

Appeal—Where the award is set aside it can not be appealed against on ground of fraud Remedy is by setting aside A I R 1927 Nag 111=118 Ind Cas 61 Where the award is set aside the award is reopened in appeal A I R 1918 Lah 4 or refusing to file an award order filing the A I R 1923 Rang 199=1 Rang 265=76 Ind Cas 504 see also 73 Ind Cas 820=A I R 1924 Lah 231, 60 Ind Cas 590 Appeal lies against one single order combining order directing an award and also decree on it A I R 1925 All 404=23 A L J, 440=47 A 743=88 Ind Cas 76 Order filing or refusing to file private award is not a decree A I R 1928 Lah 137=9 Lah 380=107 Ind Cas 756 Appeal lies against order refusing to set aside *ex parte* decree in accordance with the award 38 A 297=14 A L J 332=33 Ind Cas 80

Exclusion of certain words in the Specific Relief Act 1877

22 The last thirty seven words of section 21 of the Specific Relief Act 1877,\* shall not apply to any agreement to refer to arbitration or to any award, to which the provisions of this schedule apply

23 The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned

## APPENDIX TO SCHEDULE II

### No 1

#### APPLICATION FOR AN ORDER OF REFERENCE

(Title of suit)

- 1 This suit is instituted for *'state nature of claim'*
- 2 The matter in difference between the parties is *(state matter of difference)*
- 3 The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration
- 4 The applicants therefore apply for an order of reference

A B  
C D

Dated the            day of            19

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated

that the following matter in difference arising in this suit, namely —

the said determination to X and Y, or in case of their not agreeing then to the  
the said X and Y, who is hereby appointed to be umpire, and such arbitrators  
affix their seal and sign in writing on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
the said umpire is to  
he time during which  
have ceased

GIVEN under my hand and the seal of the Court, this                      day of                      19                      Judge

With this by it order dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, [state order of reference and facts, names, etc., of arbitrator], it is by consent ordered that Z be appointed in the place of Y (he was or as the case may be) to act as arbitrator, with the following arbitration under the said order, and it is ordered that the result of the said arbitrators be made on or before the \_\_\_\_\_ day of 19\_\_\_\_.

day of 19  
Judge

In the following list of names, the names of the persons who are members of the Court are indicated by an asterisk (\*).

[illegible]

But what is the value of the dollar?

re only better

Dated the            day of            19            )

In the matter of an application between I, B of and C D of —  
 Whereas in pursuance of an order of reference made by the Court of  
 the date of the day of 19, the following matter in difference  
 between I B and C D namely,

# 1. Introduction

Now we having duly considered the matter referred to us do hereby make our award as follows:—

We award

(1) that

(2) that

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ A

## THE THIRD SCHEDULE

### EXECUTION OF DECREES BY COLLECTORS

**Powers of Collector** 1 [S 321] Where the execution of a decree has been transferred to the Collector under section 68, he may—

- proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment debtor to raise the amount of the decree, or
- raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging the whole or any part of the property ordered to be sold, or
- sell the property ordered to be sold or so much thereof as may be necessary

**Notes**—Where a decree is sent to Collector for execution under s 68 he should let the land on premium so that the decretal amount may be raised. As regards the transferred decree the Civil Court is not competent to interfere. 35 Bom L R 61=A I R 1933 Bom 369. The Collector is to consider the proper mode in which a decree may be satisfied. 26 S L R 506=A I R 1933 Sind 112-142 Ind Cas 579. The Collector's power over property

the satisfaction of a decree of property under control of Cas 14. Sale with permission I R 1925 Nag 341=87 Ind

Cas 996. Executing authority is empowered to mortgage property for satisfying mortgage decree. A I R 1925 Bom 277=27 Bom L R 217=86 Ind Cas 846. When the Collector being unable to sell property returns the decree Civil Court can again return the decree for execution. 42 A 12=11 L W 384=24 C W N 394=

Ind Cas 487. Where the F C P Code any mortgage collector is inoperative and

void. 1931 A L J 400=A I R 1931 All 541=135 Ind Cas 568

2 [S 322] Where the execution of a decree, not being a decree order

**Procedure of Collector in special cases** ing the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided

3 [S. 322 A] (1) In any such case as is

Notice to be given to decree holders and to persons having claims on property. Collector shall comply within sixty days

and calling upon—

- every person holding a decree for the payment of money against the judgment debtor capable of execution by sale of his immoveable property and which such decree holder desires to have so

## No 2.

## ORDER OF REFERENCE

(Title of suit.)

UPON reading the application presented on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ it  
is ordered that the following matter in difference arising in this suit, namely, —

\_\_\_\_\_ be referred for determination to X and Y, or in case of their not agreeing then to the  
\_\_\_\_\_ ; and such arbitrators  
\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
\_\_\_\_\_ the said umpire is to  
\_\_\_\_\_ he time during which  
\_\_\_\_\_ have ceased

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
Judge

## No 3

## ORDER FOR APPOINTMENT OF NEW ARBITRATOR,

(Title of suit)

WHEREAS by an order, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ [state order  
of reference and death, refusal, etc., of arbitrator], it is by consent ordered that Z be  
appointed in the place of X (decease, or as the case may be) to act as arbitrator,  
with Y, the surviving arbitrator under the said order, and it is ordered that the  
award of the said arbitrators be made on or before the \_\_\_\_\_ day of 19 \_\_\_\_

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
Judge

## No 4

## SPECIAL CASE

(Title of suit)

In the matter of an arbitration between A B of \_\_\_\_\_ and C. D of \_\_\_\_\_  
the following special case is stated for the opinion of the Court —

[Here state the facts concisely in numbered paragraphs]

The questions of law for the opinion of the Court are .—

First, whether \_\_\_\_\_

Secondly, whether \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ X  
Y

## No. 5.

## AWARD.

(Title of suit)

In the matter of an arbitration between A, B, of \_\_\_\_\_ and C. D. of .—  
WHEREAS in pursuance of an order of reference made by the Court of  
and dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ the following matter in difference  
between A. B. and C. D. namely, \_\_\_\_\_

has been referred to us for determination ;

Now we, having duly considered the matter referred to us do hereby make award as follows :—

We award

(1) that —

(2) that —

Dated the

day of

19

X

V

## THE THIRD SCHEDULE.

### EXECUTION OF DECREES BY COLLECTORS.

Powers of Collector

1. [S. 321.] Where the execution of a decree has been transferred to the Collector

under section 68, he may—

- proceed as the Court would proceed when the sale of immovable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- raise the amount of the decree by letting in perpetuity, or for a term on payment of a premium, or by mortgaging, the whole or part of the property ordered to be sold, or
- sell the property ordered to be sold or so much thereof as may be necessary.

Notes.—Where a decree is sent to Collector for execution under s. 68, he should let the land on premium so that the debtful amount may be raised. As regards the transferred decree, the Civil Court is not competent to interfere. 35 Bom L R 761=A I R 1933 Bom 369. The Collector is to consider the proper mode in which a decree may be satisfied. 26 S L R 5 A I R 1933 Sind 112=142 Ind Cas 579. The Collector's power over property he has attached in execution of a decree terminates on the satisfaction of a decree. 15 N. L. J. 173=A L R 1933 Nag 26. Alienation of property under control of Collector is illegal. A. I. R. 1928 Nag 128=105 Ind Cas 14. Sale with permission of Collector is not tantamount to sale by Collector. A I R. 1925 Nag 341=87 Ind Cas. 996. Executing authority is empowered to mortgage property for satisfaction of mortgage decree. A. I. R. 1925 Bom 277=27 Bom L R 217=86 Ind Cas. When the Collector being unable to sell property under a decree, Civil Court

384=24 C W N. 36

d Cas 487. Where

P Code any mortg

by the judgment-debtor without the permission of the Collector is inoperative. 1931 A. L. J. 400=A. I. R. 1931 All 341=133 Ind Cas 368

2. [S. 322.] Where the execution of a decree, not being a decree ordering the sale of immovable property in satisfaction of which the Court

Procedure of Collector in special cases

has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided.

Notice to be given to decree holders and to persons having claims on property.

3. [S. 322 A.] (1) In any such case as referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance

and calling upon—

(a) i

7 again

15 ind

11 have

executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the collector a copy of the decree and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder,

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit, and where the address of any such decree holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

4 [S 322 B] (x) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry

(2) Where there is no dispute as to the fact or extent of the liability of the judgment debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction or transmit the case to a competent Court for disposal and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision

5 [S 322 C] The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4 draw up a statement specifying the circumstances of the judgment debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector

6 [S. 322 D] The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree

Effect of decision of Court as to dispute  
Scheme for liquidation of decrees for payment of money  
paragraph 5, the Collector may,—

7. [S 323.] (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4, or

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,



(d) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

(i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property, or

(ii) by mortgaging the whole or any part of such property, or

(iii) by selling part of such property,

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(v) partly by one of such modes, and partly by another or others of such modes

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government

Notes—Insolvency Court has jurisdiction to alienate insolvent's lands A I R 1929 Lah 66=29 P L R 605=117 Ind Cas 669

8 [S 324] Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered Recovery of balance (if any, after letting or management has not been realized, the Collector shall notify the fact in writing to the judgment debtor or his representatives in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property, and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly

9. [S 324 A] (1) The Collector shall, from time to time, render to the Collector to render accounts to Court Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such

executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the collector a copy of the decree and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder,

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit, and where the address of any such decree holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise

4 [S 322 B] (1) Upon the expiration of the said period, the Collector

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction

and for holding such inquiry as he may deem necessary for

nature and extent of such decrees and claims immoveable property, and may, from time to time inquire

(2) Where there is no dispute as to the fact or extent of the liability of the judgment debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose

(3) Where any such dispute arises the Collector shall refer the same, with a statement thereof and his own opinion thereon to the Court which made the original order for sale, and shall pending the reference stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction or transmit the case to a competent Court for disposal and the final decision shall be communicated to the Collector who shall then draw up a statement as above provided in accordance with such decision

5 [S 322 C] The Collector may instead of himself issuing the notices

Where District Court may issue notices and hold inquiry

and holding the inquiry required by paragraphs 3 and 4 draw up a statement specifying the circumstances of the judgment debtor and of

his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector

6 [S 322 D] The decision by the Court of any dispute arising under

Effect of decision of Court as to dispute

paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree

Scheme for liquidation of decrees for payment of money

7. [S 323.] (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4, or

paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property, or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

- (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property, or
- (ii) by mortgaging the whole or any part of such property, or
- (iii) by selling part of such property,
- (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or
- (v) partly by one of such modes, and partly by another or others of such modes

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government

Notes—Insolvency Court has jurisdiction to alienate insolvent's lands A I R 1929 Lah 66=29 P L R 605=117 Ind Cas 669

8 [S 324] Where, on the expiration of the letting or management Recovery of balance (if any, after letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment debtor or his representatives in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property, and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly

9. [S 324 A] (1) The Collector shall, from time to time, render to the Collector to render accounts to Court Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such

property or part, and, if the Collector so directs, the expense of any witnesses summoned by him

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of such member as the Court thinks fit; and
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
  - (i) in keeping down the interest on incumbrances on the property;
  - (ii) where the judgment debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
  - (iii) in discharging rateably the claims of the original decree-holder and any other decree holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment debtor or such other person as the Court directs

Notes—Revenue authority is competent to recover sale expenses A I R 1927 Bom 17=23 Bom L R 1191=99 Ind Cas 289 Sale expenses can not be deducted from poundage A I R 1926 Bom 335=28 Bom L R 590=96 Ind Cas 363 Where a decree relating to ancestral property is transferred to the collector for execution and the property is sold and the decree holder paid the amount for which execution is taken the collector has no power to dispose of the balance as he liked without intimation from the civil court 1931 A L J 1064=A I R 1931 All 700 133111 Cis 473

10 [S 325] Where the Collector sells any property under this section he shall put it up to public auction in one or more lots as he thinks fit and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit

11 [S 325 A] (1) So long as the Collector can exercise or perform in

Restrictions as to alienation by judgment debtor or his representative, and prosecution or remedies by decree holder

respect of the judgment debtor's immoveable property or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment debtor or his representative in interest shall be incompetent to mortgage, charge lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money

(2) During the same period no Civil Court shall issue any process of execution either against the judgment debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7

'3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree holder has been temporarily deprived

Scope—The property can be the subject of transfer with the permission

A L J 1522=A I R 1933 All 468  
Collector's proceedings, a mortgage  
144 Ind Cas 267=15 N L J 173,  
see also 1933 A L J 564=A I R 1933 All 908, 144 Ind Cas 373=1933 A L J,  
1822=A I R 1933 All 468, A I R 1933 Nag 238, A L R 1933 All 830 As  
alienation is illegal therefore payment of previous encumbrances does not create  
charge in favour of transferee A I R 1924 Oudh 302=27 O C 56=83 Ind Cas  
854, see also 48 Ind Cas 312=46 C 183=23 C W N 350 (P C) Alienation does  
not preclude transfer of future interest A I R 1927 Nag 177=100 Ind Cas 863  
Provisions of para 11 must be strictly construed A I R 1929 Oudh 441=6 O W N  
750=121 Ind Cas 888, 6 O W N 843=A I R 1929 Oudh 435 Collector's power  
over property comes to an end with satisfaction of decree A I R 1930 Nag 220=  
122 Ind Cas 571 Prohibition of sale in para 11 relates to money decree only and  
not to cases where sale of specific property is ordered A I R 1931 All 38=1930  
A L J 1594 Whilst the property is under Collector Civil Court is barred from  
issuing process against property A I R 1921 Oudh 176=8 O L J 358=66 Ind  
Cas 642. Collector's power do not terminate until sale is confirmed 16  
N L R 194=60 Ind Cas 510 When some property is under the Collector,  
the rest can be mortgaged A I R 1930 Nag 237=13 N L J 36=  
122 Ind Cas 569 Collector's written permission is essential if property  
to be gifted is under him A I R 1929 Oudh 435 6 O W N 843=124 Ind Cas  
354 Inference from correspondence about permission amounts to written permission  
A I R 1930 Oudh 510=7 O W N 938=150 Ind Cas 65 Leave by sale officer to  
deposit amount in satisfaction of money decree is not implied permission by Collector  
A I R 1929 Oudh 441=6 O W N 750=121 Ind Cas 888 Where property is under  
Collector under s 68, Court should not appoint Receiver to receive annual income A  
I R 1929 Oudh 448=12 O L J 146=2 O W N 73=87 Ind Cas 21 From the time  
of its order of transfer of decree the court ceases to have jurisdiction A I R 1926  
Nag 246=92 Ind Cas 44 Attachment before judgment is not void under para 11  
A I R 1922 Nag 238=68 Ind Cas 188 When payment of full amount with  
Collector's permission is made Collectors power over property attached immediately  
terminates Subsequent alienation is not therefore invalid though proceedings  
formally continue A I R 1934 Nag 33

12 [S. 325 B] Where the property of which the sale has been ordered

Provision where property is  
in several districts

is situate in more districts than one, the powers  
and duties conferred and imposed on the Collec  
tor by paragraphs 1 to 10 shall be exercised and

performed by such one of the Collectors of the said districts as the Local Gov  
ernment may by general rule or special order direct

Powers of Collector to com  
pel attendance and produc  
tion

13 [S 325 C] In exercising the powers  
conferred on him by paragraphs 1 to 10 the Col  
lector shall have the powers of a civil court to  
compel the attendance of parties and witnesses  
and the production of documents.

## THE FOURTH SCHEDULE

(See section 155)

ENACTMENTS AMENDED.

| 1    | 2   | 3                        | 4                                                                                                                                                                                                                                    |
|------|-----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Year | No  | Short title              | Amendment                                                                                                                                                                                                                            |
| 1870 | VII | The Court fees Act, 1870 | 11<br><br>words 'or of<br>From article<br>an order re'<br>For the ent<br>relating to<br>substituted, namely —<br>'Agreement in writing stating a question for the<br>opinion of the Code under the code of Civil<br>Procedure, 1908" |

## THE FIFTH SCHEDULE

[Enactment repealed] Repealed by s 3 and Schedule II of the  
Second Repealing and Amending Act, 1914 (XVII of 1914),

## APPENDIX I

Rules made by the High Court of Allahabad under S 122

### ORDER IV

#### Rule

1 (1) For rule 1 (1), substitute the following —

Every suit shall be institute  
appoints in this behalf a plaintiff,  
mons upon each defendant until  
filing such copies

(2) "The court fee chargeable for such service shall be paid in the case of suits  
when the plaint is filed and in the case of all other proceedings when the process is  
applied for

and re number the present sub-rule (2) as sub-rule (3)

### ORDER V

#### Rule

2 Omit the words 'or, if so permitted, by a concise statement

Add the following rule 4 A —

"4A Except as otherwise provided, in every interlocutory proceeding and in every

Add the following as rule 25A —

"25A When the defendant resides in British India but outside the limits of the  
United Provinces of Agra and Oudh, the court may, in addition to, or in substitution  
for any other mode of service send the summons by post to the defendant at the  
place where he is residing or carrying on business. An acknowledgment purport  
to be signed by the defendant, or an endorsement by a postal servant that the defen

defendant refused service, may be deemed by the court issuing the summons to be *prima*

is employed in order that arrangements may be made for the performance of the duties of such person

*Illustration* If the Court sees fit to issue a summons to a *Kanungo* or *patwari* it shall inform the collector of the district, and if to a sub-registrar it shall inform the District Registrar to whom the Sub Registrar is subordinate—

Rule 28—The present rule 28 shall be numbered 28 (1) Add the following as rule 28 (2) —

the court may  
is serving  
scribed in

wherever

in which

of the defendant or all such information that it is in his power to give as may lead to the summons

Rule 29—In rule 29 sub rule (1), line 2 for the word and figures 'rule 28' read rule 28 (1)'

*Insert the following rules at the end of O 5 —*

31 An application for the issue of a summons for a party or a witness shall be made in the form prescribed for the purpose No other forms shall be received by the Court

32 Ordinarily every process except those that are to be served on Europeans shall be written in the Court vernacular But where a process is sent for execution to the Court of a district where a different language is in ordinary use it shall be written in English and shall be accompanied by a letter in English requesting its execution

In cases where the return of service is in a language different from that of the district from which it is issued it shall be accompanied by an English translation

# ORDER VII

Rule 9—In rule 9 a) for the semicolon after it in clause (1), substitute a full stop and delete the rest of this clause as well as clauses (2) and (3), and (b) Renumber clause (4) as clause (2) deleting the words or statements therein

following proviso — 'Provided that, written in a character other than the the procedure laid down in Order XIII, in that case the Court or its officer

need not examine or compare the copy with the original'

*Insert the following at the end of order VII*

19  
an addr  
or other  
subsequ  
nature





The person making the translation or transliteration shall give his name and address and verify that the translation or transliteration is correct. In case of a

13. When a document included in the list prescribed by rule 1, has been admitted in evidence, the Court shall, in addition to making the endorsement prescribed in rule 4

admitted as evidence

admitted as evidence

letter. When there are two or more parties defendants, the documents of the first party defendant may be marked A 1, B 1, C 1, etc., AA1, BB1, etc., and those of the second A2, B2, C2, etc., AA2, BB2, etc. When a number of documents of the same nature is admitted, as for example a series of receipts for rent, the whole series shall bear one figure or capital letter or letters and a small figure or a small letter shall be added to distinguish each paper of the series

#### ORDER XVI

1. The following proviso to be added to rule (1) —

"Provided that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to call any witness not named in a list, which must be filed in court before the hearing of evidence on his behalf has commenced without an order of the Judge made in writing and stating the reasons therefor."

2. (4) This rule shall not apply in cases in which Government is a party, in the case of witnesses who are Government servants whose salary exceeds Rs. 10 per mensem and who are summoned to give evidence in their public capacity at a court situated more than five miles from their head quarters.

8. For the words in line 1 under this order shall be served' read under this order may by leave of the court be served by the party or his agent, applying for the same, by personal service and failing such service shall be served'

22. (1) Save as provided in this rule and in rule 2, the court shall allow travelling and other expenses on the following scale —

(a) In the case of witnesses of the class of cultivators labourers and menials, six annas a day,

(b) In the case of witnesses of a better class, such as Zamindars traders pleaders, and persons of corresponding rank, from eight annas to two rupees a day as the Court may direct and

(c) In the case of witnesses of superior rank including officers of Government in receipt of a salary of less than Rs 200 a month, from three to five rupees a day

(2) If a witness demands any sum in excess of what has been paid to him such sum shall be allowed if he satisfies the court that he has actually and necessarily incurred the additional expense

#### Illustration

A Post Office employee summoned to give evidence is entitled to demand from the party, on whose behalf or at whose instance he is summoned the travelling and other expenses allowed to witnesses of the class or rank to which he belongs and in addition the sum for which he is liable as payment to the substitute officiating during his  
be certified  
present to it

(3) If a witness be detained for a longer period than one day the expenses of his detention shall be allowed at such rate, not usually exceeding that payable under

uses on a

23. In cases to which Government is a party, Government servants whose salary exceeds Rs. 10 per mensem and all police constables whatever their salary may be who are summoned to give evidence in their official capacity at a court situated more than five miles from their headquarters, shall be given a certificate of attendance by the Court in lieu of travelling and other expenses

20 An address for service local limits of the District Court District Court within which the plaintiff fails to file and address for service, he shall or his petition rejected by the court *suo motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served.

23 Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order III rule 5, unless the court directs service at the address for service given by the party.

24 A party who desires to change address shall file a verified petition, and record accordingly. Notice or such petition of the suit as the court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the court thinks fit.

25 Nothing in these rules shall prevent the court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so.

26 \* [Deleted]

#### ORDER VIII

Insert the following rules at the end of Order VIII —

he had not defended. In this respect the Court may act *suo motu* or on the application of any party for an order to such effect and the Court may make such order as it thinks just.

12 Rules 20 22 23 24 25 and 26 \* of Order VII shall apply, so far as may be to addresses for service filed under the preceding rule.

#### ORDER IX.

2 After the words in the fourth line, "for such service" insert the words "or that the plaintiff has failed to comply with the rules for filing the copy of the plaint for service on the defendant."

13 Add the following proviso —

"Provided also that no such decree shall be set aside merely on the ground of that the defendant of hearing in sufficient."

#### ORDER XIII

Insert the following rules at the end of Order XIII —

Vernacular or in English, which is g or (c) at any other time tendered

in the court vernacular but in characters other characters in use, it shall be accompanied by into the Persian or Nagri character

\* Rule 26 of VII has been deleted by Notification No. 4034/352-3(7) Vide Allahabad Gazette, Part II, p 511, dated 24th July 1926

The person making the translation or transliteration shall give his name and address and verify that the translation or transliteration is correct. In case of a document written in a script or language not known to the translator or to the person

admitted as evidence for a defendant, and shall initial every such serial number or letter. When there are two or more parties defendants, the documents of the first party defendant may be marked A 1, B 1, C 1, etc., AA1, BB1, etc., and those of the second A2, B2, C2, etc., AA2, BB2, etc. When a number of documents of the same nature is admitted as for example a series of receipts for rent, the whole series shall bear one figure or capital letter or letters and a small figure or a small letter shall be added to distinguish each paper of the series.

#### ORDER XVI

1. The following proviso to be added to rule (1) —

"Provided that no party who has been called by his witnesses shall be entitled to obtain process to enforce not previously issued or to filed in court before the court has made out an order of the Judge making the same."

2. (4) This rule shall not apply to the case of witnesses who are Government servants and who are summoned at a distance more than five miles from their head quarters.

3. For the words in line 1 under this order shall be served" read "under this order may by leave of the court be served by the party or his agent, applying for the same, by personal service and filing such service shall be served."

22. (1) Save as provided in this rule and in rule 2, the court shall allow travelling and other expenses on the following scale —

- (a) In the case of witnesses of the class of cultivators, labourers and menials, six annas a day,
- (b) In the case of witnesses of a better class, such as Zamindars traders, pleaders, and persons of corresponding rank, from eight annas to two rupees a day as the Court may direct and
- (c) In the case of witnesses of superior rank including officers of Government in receipt of a salary of less than Rs 200 a month, from three to

to him such and necessarily

#### Illustration

A Post Office employee summoned to give evidence is entitled to demand from the party, on whose behalf or at whose other expenses allowed to witnesses addition the sum for which he is during his absence from duty. The be certified by the official superior of the witness on a slip, which the witness will

23. In cases to which Government is a party, Government servants whose salary exceeds Rs 10 per mensem and all police constables whatever their salary may be who are summoned to give evidence in their official capacity at a court situated more than five miles from their headquarters, shall be given a certificate of attendance by the Court in lieu of travelling and other expenses.

## ORDER XVII

1 (2) *Add* the following further proviso —  
 "Provide further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order XVI, rule 1."

*Add* to rule 2 :—

"Where on any such day the evidence, of any party has been recorded and such pa discretion proceed with the case as if such it on its merits

*Explanation*—No party shall be deemed to have failed to appear if he is either present or is represented in Court by an agent or pleader, though engaged only for the purpose of making an application.

*Amend* rule 3 :—

"Where any party to a suit to whom time has been granted, fails, without reasonable excuse to produce his evidence, or to cause the attendance of his witnesses, or to comply with to the further progress whether such party is pres

## ORDER XVIII

*Insert* the following rules at the end of Order XVIII .—

19 (1) The Judge shall record in his own hand in English all orders passed on applications other than orders of a purely routine character

lish all admissions and show how all documents if presentation down to

(3) The Judge shall record the issues in his own hand in English, and the issues shall be signed by the Judge and shall form part of the English proceedings

## ORDER XIX

*Insert* the following rules at the end of Order XIX —

4 Affidavit shall be entitled in the court of at (naming such court) If the affidavit be in support of, or in opposition to, an application respecting any case in the court it shall also be entitled in such case If there be no such case, it shall be entitled *In the matter of the petition of*

5 Affidavits shall be divided into paragraphs, and every paragraph shall be numbered consecutively and as nearly as may be, shall be confined to a distinct portion of the subject

6 as shal manner contain his rank or degree in life, his profession, calling, occupation or trade, and the true place of his residence, it shall

7. Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to Two or more persons may join in an affidavit. each shall depose separately to those facts which are within his own knowledge and such facts shall be stated in separate paragraphs

8. When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively, using the words "I affirm" or "I make oath and say"

9. affidavits shall strictly be confined to such own knowledge to prove In interlocutory fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed", and if such be the case "and verily believe it to be true", and shall state the name and address of, and, sufficiently describe for the purposes of identification the person or persons from whom he received such in-

facts disclosed  
Justice or other  
were produced,  
such document

10 When any place is referred to in an affidavit it shall be correctly described. When in an affidavit any person is referred to such person the correct name and address of such person and such further description as may be sufficient for the purpose of the identification of such person shall be given in the affidavit.

11 Every person making an affidavit for personally known to the person before whom the that person by some one known to him and the made shall state at the foot of the affidavit the name address, and description of him by whom the identification was made as well as the time and place of such identification.

11A. Such identification may be made by a person—

(a) Personally acquainted with the person to be identified or

(b) Satisfied from papers in that person's possession or otherwise, of his identity

affi  
dec

#### Form

I (name address and description) declare that the person verifying this petition (or making this affidavit) and alleging himself to be A B has satisfied me (here state by what means e.g. from papers in his possession or otherwise) that he is A B

12 No verification of a petition and no affidavit purporting to have been made filed before the person used unless she has been petition or affidavit be made at the time by the

person who identified her

13 The person before whom any affidavit is about to be made shall before the

is about to be made shall read and explain or cause some other competent person to read and explain in his presence the affidavit to the person proposing to make the same and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof the affidavit may be made

in trial any exhibits referred to in the affidavit

15 If it be found necessary to correct any clerical error in any affidavit such correction may about to be made made shall be made in such word or words figure or figures in respect of which the correction may have been made

#### ORDER XX

Insert the following at the end of Order XX —

21 (1) Every decree and order as defined in section 2, other than a decree or order of a Court of Small Causes or of a Court in the exercise of the jurisdiction of a Court of Small Causes shall be drawn up in the Court vernacular. As soon as such decree or order has been drawn up and before it is signed the Munsarim shall cause

## ORDER XVII

1 (2) *Add* the following further proviso —

"Provide<sup>d</sup> further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order XVI, rule 1."

*Add* to rule 2 :—

"Where on any such day the evidence, of any party has been recorded and such par discretion proceed with the case as if such party were present, it on its merits

*Explanation*—No party shall be deemed to have failed to appear if he is either present or is represented in Court by an agent or pleader, though engaged only for the purpose of making an application

*Amend* rule 3 —

"Where any party to a suit to whom time has been granted, fails, without reasonable excuse to produce his evidence, or to cause the attendance of his witnesses, or to comply with any previous order, or to perform any other act, necessary to the further progress of the suit for which time has been allowed, the court may, whether such party is present or not, proceed to decide the suit on the merits"

## ORDER XVIII

*Insert* the following rules at the end of Order XVIII —

19 (1) The Judge shall record in his own hand in English all orders pass on applications other than orders of a purely routine character

(2) The Judge shall record in his own hand in English all admissions and denials of documents, and the English proceedings shall show how all documents tendered in evidence have been dealt with from the date of presentation down to the final order admitting them in evidence or rejecting them

(3) The Judge shall record the issues in his own hand in English, and the issue shall be signed by the Judge and shall form part of the English proceedings

## ORDER XIX

*Insert* the following rules at the end of Order XIX —

4 Affidavit shall be entitled in the court of \_\_\_\_\_ at (naming such court) If the affidavit be in support of or in opposition to, an application respecting a case in the court it shall also be entitled in such case If there be no such case shall be entitled *In the matter of the petition of*

5 Affidavits shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as may be, shall be confined to a distinct portion of the subject

6 Every person making any affidavit shall be described therein in such manner as may be necessary for this purpose, it shall state his caste or religious persuasion, his place of his residence, his occupation or trade, and the true

7 Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to Two or more persons may join in a affidavit. Each shall depose separately to those facts which are within his own knowledge and such facts shall be stated in separate paragraphs

8 When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say"

9 Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge but is stated from information obtained from others, the declarant shall use the expression "I am informed", and if such be the case "and verily believe it to be true", and shall state the name and address of, and, sufficiently describe for the purposes of identification the person or persons from whom he received such in

formation. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of Justice or other source the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such document.

10. When any place is referred to in an affidavit, it shall be correctly described. When in an affidavit any person is referred to, and the address of such person, and such further information as may be necessary for the purpose of the identification of such person.

11. Every person making an affidavit for use in a Civil Court shall, if not personally known to the person before whom the affidavit is made, be identified to that person by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name and address, and description of him, by whom the identification was made as well as the time and place of such identification.

11A. Such identification may be made by a person—

(a) Personally acquainted with the person to be identified or

(b) Satisfied from papers in that person's possession or otherwise, of his identity,

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I (name address and description) declare that the person verifying this petition (or making this affidavit) and alleging himself to be A B has satisfied me (here state by what means e.g. from papers in his possession or otherwise) that he is A B

12. No verification of a petition and no affidavit purporting to have been made by a person shall be used unless the person before whom the affidavit is made, shall be satisfied that the person making the affidavit is the person who identified her.

13. The person before whom any affidavit is about to be made shall, before the affidavit is made, read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same, and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made.

14. The person before whom an affidavit is made, shall certify at the foot of the affidavit the fact of its making, the time and place of the making of the affidavit before him and the time and place when and where it was made, and shall for the purpose of identification mark and initial any exhibits referred to in the affidavit.

15. If it be found that any error or correction may be made in any affidavit, such error or correction may be made in such word or words, figure or figures, in respect of which the correction may be made.

#### ORDER XX

Insert the following at the end of Order XX —

21. (1) Every order of a Court of Small Causes or order of a Court of Small Causes

2, other than a decree or order of the Court of Small Causes, shall be filed in the Court of Small Causes.

## ORDER XVII

1 (2) *Add* the following further proviso —

Provide<sup>d</sup> further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order XVI rule 1.

*Add to rule 2 —*

'Where on any such day the evidence or a of any party has been recorded and such party fa discretion proceed with the case as if such party . . . , it on its merits

*Explanation*—No party shall be deemed to have failed to appear if he is either present or is represented in Court by an agent or pleader though engaged only for the purpose of making an application

*Amend rule 3 —*

Where any party to a suit to whom time has been granted, fails without reasonable excuse to produce his evidence, or to cause the attendance of his witnesses, or to comply with any previous order, or to perform any other act, necessary to the further progress of the suit for which time has been allowed, the court may, whether such party is present or not, proceed to decide the suit on the merits'

## ORDER XVIII

*Insert* the following rules at the end of Order XVIII —

19 (1) The Judge shall record in his own hand in English all orders passed on applications other than orders of a purely routine character

1 shall all admissions and  
show how all documents  
f presentation down to

(3) The Judge shall record the issues in his own hand in English and the issues shall be signed by the Judge and shall form part of the English proceedings

## ORDER XIX

*Insert* the following rules at the end of Order XIX —

4 Affidavit shall be entitled in the court of at (naming such court) If the affidavit be in support of or in opposition to an application respecting any case in the court it shall also be entitled in such case If there be no such case it shall be entitled *In the matter of the petition of*

5 Affidavits shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as may be shall be confined to a distinct portion of the subject

6 Every person making any affidavit shall be described therein in such manner necessary for this purpose, it shall his caste or religious persuasion, occupation or trade and the true place of his residence

7 Unless it be otherwise provided an affidavit may be made by any person having cognizance of the facts deposed to Two or more persons may join in an affidavit each shall depose separately to those facts which are within his own knowledge and such facts shall be stated in separate paragraphs

8 When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively using the words 'I affirm' or 'I make oath and say'

9. Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge but is stated from information obtained from others, the declarant shall use the expression 'I am informed', and if such be the case and verily believe it to be true', and shall state the name and address of and, sufficiently describe for the purposes of identification the person or persons from whom he received such in



formation. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of Justice or other source the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such document.

10. Where any place is referred to in an affidavit, it shall be correctly described. When in an affidavit any person is referred to, such person the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person shall be given in the affidavit.

made shall state at the foot of the affidavit the name, address, and description of him, by whom the identification was made as well as the time and place of such identification.

11A. Such identification may be made by a person—

(a) Personally acquainted with the person to be identified or

(b) Satisfied from papers in that person's possession or otherwise, of his identity,

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13. The person before whom any affidavit is about to be made shall before the same is made ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make

the same, and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made.

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15. If it be found necessary to correct a  
correction may be made in the  
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made shall be initialed by the person before whom the affidavit is made and shall be  
made in such manner as not to render it impossible or difficult to read the original  
word or words figure or figures in respect of which the correction may have been  
made

ORDER XX

Insert the following at the end of Order XX —

21. (1) Every decree and order as

a notice to be posted on the notice board stating the decree or order has been drawn up, and that any party or the pleader of any party may, within six working days from the date of such notice, peruse the draft decree or order and may sign it, or may file with the Munsarim an objection to it on the ground that there is in the judgment a verbal error or some accidental defect not affecting a material part of the case, or that such decree or order is at variance with the judgment or contains some clerical or arithmetical error. Such objection shall state clearly what is the error, defect, or variance alleged, and shall be signed and dated by the person making it.

(2) If any such objection be filed on or before the date specified in the notice the Munsarim shall enter the case in the earliest weekly list practicable, and shall, on the date fixed, put up the objection together with the record before the Judge who pronounced the judgment or, if such Judge has ceased to be the Judge of the Court before the Judge then presiding,

(3) If no objection has been filed on or before the date specified in the notice, if an objection has been filed and disallowed the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.

(4) If an objection has been duly filed and has been allowed, the correction or alteration directed by the judge shall be made. Every such correction or alteration in the judgment shall be made by the Judge in his own handwriting. A decree amended in accordance with the correction or alteration directed by the Judge shall be drawn up and the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8.

(5) When the Judge signs the decree he shall make an autograph note stating the date on which the decree was signed.

#### ORDER XXI

5 For the word *DisRICT* where it occurs *after* the words 'same' and 'different' *read* *Province*.

#### Rule 6

Rule 6 be *re-numbered* 6 (1) and the following sub-rule 6 (2) be *added* —

(2) Such copies and certificates may, at the request of the decree holder, be handed over to him or to such person as he appoints, in a sealed cover to be taken to the Court to which they are to be sent.

#### Rule 11

11 For clause (f) of sub-rule (2) of this rule *substitute* the following —

'(f) The date of the last application, if any.' And *add* the following proviso to sub-rule (2) —

'Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b) (c) and (d) need not be given in the application.'

#### Rule 17

Between the words 'been complied with' and 'the Court may' *insert* the words, 'and if the decree holder fails to remedy the defect within a time to be fixed by the Court'.

#### Rule 22

For the words 'one year' wherever they occur in this rule *read* the words 'three years'.

To sub-rule (2) of this rule shall be *added* the following proviso —

'Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment debtor has sustained substantial injury by reason of such omission.'

#### Rule 24 (3)

*After* the words at the end of the sub-rule "be executed" *add* the words 'and a day shall be specified on or before which it shall be returned to Court'.

25. 2) Substitute the following for paragraph (1) in rule 25 —

"Where the endorsement is to the effect that such officer is unable to execute the process, the Court may examine him personally or upon affidavit touching his alleged inability and may if it thinks fit, summon and examine witnesses to such inability and shall record the result."

#### Rule 26 (3)

For the words 'the Court may' *read* the words 'the Court shall, unless good cause to the contrary is shown'

#### Rule 29

After the words 'the person against whom the decree was passed,' *insert* the words "or any person whose interests are affected by the decree, or by any order made in execution thereof"

#### Rule 31 (2) *int* (3)

For the words wherever they occur in each sub-rule 'six months' *read* the words, 'three months or such extended time as the Court may for good cause direct'

#### Rule 32 (3)

For the words 'one year' *read* the words 'three months' and *after* the words at the end of the sub rule "on his application," *add* the words 'the Court may for good cause extend the time.'

#### Rule 39 (5)

Delete the words 'in the Civil Prison'

#### Rule 40 (5)

Add the following proviso —

"Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court before making the order of committal may leave the judgment debtor in the custody of an officer of the Court for specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period, if the decree be not soon satisfied. Where the Court sees fit to leave a judgment debtor in the custody of a

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subsistence of the judgment debtor and costs of conveyance, if any, and sum disbursed by the decree holder under this proviso shall be deemed to the costs of the suit"

#### Rule 53

In sub rule (1) (b) in the third line and in sub rule (4) in the eighth line, *after* the words 'to such other Court,' *add* the words "and to any other Court to which the decree has been transferred for execution"

And in sub rule (6) *for* the words, "after receipt of notice thereof" *read* the word 'after receipt of notice, or with the knowledge thereof'

#### Rule 54

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execution of which the original order was passed

(2) Where—

(a) The amount decreed (which shall include the amount of any decree passed against the same judgment debtor) notice of which has been sent to the sale officer under sub section (1), with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or,

(b) satisfaction of

judgment

sub-section (1), as contained in the

Court, or

(c) the decree (including any decree passed against the same judgment-debtor) notice of which has been sent to the sale officer under sub-section

(1), is set aside or reversed,

the attachment shall be deemed to be withdrawn and in the case of immoveable property, the withdrawal shall, if the judgment debtor so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule

#### Rule 58

*Add the following words to sub-rule (58) (2) —*

'(or objection) or may in its discretion make an order postponing the delivery of the property after the sale pending such investigation. And in no case shall the sale become absolute until the claim or objection has been decided'

#### Rule 68

*For the words 'fifteen days' read the words 'seven days'*

#### Rule 69(2)

*For the word 'seven' read the word 'fourteen,' and add the following proviso —*

Provided that the Court may dispense with the consent of any judgment debtor who has failed to attend in answer to a notice issued under rule 66,

#### Rule 72

In sub-rule (2) for the words with such permission read the words 'property sold,' and re number this sub rule '72' and delete sub rules (1) and (3)

#### Rule 89

In sub rule (1) of 'such sale' read the 'the judgment debtor,

#### Rule 90

*For the words 'Provided that no' read the words 'provided that—*

(a) no

and add the following proviso —

(b) no such application shall be entertained upon any ground which could have been taken by the applicant on or before the date on which the sale proclamation was drawn up

#### Rule 92

*In sub rule (1) after the words 'the Court shall,' insert the words 'subject to the provisions of rules 58 (2)'*

#### Rule 98

*After the words "at his instigation wherever they occur, add the words or on his behalf," and after the words at the end of the rule, "thirty days add the word*

(thirty days), and may order the person or persons whom it holds responsible for such resistance or obstructions to pay jointly or severally in addition to costs reasonable compensation to the decree holder for the delay and expense caused him in obtaining possession. The order to pay costs and compensations made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree'

#### Rule 99

*For the words in brackets '(other than the judgment debtor)' read the word in brackets, (other than the persons mentioned in rules 9, and 98 hereof*

*Insert the following rules at the end of Order XXI —*

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105 Every attachment of moveable property under rule 43, of Negotiable Instruments under rule 51 and of immoveable property under rule 54, shall be made through a Civil Court Amin, or bailiff, unless special reasons render necessary that any other agency should be employed, in which case those reasons shall be stated in the handwriting of the presiding Judge himself in the order for attachment.

106 When the property which it is sought to bring to sale is immoveable property within the definition of the same contained in the law for the time being in force relating to the registration of documents, the decree-holder shall file with his application a certificate from the sub-registrar within whose sub-district such property is situated, showing that the sub-registrar has searched his book Nos I and II and their indices for the past twelve years and stating the encumbrances, if any, which he has found on the property.

107 When an application is made for the sale of land or of any interest in land, the Court shall determine the question.

On the day so fixed, or on any date to which the enquiry may have been adjourned, the Court may take such evidence, by affidavit or otherwise, as it may deem necessary, and may also call for a report from the Collector of the district as to whether such land or any portion thereof is ancestral land.

After considering the evidence and the report, if any, the Court shall determine whether such land, or any, or what part of it is ancestral land.

The result of the enquiry shall be noted in an order made for the purpose by the presiding Judge in his own handwriting.

108 When the property which it is sought to bring to sale is revenue-paying land, the Court shall also determine whether it is liable to be sold, if so.

109 The certificate of the sub-registrar and the report of the Collector shall be open to the inspection of the parties or their pleaders, free of charge, between the time of the receipt by the Court and the declaration of the result of the enquiry.

No fees are payable in respect of the report by the Collector.

110 The result of the enquiry under rule 66 shall be noted in an order made.

111 If after proclamation of the intended sale has been made, any matter is brought to the notice of the Court which it considers material for purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale.

112 The costs of the proceedings under rules 66, 106 and 108 shall be paid in the first instance by the decree holder, but they shall be charged as part of the costs of the execution, unless the Court, for reasons to be specified in writing, shall consider that they shall either wholly or in part be omitted therefrom.

113 Whenever any Civil Court has sold, in execution of a decree or other order, any house or other building situated within the limits of a Military cantonment or station, it shall, as soon as the sale has been confirmed, forward to the commanding officer the information and for record in the that such sale has taken place, and property sold and of the name and

114 Whenever guns or other arms in respect of which licenses have to be taken by purchaser under the Indian Arms Act (Act No XI of 1878) are sold by public auction in execution of decrees by order of a civil Court the Court directing the sale shall give due notice to the magistrate of the district of the names and the addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Indian Arms Act

the Court, on receiving a report thereof from the proper officer may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

116 Livestock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment debtor on his furnishing security or in that of some landholder or other respectable person willing to undertake the responsibility of its custody and to produce it when required by the Court

117 If the custody of live-stock cannot be provided for in the manner described in the last preceding rule the animals attached shall be removed to the nearest pound established by the Government

(a)  
(b)  
(c)

committed to his custody, and shall give such attaching officer or subordinate a copy of the entry

under section 12 of Act No 1 of 1871

And the sum so levied shall be sent to the Treasury for credit to the Municipal or District Board as the case may be under whose jurisdiction the pound is All such sum shall be applied in the same manner as fines levied under section 12 of the said Cattle Trespass Act

119 The pound keeper shall take charge of feed and water animals attached and committed as aforesaid until they are withdrawn from his custody as hereinafter provided and he shall be entitled to be paid for their maintenance at such rates as may be from time to time prescribed under proper authority Such rates shall for animals specified in the section mentioned in the last preceding rule not exceed the rates for the time being fixed under section 5 of the same Act In any case, for special reasons to be recorded in writing the Court may require payment to be made for maintenance at higher rates than those prescribed

120 The charges herein authorized for the maintenance of live stock shall be paid to the pound keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody and thereafter for such further period as the Court may direct at the commencement of such period Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound keeper shall be refunded by him to the attaching officer

121 Animals attached and committed as aforesaid shall not be released from custody by the pound keeper except on the written order of the Court, or of the attaching officer, or of the officer appointed to conduct the sale, the person receiving the animals, on their being so released, shall sign a receipt for them in the register mentioned in rule 118

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123 With the permission of the Court the attaching officer may place one or more persons in special charge of such property.

124. The fee for the services of each such person shall be payable in the manner prescribed in rule 116. It shall not be less than four annas, and shall ordinarily not be more than six annas per diem. The Court may, at its discretion allow a higher fee, but if it do so, it shall state in writing its reasons for allowing an exceptional rate.

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126. When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be.

127. Fees paid into Court under the foregoing rules shall be entered in the Register of Petty Receipts and Repayments.

128. When any sum levied under rule 119 is remitted to the Treasury, it shall be accompanied by an order in triplicate (in the form given as form 9 of the Municipal Account Code), of which one part will be forwarded by the Treasury officials to the District or Municipal Board as the case may be. A note that the same has been paid into the Treasury as rent for the use of the pound, will be recorded on the extract from the pass book.

129. The cost place where it is a attaching officer funds the attach thereupon issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid.

130. Nothing in these rules shall be deemed to prevent the Court from issuing and serving on the judgment-debtor simultaneously the notices required by Order XXI, rules 22, 65 and 107.

#### *'Garnishee orders'*

"131. The Court may, in the case of any debt, due to the judgment debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a revenue Court), or any moveable property not in the issue a notice to any person (hereinafter called or to deliver or account for such moveable before the Court and show cause why he should not pay or deliver into the Court the debt due from or the property deliverable by him to such judgment debtor, in so much thereof as may be sufficient to satisfy the decree and the cost of execution.

132. If the garnishee does not forthwith or within such time as the Court may allow, pay or deliver into Court the amount due from or the property deliverable by him to the judgment debtor, or so much as may be sufficient to satisfy the decree and the cost of execution, and does not dispute his liability to pay such debt or deliver such moveable property, or if he does not appear in answer to the notice, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.

133. If the garnishee disputes his liability the Court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just.

114 Whenever guns or other arms in respect of which licenses have to be taken by purchaser under the Indian Arms Act (Act No XI of 1878) are sold by public auction in execution shall give due notice of the purchasers of such arms, so that proper steps may be taken by the police to enforce the provisions of the Indian Arms Act

three clear days before the expiry of any such period or such costs for such further period as the Court may direct be not paid into Court the Court, on receiving a report thereof from the proper officer may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment

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person willing to undertake the responsibility of its custody as required by the Court

it cannot be provided for in the manner described

- (d) the day and hour on and at which they were committed to his custody,  
(e) the name of the attaching officer or his subordinate by whom they were committed to his custody, and shall give such attaching officer or subordinate a copy of the entry

118 For every animal committed to the custody of the pound-keeper as aforesaid, a charge shall be levied as rent for the use of the pound for each fifteen or part of fifteen days during which such custody continues, according to the scale prescribed under section 12 of Act No 1 of 1871

And the sum so levied shall be sent to the Treasury for credit to the Municipal or District Board as the case may be under whose jurisdiction the pound is. All such sum shall be applied in the same manner as fines levied under section 12 of the said Cattle Trespass Act

119 and commuted custody as hereinafter provided  
Such rates shall, for animals specified in the section mentioned in the last preceding rule not exceed the rates for the time being fixed under section 5 of the same Act. In any case, for special reasons to be recorded in writing, the Court may require payment to be made for maintenance at higher rates than those prescribed

120 The charges herein authorized for the maintenance of live stock shall be paid to the pound keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody, and thereafter for such further period as the Court may direct, at the commencement of such period. Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound keeper shall be refunded by him to the attaching officer

121. Animals attached and committed as aforesaid shall not be released from the custody of the Court, or of the person receiving them in the register

122 For the safe custody of moveable property other than live-stock while under attachment, the attaching officer shall, subject to approval by the Court, make such arrangements as may be most convenient and economical

123 With the permission of the Court the attaching officer may place one or more persons in special charge of such property.



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to the Court which ordered the attachment the amount shall be paid to him in the certificate he has furnished, if the amount does not exceed the requisition by the Amin, and

126. When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be.

127. Fees paid into Court under the foregoing rules shall be entered in the Register of Petty Receipts and Repayments.

128. When any sum levied under rule 119 is remitted to the Treasury, it shall be accompanied by an order in triplicate (in the form given as form 9 of the Municipal Account Code), of which one part will be forwarded by the Treasury officials to the District or Municipal Board as the case may be. A note that the same has been paid into the Treasury as rent for the use of the pound, will be recorded on the extract from the pass book.

the costs of the attachment are to be paid

130. Nothing in these rules shall be deemed to prevent the Court from issuing and serving on the judgment-debtor simultaneously the notices required by Order XXI, rules 22, 65 and 107.

#### *'Garnishee orders'*

131. The Court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a revenue Court) or any moveable property not in the possession of the judgment-debtor (the garnishee) liable to the garnishee, calling upon the garnishee to pay or deliver in him to such judgment-debtor, decree and the cost of execution.

deliver such moveable property, or if he does not appear in answer to the notice, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.

133. If the garnishee disputes his liability the Court instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just.

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135 After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such ordered, the Court may pass such order as it shall think fit upon such charge or interest if any of such third or other person as to such Court shall seem just and reasonable

reversed

137 Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached under these rules, although one or more members of such firm may be resident out of the jurisdiction, Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm

under these rules and of any proceedings any order made thereon, shall be in the

139 (1) Where the liability of any garnishee has been tried and determined under these rules the order shall have the same force and be subject to the same conditions as to appeal or other wise as if it were a decree

(2) Orders not covered by clause (1) shall be appealable as orders made in execution

dismissed either on the  
no *prima facie* evidence  
on

Add the following rule 140 —

either plaintiffs or  
VII or Order VIII

of Order XXI —

SUIT No. of 19

versus

Plaintiff

Defendant

To

set  
on or before the day of 19 to pay into this Court the  
said sum of Rs

Or  
to deliver or account to the *clerk* of this Court for the moveable property detailed in the attached schedule or otherwise to appear in person or by advocate vakil or authorized agent in this Court at 10.30 in the forenoon of the day aforesaid and show cause to the contrary, in default whereof an order for the payment of the said sum, or for the delivery of the said property may be passed against you

Dated this day of 19

*Munsif*  
*Subordinate Judge*  
At

#### ORDER XXI

12 At the end of the rule add the words —

'Or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit.'

## ORDER XXV.

## Rule I

After the words in lines 6 and 7, "property in suit" insert the words "or that the plaintiff is being financed by a person not a party to the suit"

## ORDER XXVI

## Rule 18.

a for the  
for the  
o supply

## ORDER XXVII.

Insert the following rule at the end of O 27 —

as a p  
provisic  
shall in lieu of a vakalatnama, file a memorandum on stamped paper signed by him and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form :

Title of the suit, etc.

I A. B., Government Pleader, appear on behalf of the Secretary of State for India in Council (or the Government of the United Provinces, or as the case may be) respondent (or etc) in the suit —

or, on behalf of the Government (which under Order 27, rule 8 (1) of Act No. V of 1908, has undertaken the defence of the suit), respondent (or etc) in the suit.

## ORDER XXXII

## Rule 3.

Add the following proviso to rule 3(4) —

'Provided that if the minor is under ten years of age no such notice shall be issued to him.'

Substitute the following for rule 4 —

"4. (1) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as next friend, except by leave of the Court"

"(2) Subject to the provisions of sub-rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor or he is a defendant, or the Court for other reasons to be recorded considers him unfit to act"

"(3) Every next friend shall, except as otherwise provided by clause (5) of this rule be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor."

"(4) The Court may in its discretion for reason to be recorded, award costs of the suit, or compensation under section 35A or section 95 against the next friend personally as if he were a plaintiff.

clause (4) shall not be recoverable by less the decree expressly directs that

Add the following rule 4A :—

"4A. (1) Where a minor has a guardian appointed by competent authority, no person other than such guardian shall be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be appointed.

(2) Where there is no such guardian, or where the Court considers that such guardian for the suit the is no such guardian the who has notified the officer of the Court.

Explanation.—An officer of the Court shall for the purposes of this sub rule include a legal practitioner on the roll of the Court.

to accept appointment as such guardian  
to be refusal to act

(4) Where an officer of the Court is appointed guardian for the suit under sub-rule (1) the Court may direct that the costs to be incurred by such officer in the

justice and the circumstances of the case may require.

#### ORDER XXXIV

##### Rule 4 (2)

After the words the Court may insert the words of its own motion, or

#### ORDER XXXVII

##### Rule 1

Add the following clause (e) —

(e) any Court in the Province of Agra exercising the powers of a Small Cause Court

#### ORDER XXXIX

##### Rule 1

In clause (a) delete the words or wrongfully sold in execution of a decree and

Delete the word sale after the words 'damaging alienation'

#### ORDER XLI

Substitute the following for r 3 (1) —

3(1) Where the memorandum of appeal is not drawn up in the manner herein

Reject on or a  
memorandum

never prescribed

within a time to be fixed by the Court

Rule 7 — For the tenth word and substitute a comma and between the figure 6 and the word shall add the word after figure and 10'

##### Rule 10 (1)

Add the following proviso —

for the costs of the appeal and for all costs ordered by the Courts below to be paid by him which remain unpaid

Add Clause (2) —

"(2) In the second proviso to clause (1) of this rule costs of the appeal means advocate's fee calculated on the valuation of the appeal together with a sum of Rs 2 for Court fee on vakalatnama to be filed by the respondent Re-inspection fee, and in case of second appeals outside the jurisdiction of a single Judge a further sum of Rs 10 for printing charges payable by respondent

Original Clause (2) — of the rule shall be numbered as (3)

14 Add the following sub-rule (3) —

14(3). Notwithstanding any previous notice of any person implicated or person implicated for filed an address for in the lower appellate Court or has appeared in the appeal

*Insert the following at the end of the Order XLI :—*

38. (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11 hold (2) the op the app (3) Rules 21, 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings

#### ORDER XLII

*Substitute the following for rule I :—*

Procedure

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees, subject

on which the decree appealed against may be founded, and the record of the case shall be sent for at the expense of the appellant

#### ORDER XLIII

*Rule I (u)*

Li' rest "any order"

dis... nuous case, and in every suit p stating clearly the determination of the appeal or case, the costs incurred and the parties, if any, by whom such costs are to be paid

#### ORDER XLV

For rule 15 (1) substitute —

15 (1) Whoever desires to obtain —

(a) execution of any order of Her Majesty in Council, or

(b) where an appeal has been dis

of prosecution, an order of

was preferred terminating f

shall apply to the said Court by a pe

decree passed or order made by His Majesty in Council of which execution is desired or to which effect is to be given and a memorandum of all costs incurred in India that are claimed in pursuance thereof

#### ORDER XLVI

*Insert the following rule at the end of Order XLVI —*

8 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order

#### ORDER XLVII

*Insert the following at the end of Order XLVII —*

10 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of the code

#### ORDER XLVIII

*Rule I*

Before the words 'Every process issued' prefix the words "Except as provided in Order IV rule I (2)"

#### ORDER LII (New)

1 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of the code

#### FORMS

#### APPENDIX B.

Form No 7—an order for transmission of summons for service in the jurisdiction of another Court (Order 5, rule 21) is hereby cancelled

Form No 10—a form to accompany return of summons of another Court (Order 5, rule 23), is cancelled

No 20

Application for issue of summons to be party or witness

No of suit

Names of parties  
In the Court of the  
Date fixed for hearing

FORM NO 4

| 1                                           | 2                                                                 | 3                             | 4                                      |      | 5                           |                    | 6                                                                                                                                   |
|---------------------------------------------|-------------------------------------------------------------------|-------------------------------|----------------------------------------|------|-----------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------|
|                                             |                                                                   |                               | DISTANCE OF<br>RESIDENCE<br>FROM COURT |      | CASH PAID FOR               |                    | Name and<br>address of<br>person to<br>whom un-<br>expended<br>travelling<br>expenses<br>and diet<br>money<br>should be<br>returned |
| Number of<br>witnesses<br>to be<br>summoned | Name and<br>full address<br>of each per-<br>son to be<br>summoned | Rank<br>or<br>occupa-<br>tion | Rail                                   | Road | Travel-<br>ling<br>expenses | Diet ex-<br>penses |                                                                                                                                     |
|                                             |                                                                   |                               |                                        |      |                             |                    |                                                                                                                                     |

## APPENDIX E.

No 29

In form No 29 (Proclamation of sale) delete the sentence "No bid by previously given in the paragraph above "conditions of sale"

No 43.

The security to be furnished under section 55 (4) shall be, as nearly as may be by a bond in the following form —

In the court of

Sut No <sup>at</sup> of 19 .

A B of

against

Plaintiff

C D of

Defendant

Whereas in execution of the decree in the suit aforesaid the said C D has been arrested under a warrant and brought before the Court of and whereas the said C D has applied for his discharge on the ground that he undertakes within one month to apply under section 5 of Act No III of 1907 to be declared an insolvent and the said Court has ordered that the said C D shall be released from custody if the said C D furnish good and sufficient security in the sum of Rs that he will appear when called upon and that he will within one month from this date apply under section 5 of Act No III of 1907 to be declared an insolvent, therefore I, E F, inhabitant of have voluntarily become surety, and do hereby bind myself my heirs and executors to as Judge of the said Court and his successors in office that the said C D will appear anytime when called upon by the said Court and will apply in the manner and within the time here in before set forth and in default of such appearance or of such application, I bind myself, my heirs and executors, to pay to the said Court, on its order, the sum of Rs

Witness my hand at

this

day of

19

(Sd) E F,  
Surety

Witnesses

No 11.

In the Court of

Suit No.

of 10 .

Plaintiff

Defendant

Amount of suit, Rupees

Co:

security to him may be decreed and may be enforced against him on his failure so to do, certain property of the said defendant, be attached

if the said Court, and his successors in office, that the said defendant,  
shall produce and place at the disposal of the said Court, when required, the  
property here in below specified namely (*here give a description of property*  
*r refer to an annexed schedule*) or  
hereof as may be sufficient to fulfil suc-  
costs of the attachment and in default  
executors to pay to \_\_\_\_\_ as  
office on his order such sum to the extent  
over the amount of suit with costs and to  
pay adjudge against the said defendant

Witness my hand at

this

day of

19

(Signed)

**Surety**

**Witnesses**

No 12

The security to be furnished under Order XXXIX, rule 2 (2), shall be, as far as may be, by a bond in the following form —

In the Court of

at

Suit No

of 19

Plaintiff

Defendant

WHEREAS, in the suit above specified instituted by the said plaintiff,  
to restrain the said defendant, from (here state the  
breach of contract or other injury) the said Court has on the application of the  
said plaintiff, granted an injunction to restrain the  
said defendant from the repetition (or the continuance) of the said breach of contract  
(or wrongful act complained of,) and required security from the said defendant  
against such repetition (or continuance)

Therefore I, \_\_\_\_\_, inhabitant of \_\_\_\_\_, have voluntarily become security and do hereby bind myself, my heirs and executors to \_\_\_\_\_ as Judge of the said Court and his successors in office that the said defendant, \_\_\_\_\_, shall abstain from the repetition (or continuance) of the breach of contract aforesaid (or wrongful act, or from the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right) and in default of his \_\_\_\_\_ and executors to pay into Court, on the \_\_\_\_\_ extent of rupees \_\_\_\_\_ as the Court

Witness my hand at

this

day of

19 .

### Witnesses

(Signed)

**Surety**

## APPENDIX H

No 4

Notice to show cause (General Form)

In the Court of  
AtDistrict  
Civil Suit No  
Miscellaneous Noof 19  
of 19  
Resident of

versus

To  
WHEREAS the above namedResident of  
has made application to this Court that  
1 person or by a pleader  
19 at  
application, failing wherein  
and it will be presumed

day of

19

Judge

No 5

(List of documents produced by plaintiff Order 13, rule 1 )  
at defendant

In the Court of

Suit No

District  
of 19

Plaintiff,

versus

Defendant

List of documents produced with the plaint (or at the first hearing) on behalf of  
plaintiff (or defendant) this list was filed by  
day of 19 this

| 1         | 2                                           | 3                                                                                                                                                                                                                                                                                                                                                            | 4       |
|-----------|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Serial No | Description and date of any of the document | What became of the document                                                                                                                                                                                                                                                                                                                                  | Remarks |
|           |                                             | <div>If brought on the record the exhibit mark put on the document</div> <div>If rejected date of return to party and signature of party or pleader to whom the document was returned</div> <div>If it remains on the record after decision of the case and is enclosed in an envelope under rule 24 Chapter III the date of enclosure in the envelope</div> |         |

Signature of party or pleader producing the list

No 11

Notice to minor defendant and guardian  
In the Court of \_\_\_\_\_ at \_\_\_\_\_ district

Suit No \_\_\_\_\_ of 19

resident of \_\_\_\_\_

versus

\_\_\_\_\_ Plaintiff

resident of \_\_\_\_\_

\_\_\_\_\_ Defendant



To—

(1) \_\_\_\_\_ Minor defendant ,

and

(2) \_\_\_\_\_ *Natural*  
or *Certified* guardian the person in whose

care the minor is alleged to be Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, said minor, and

you (2) \_\_\_\_\_ the *\*natural*  
*certificated* guardian or the person inwhose care the minor is alleged to be, are hereby required to take notice that unless within \_\_\_\_\_ days from the service upon you of this notice, an application is made to this Court to show cause why the person named below should not be appointed or for the appointment of any other person willing to act as guardian for the suit, the Court will proceed to appoint the person named below or some other person to act as the guardian of the minor for the purposes of the said suit *Proposed*  
*guardian* \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_

Given under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge*

Notes—\*Cut out the word 'natural' if the certificated guardian is named cut out the word 'certificated' if the natural guardian be intended ; and cut out both natural and certificate and the word or if the guardian be of neither class but one with whom the minor lives

No 16

The security to be furnished under order XXV, rule 1 shall be, as nearly as may be, by bond in the following form —

In the Court of

Suit No

of 19

*Plaintiff**Defendant*Whereas a suit has been instituted in the said Court by the said plaintiff ...  
to recover from the said defendant the sum of rupees  
and the said plaintiff is residing out of British India (or is a woman)  
and does not possess any sufficient immovable property within British India  
independent of the property in the suit —Therefore, I, \_\_\_\_\_ inhabitant of \_\_\_\_\_, have voluntarily become  
security, and do hereby bind myself my heirs and executors, to  
as Judge of the said Court and to his successors in office if at the said  
\_\_\_\_\_ his heirs and executors, shall, whenever called  
Court, pay all costs that may have been or may be incurred by  
endant \_\_\_\_\_ in the said suit, and in default  
ment I bind myself, my heirs and executors, to pay all such costs to  
on its order

Witness my hand at

this

19

Witnesses,

(Signed)

Sincerely

No 17

*A Address for Service*Under order VII rules 19 to 26 ; Order VIII, rules 11 and 12 ; O  
rule 38 , Order XLVI, rule 8 , Order XLVII, rule 10 ; Order III rule 1  
In the Court of the \_\_\_\_\_ of \_\_\_\_\_Original Suit No  
or case

of 192

*versus**Plaintiff.**Defendant*

This address shall be within the local limits of the District Court within which the suit is filed, or of the District Court within which the party ordinarily resides, if within the limits of the United Provinces of Agra and Oudh, but not within the limits of any other province —

| Name, parentage and caste | Residence | Pargana or tahsil | Post office | District |
|---------------------------|-----------|-------------------|-------------|----------|
|                           |           |                   |             |          |

Dated

Any summons, notice, or process in the case may, henceforward be issued to me at the above address until I file notice of change. If this address is changed I shall forthwith file a notice of change containing all the new particulars

Signature of party—

{ Plaintiff  
Defendant  
Appellant  
Respondent

Or

I file the above address according to the instructions given by my client (name) capacity) (and

Signature of pleader

N B—This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or matter

No 18

*Notice of change of address for service*

Under Order VII rules 19 to 26, Order VIII, rules 11 and 12, Order XLI, rule 38, Order XLVI rule 8, Order XLVII rule 10, Order LII, rule 1

In the Court of the

of

Original ~~\_\_\_\_\_~~ No  
or case

of 192

Plaintiff

Versus

Defendant

This address shall be within the local limits of the District Court within which the suit is filed, or of the District Court within which the party ordinarily resides if within the limits of the United Provinces of Agra and Oudh but not within the limits of any other province —

| Name, parentage and caste | Residence | Pargana or tahsil | Post office | District |
|---------------------------|-----------|-------------------|-------------|----------|
|                           |           |                   |             |          |

Dated

Any summons, notice, or process in the case may henceforward be issued to me at the above address until I file notice of change. If this address is again changed I shall forthwith file a notice of change containing all the new particulars

Signature of party—

{ Plaintiff  
Defendant  
Appellant  
Respondent

Or

I file the above address according to the instructions given by my client, (name)  
(and capacity)

Signature of pleader.

N. B.—This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or matter.

## APPENDIX II.

*Rules made by the High Court of Bombay under S. 122.*

### ORDER III.

R. 2 clause (1)—O. 3, r. 2, cl (a) be amended to read as follows :—

Persons holding general powers of attorney (or in the case of proceedings on the original side of the Bombay High Court attorneys holding the requisite special powers of attorney) from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties.

Rule 4—In sub rule (3) the words "or any application relating to such appeal" shall be inserted between the words "order in the suit" and "and any application or act."

### ORDER V

in C  
h  
p  
q

Nothing of the  
where  
quent  
head  
about  
in the  
Notification by the  
An acknowledgment  
Court holding the  
over the Court shall  
been duly served

R. 22—The following proviso be added to O. 5 r. 22.

of  
he  
lec

enclosed by a person serving the defendant removal served shall be deemed  
by the Court issuing the summons to be *prima facie* proof of service. In all other  
cases the Court shall hold such enquiry as it thinks fit and either declare the sum-  
mons to have been duly served or order such further service as may in his opinion  
be necessary.

### Order VII

The following shall be added as Rules 19 to 26 in order 7.

"19 Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice or summons or other process may be made on the plaintiff or petitioner. Affidavits or petitions subsequently added shall, immediately on being added, be a memorandum in writing of this nature.

"20 An address  
local limits of  
not convenient  
resides



Order 37, rule 38—The following shall be added as rule 38 :—

“38 (f) An address for service filed under order VII, rule 19 or order VIII, rule 11, subsequently altered under order VII, rule 24, or order VIII, rule 12 shall hold good, subject to

opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses.

“(3) Rule 22, 23 and 24 of order VII shall apply, so far as may be, to appellate proceedings.”

Order 43, rule 1—Clause (w) shall be deleted.

In sub-rule (2) of rule 3 of Order 45, after the words “to show cause why the said certificate should not be granted” the following words shall be inserted, namely :—  
“unless it thinks fit to refuse the certificate.”

Order 45, r 7A—After rule 7 of Order 45, the following rule shall be inserted namely :—

7A No such security as is mentioned in rule 7(1), clause (a), shall be required from the Secretary of State for India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Order 46, rule 8—The following shall be added as rule 8 :—

“8. Rule 38 of order XLI shall apply so far as may be, to proceedings under this Order.”

Order 47, rule 5—In rule 5, for the word “six” the word “two” shall be substituted.

Order 47, rule 10—The following shall be added as rule 10 :—

“10 Rule 38 order XLI shall apply so far as may be, to proceedings under this Order”

Order 49 rule 3—In rule 3 the word “and” immediately preceding paragraph (6) shall be omitted and the following paragraph shall be inserted between paragraphs (5) and (6) namely :—

“5a) Rule 72 A of Order XXI and”

words and

“(7) rule 38 of order XLI”

Title,  
Read proceeding from the  
for service on  
of that Court.

in Suit No

forwarding  
of 19

and not less in  
shall appear

the following rule—

Order 21 r 91 A—The following rule shall be inserted as rule 91 A in Order XXI of the Code of Civil Procedure—

91 A Where the execution of a decree has been transferred to the Collector and the sale has been conducted by the Collector or by an officer subordinate to, and in the case of an made to the Collector in accordance with any Code, shall be deemed rules 89 90 and 91

be added as sub rule (4) namely—

Indian Limitation Act 1908, shall apply to

Order 32, rule 3 (4) —

The words 'to the minor and' in line 2 of sub rule (4) rule 3 of Order 32 shall be deleted

Order 33 r 1—The following sentence shall be added to the Explanation to rule

the subject matter of

Order 34, r 2 (d)—The following shall be substituted for clause (d) of rule 2 of Order 34—

(d) that, if such payment is not made on or before the day to be fixed by the Court the plaintiff shall be entitled to apply for a final decree for foreclosure under rule 3

Order 34 rule 4 (1) —

In sub rule (1) of rule 4 of Order 34, after the words 'as therein mentioned' substitute "the plaintiff shall be entitled to apply for a final decree for sale under rule 5"

Order 34, r 5 (2)—

the balance (if any) be paid to the defendants or other persons entitled to the same

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit from time to time postpone the day fixed for such payment

Order 34 r 7 (d) —

For clause (d) of rule 7 of Order 34, substitute '(d) that if such payment is not made on or before the day to be fixed by the Court the defendant shall be entitled to apply for a final decree for sale or foreclosure under rule 8'

7 after the words promissory

to recover a debt or liquidated without interest arising on a contract express or implied or an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty, or on a guarantee where the claim against the principal is in respect of a debt or a liquidated demand only

Order 37, r 3—In rule 3 of Order 37 the following sub-rule shall be inserted—

(3) The provisions of Section 5 of the Indian Limitation Act 1908 shall apply to applications under sub rule (1)

Order 41, r 3 A—After rule 3 of order 41, the following rule shall be inserted namely—

3A Where an appellant applies for delay to be excused, notice to show cause shall at once be issued to the respondent and the matter shall be finally decided before notice is issued to the Court from whose decree the appeal is preferred under rule 13.

Order 37, rule 38—The following shall be added as rule 38.—

"38 (f) An address for service filed under order VII, rule 19 or order VIII, rule 11, shall be held good, subject to

given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

"(3) Rule 22, 23 and 24 of order VII shall apply, so far as may be, to appellate proceedings."

"to show cause why the said shall be inserted, namely :—

Order 45, r 7A—After rule 7 of Order 45, the following rule shall be inserted namely :—

7A No such security as is mentioned in rule 7(1), clause (a), shall be required from the Secretary of State for India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity

Order 46, rule 8—The following shall be added as rule 8 :—

"3 Rule 38 of order XLI shall apply so far as may be, to proceedings under this Order."

Order 47, rule 5—In rule 5 for the word 'six' the word "two" shall be substituted.

Order 47, rule 10—The following shall be added as rule 10 —

"10 Rule 38 order XLI shall apply so far as may be, to proceedings under this order"

Order 49 rule 3—In rule 3 the word "and" immediately preceding paragraph (6) shall be omitted and the following paragraph shall be inserted between paragraphs

rule 3, the words and

"(1) rule 21 A of Order V ;"

"(1 b) rule 11 and 12 of order VII"

Below clause (6) the following shall be inserted, namely

"(7) rule 38 of order XLI"

force relating to Court-fees has not been paid, the Registrar may in his discretion  
urt fees  
ent of  
peal.

of the Code."

s. 115

3, 5 and 6.—

service on or before

10 in Appendix B,

V. r. 23)

Title,

Read proceeding from the  
for service on  
of that Court.

in Suit No

forwarding  
of 19

Read Serving Officer's indorsement stating that the  
and proof of the above have been duly taken by me on the oath of  
and it is ordered that the

be returned to the with this proceeding.  
I hereby declare that the said summons on Judge has been duly served

Note—This form will be applicable to process other than summons the service of  
which may have to be effected in the same manner "

#### Schedule 1—Appendix B—Form No 4

In line 4 of Form No 4 in Appendix D, for "realization" substitute "the day here-  
inafter referred to "

For clause (2) of the said form substitute "(2) that if such payment is not made  
on or before the said day of 19 , the plaintiff shall  
be entitled to apply to the Court for a final decree for sale "

Delete clause (3) of the said form.

#### Schedule I—Appendix C—Form No 5

For clause (2) of Form No 5 in Appendix D, substitute "(2) That if such pay-  
ment is not made on or before the said day of 19 , the defendant  
shall be entitled to apply for a final decree for foreclosure or sale "

Schedule 1—Appendix D—Form No 10A—Add the following form as  
Form No 10A —

#### "No 10 A Final decree for sale" (Title).

Upon reading the decree passed in the above suit on the day of 19  
and the application of the plaintiff, dated the day of 19  
and after hearing pleader for the plaintiff and  
pleader for the defendant and it appearing that the payment directed by the said  
decree has not been made

It is hereby decreed as follows —

(1) That the mortgaged property or a sufficient part thereof be sold and that the  
proceeds of the sale after defraying thereout the expenses of the sale be paid into  
Court and I apply in payment of what is declared due to the plaintiff as aforesaid  
together with simple interest at per cent per annum as subsequent costs  
and that the balance of the sale be paid to the defendant

(2) That if the net proceeds of the sale are insufficient to pay such amount and  
such subsequent interest and costs in full, the plaintiff shall be at liberty to apply  
for a personal decree for the amount of the balance

### APPENDIX III

#### RULES FRAMED BY THE HIGH COURT OF CALCUTTA UNDER 5, 122 ORDER V

Rule 5—Insert the words "for the ascertainment whether the suit will be contested"  
after the words "issues only

Rules 15 and 17—Substitute the following rules 15 and 17 for the original. —

"15 Where in any suit the defendant is absent from his residence at the time  
when service is sought to be effected on him, thereat and there is no likelihood of  
his being found thereat within a reasonable time, then unless he has an agent  
empowered to accept service of the summons on his behalf, service may be made  
on any adult male member of the family of the defendant who is residing with him

Provided that where such adult male member has an interest in the suit and  
such interest is adverse to that of the defendant, a summons so served shall be  
deemed for the purposes of the third column of Art 164 of Schedule I of the  
Limitation Act, 1908 not to have been duly served

Explanation—A servant is not a member of the family within the meaning of  
this rule

"17. Where the defendant or his agent or such other person as aforesaid refuses  
to sign the acknowledgment, or where the defendant is absent from his residence at  
the time when service is sought to be effected on him, thereat and there is no



likelihood of his being found there is no agent  
empowered to accept service of any other person  
upon whom service can be made. A copy of the summons  
or the order or some other conspicuous part of the house in which the defendant  
ordinarily resides or carries on business or personally works for gain and shall  
be affixed to the copy of the summons or order, with a report  
of the officer making the service, and the name and address of the person if  
(any) by whom the house was identified and in whose presence the copy was  
affixed.

**Rule 19—**Substitute the following for rule 19 —

shall, if the return  
ing officer, and may,  
use him to be so  
make such further  
that the summons

ceived

## ORDER VI

the cause or matter. Service of any process may be effected upon a party at his registered address in like manner in all respects as though such party resided thereat."

## ORDER VII

scription shall further state the area  
settlement or surety, with or without

to, a list of

ants, unless or for any other sufficient reason permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit in which case he shall present such statements.

(ii) draft forms of summonses and fees for the service thereof." (*Notification No 35 16 G dated 22.2.21*)

plaintiff  
fixed by the Court, has to go 50 .

## ORDER IX

Rule 9—Re-number sub-rule (2) as sub rule (3) and insert therein after the words 'notice of the application' the words "with a copy thereof (or concise statement as the case may be)'

(b) Insert the following as sub rule (2) —

(2) The plaintiff shall, for service on the opposite parties, present along with his application under this rule either—

(i) As many copies thereof on plain papers as there are opposite parties, or,

(ii) if the Court by reason of the length of the application or the number of opposite parties, or for any other sufficient reason grant permission in this behalf, a like number of concise statements (3 2-1933)

Rule 13—Re number rule 13 as rule 13 (1) and add the following as rule 13 (2) —

“(2) The defendant shall, for service on the opposite party present along with his application under this rule either—

(i) as many copies thereof on plain paper as there are opposite parties, or

(ii) if the Court by reason of the length of application or the number of opposite parties or for any sufficient reason grants permission in this behalf, a like number of concise statements (3 2 1933)

Rule 14—Cancel the word *thereof* in rule 14 and substitute therefor the following words —

‘together with a copy thereof (or concise statement as the case may be)’ (3 2-1933)

### ORDER XVI

Rule 2—Cancel clauses (1) and (2) and substitute therefor the following —

(1) The Court shall fix in respect of such summons such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance

(2) In fixing such an amount the Court may, in the case of any person summoned to give evidence as an expert allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case

Rule 3—Cancel rule 3 and substitute the following —

“3 The sum so fixed shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally”

Rule 4—Cancel clause (1) and substitute therefor the following —

Where it appears to the Court or to such officer as it appoints in this behalf that the sum so fixed is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account and in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons or the Court may discharge the persons summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid

Rule 7A—Insert the following after rule 7 —

“A (1) Except where it appears to the Court that a summons under this order should be served by the Court in the same manner as a summons to a defendant the Court shall make over for service all summonses under this order to the party applying therefor. The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court

(ii) Rules 16 and 18 of Order V shall apply to summons personally served under this rule, as though the person affecting service were a serving officer

(iii) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or if for any reason such summons cannot be served personally, the Court shall on the application of the party, re issue such summons to be served by the Court in like manner as a summons to a defendant”

Rule 8—Cancel rule 8 and substitute therefor the following —

8 (1) Every summons under this order not being a summons made over to a party for service under rule 7A (1) of this order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply thereto

(2) The party applying for a summons to be served under this rule shall before the summons is granted and within a period to be fixed pay into Court the sum fixed by the Court under rule 2 of this order”

Rule 21—Cancel rule 21 and substitute therefor the following —

“21 (1) When any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable

1 gives evidence on his own behalf, the Court  
include as costs in the suit a sum of money for  
and other expenses to other witnesses in the

## ORDER XVIII

## Rule 2

"2 A. — In rule (1) and (2) of 1  
the Court may reject the application although the evidence  
of the party having the right to begin has not been concluded, and may also  
order the party to produce any witness at any stage of the suit"

## ORDER XXI

Rule 16—In the first proviso cancel the words "and the decree shall be  
executed until the Court has heard their objections (if any) to its execution  
substitute therefor the following words —

"and until the Court has heard their objections (if any) the decree shall  
be executed provided that if, with the application for execution, an affidavit  
is filed admitting the transfer or an instrument of transfer duly registered by  
the Court may proceed with the execution of the decree pending the hearing  
of such objections."

Rule 17—In sub rule (1) cancel the words "the Court may reject the applica-  
tion or may allow the defect to be remedied then and there or within a time  
fixed by it" and substitute therefor the following words —

"the Court shall allow the defect to be remedied then and there or with-  
in a time to be fixed by it. If the defect is not remedied within the time fixed the  
Court may reject the application"

Rule 22—Add the following as sub rule (3) —

(3) Omissions issue a notice in a case where notice is required under sub rule  
1 or to record reasons in a case where notice is dispensed with under sub rule  
shall not affect the jurisdiction of the Court in executing the decree"

Rule 24—Add the following to sub rule (3) —

"and a day shall be specified on or before which it shall be returned to the Court"

Rule 26—In sub rule (3), cancel the words "the Court may require such security  
from or impose such conditions upon, the judgment-debtor as it thinks fit"  
substitute therefor the following words —

"the Court shall require security from the judgment-debtor unless such  
case is shown to the contrary"

Rule 31—Substitute the words "three months" for the words "six months"  
in sub rules (2) and (3)

Rule 32—Substitute the words "three months" for the words "one year," in  
sub rule (3)

Rule 39—Omit the words "in the civil prison" in sub rule (5)

Rule 45—Add the following to sub rule (1) —

"and the applicant shall deposit in court such sum as the Court shall require  
order to defray the cost of watching or tending the crop till such time"

Rule 53—(a) In sub rule (1) (b) insert after the words "then by the issue of  
other court" the words "and to any court to which it has been transferred for  
execution" and also insert therein the words "or courts after the word require  
such other court" (b) In sub rule (1) (b) (ii) cancel the words "to execute  
own decree" and substitute therefor the words "to execute the attached  
with the consent of the said decree holder expressed in writing or the per-  
mission of the attaching court"

(c) In sub rule (4), insert after the words "by sending to such other court"  
the words "and to any court to which it has been transferred for execution" (d) In  
sub rule (b) substitute the words "in contravention of the said order with knowledge  
of" for the words "in contravention of such order after receipt of notice thereof"

Rule 54—Add the following as sub rule (1) —

"Such order shall take effect"

charge, from the date of the order  
or charge, from the date when  
whom or in whose favour the order is made  
when the order was proclaimed under sub rule (2) whichever is earlier"

Rule 37—Add the following words at the end of rule 37 :—

“Or the Court shall make an order to the contrary.”

Rule 38—Add the following words at the end of sub-rule (2) :—

“Or the Court may, as the security, or otherwise as the Court shall seem fit,”

Rule 62—Subs. 1. Add the words “one Calendar month” for the words “seven days”

Sub-rule (2)

“where

“wheat)

“in sub-rule

Rule 87—In sub-rule (1), cancel the words “entitled owning such property or holding” and substitute the words “whose interest is affected by such sale” (provided that such interest has not been sold or mortgaged by him after such sale)

Rule 90—Add the following words to Rule 90 (1) :—

“Or on the ground of failure to issue notice to him as required by rule 22 of this order”

“following —

“such irregularity

“that the applicant

has sustained substantial injury by reason of such irregularity, fraud or failure.

(2) that no sale be set aside on the ground of any defect in the proclamation of sale at the instance of any person who after notice did not attend at the drawing up of the proclamation or of any person to whose presence the proclamation was drawn up, unless objection was made by him at the time in respect of the defect relied on

Rule 98—Insert the words “or on his behalf” after the words “at his instigation” occurring twice.

Rule 99—Insert the words “to have a right” after the words “in good faith”

#### ORDER XXII

Rule 11—Add the following proviso to rule 11 :—

“Provided always that where an Appellate Court has made an order dispensing with service of notice of appeal upon legal representatives of any person deceased under Order XXI Rule 14 (3), the appeal shall not be deemed to abate as against such party and the decree made on appeal shall be binding on the estate or the interest of such party”

#### ORDER XXVI

Rule 7—Omit the proviso to Rule 9 Order XXVI, First Schedule to the Code of Civil Procedure.

(Notification No. 11233 G, dated 7-1-24)

#### XXXII

Rule 4—Substitute the words “Except as otherwise provided in this order” for the words “where there is no other person fit and willing to act as guardian for the suit,”

#### Order XXXIV

as sub rules (4) and (5) respectively and

direct in the decree for sale that if the mortgagee fails to pay the mortgage debt, the mortgagor shall pay the balance personally

#### Order XXXIX

Rule 1—Amend Rule 1 as Rule 1 (1) and add the following as sub-rules (2) and (3) :—

(2) In case of disobedience, or on breach of the terms of such temporary injunction or order, the court granting the injunction or making such order may attach the property of the person guilty of such disobedience or breach to be attached

and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

"(3) The property attached under sub rule (2) may, when the Court considers it fit so to direct, be sold and, out of the proceeds, the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto."

### XLJ

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of tl

Provided that :—

(a) The Court may require notice of the appeal to be published in any newspaper or newspapers as it may direct.

(b) No such Order shall preclude any such respondent or legal representative from appearing to contest the appeal.

### XLVIII.

Rule 1—Cancel clause (2), Rule 1, Order XLVIII and substitute therefor the following :—

"(2) The Court fee chargeable for such service shall be paid when the process is applied for, or within such time, if any, as the Court may, when ordering its issue, fix for the purpose" 17 : 1934.

### ORDER LXIII

hment shall

### Appendix A.

FORM No. 13

In the form of "Breach of agreement to purchase land" cancel the word "bighas" and substitute therefor the words  $\frac{\text{acres}}{\text{bighas}}$

### Appendix B.

FORM No. 1A.

Insert the following form after form 1 and number it as 1 A.

"No 1 A.

SUMMONS to defendant for ascertainment whether the suit will be contested (Order V, rules 1 and 5)

Title

To,

(Name, description and place of residence)

WHEREAS has instituted a suit against you for you  
are hereby summoned to, to appear in this Court in person or by a  
pleader, duly instructed, and able to answer all material questions relating to  
the suit on the day of 19 , at

Court whether  
nd in order that  
part directions  
is to be filed  
-ly in support of  
: is upon which

you intend to rely.

day before-mentioned  
ake further notice that  
in part the court

Given under my hand and the seal of the Court, this day of . 19

*Seal*

*Judge*

Notice—If you admit the claim either in whole or in part you should come prepared to pay into Court the money due by virtue of such admission together with the costs of the suit, to avoid execution of any decree which may be passed against your person or property, or both.

#### Form No 10

Insert the words 'or proof of the above having been duly made by the declaration of' after the words 'proof of the above having been duly taken by me on the oath of'

#### Form No 11

Substitute the following for the existing Form No. 11 —

#### "No 11

Declaration—OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (Order V rule 18)

#### Title

I a process server of this Court declare —

(1) On the day of 19 I received a summons issued by the Court of in Suit No of 19 in the said Court, dated day of 19 for service on (2) The said was at the time personally known to me and I served the said summons on him on the day of 19 at about o'clock in the noon at by tendering a copy there of to him and requiring his signature to the original summons notice

(a)

(b)

Or

(2) The said not being personally known to me pointed out to me a person when he stated to be the said and I served the said summons on him on the day of 19 at about o'clock in the noon at by tendering a copy there of to him and requiring his signature to the original service notice

(a)

(b)

Or

(2) The said and the house in which he ordinarily resides being personally known to me, I went to the said house in and thereon the day of 19 at about o'clock in the noon, I did not find the said

(x)

(y)

or

(2) One at pointed out to me which he said was the house in which ordinarily resides I did not find the said there

(x)

(y)

(a) Here state whether the process served signed or refused to sign the process and in whose presence

(b) Signature of process server

(x) Enter fully and exactly the manner in which the process was served, with special reference to order 5, rule 15 and 17

(y) Signature of the process server

or

(3) If substituted service has been ordered state fully and exactly the manner in which summons was served with special reference to the terms of the order for substituted service

## APPENDIX D.

## Form No. 1

Cancel the table under the head 'Cost of Suit' in Form 1 and substitute therefor the following:—

| Plaintiff                                                                                          | Rs A | Defendant                                                                          | Rs A |
|----------------------------------------------------------------------------------------------------|------|------------------------------------------------------------------------------------|------|
| 1. Stamp for plaint                                                                                |      | 1 Stamp for power                                                                  |      |
| 2 Stamp for power                                                                                  |      | 2 Stamp for petitions and affidavits                                               |      |
| 3 Stamp for petitions and affidavits.                                                              |      | 3 Costs of exhibits including copies                                               |      |
| 4 Cost of exhibits including copies made under the Bankers' Books Evidence Act, 1891               |      | made under the Bankers' Books of Evidence Act, 1891                                |      |
| 5 Pleader's fee on Rs                                                                              |      | 4 Pleadings fee                                                                    |      |
| 6 Subsistence and travelling allowance of witnesses (including those of party if allowed by Judge) |      |                                                                                    |      |
| 7 Process fees                                                                                     |      | 6 Process fees,                                                                    |      |
| 8 Commissioners' fees                                                                              |      | 7 Commissioners fees                                                               |      |
| 9 Demi paper                                                                                       |      | 8 Demi paper                                                                       |      |
| 10 Cost of transmission of records                                                                 |      | 9 Costs of transmission of records                                                 |      |
| 11 Other costs allowed under the Code and General Rules and Orders                                 |      | 10 Other costs allowed under the Code and General Rules and Orders                 |      |
| 12 Adjournment costs not paid in cash (to be added or deducted as the case may be)                 |      | 11 Adjournment costs not paid in cash (to be deducted or added as the case may be) |      |

## Form No. 2

Cancel the table under the head 'costs of suit' in Form No. 2 and substitute therefor the following:—

| Plaintiff                                                                                           | Rs A P | Defendant                                                                                          | Rs A P |
|-----------------------------------------------------------------------------------------------------|--------|----------------------------------------------------------------------------------------------------|--------|
| 1 Stamp for plaint                                                                                  |        | 1 Stamp for power                                                                                  |        |
| 2 Stamp for power                                                                                   |        | 2 Stamp for petitions and affidavits                                                               |        |
| 3 Stamp for petitions and affidavits                                                                |        | 3 Costs of exhibits including copies                                                               |        |
| 4 Cost of exhibits including copies made under the Bankers' Books Evidence Act, 1891                |        | made under the Banker's Books Evidence Act 1891                                                    |        |
| 5 Pleader's fee on Rs                                                                               |        | 4 Pleadings fee                                                                                    |        |
| 6 Subsistence and travelling allowance of witnesses (including those of party, if allowed by Judge) |        | 5 Subsistence and travelling allowance of witnesses (including those of party if allowed by Judge) |        |
| 7 Process fees                                                                                      |        | 6 Process fees                                                                                     |        |
| 8 Commissioners' fee                                                                                |        | 7 Commissioners' fee                                                                               |        |
| 9 Demi paper                                                                                        |        | 8 Demi paper                                                                                       |        |
| 10 Cost of transmission of records                                                                  |        | 9 Costs of transmission of records                                                                 |        |
| 11. Other costs allowed under the Code and General Rules and orders                                 |        | 10 Other costs allowed under the Code and General Rules and orders.                                |        |
| 12 Adjournment costs paid in cash (to be added or deducted as the case may be)                      |        | 11 Adjournment costs not paid in cash (to be deducted or added as the case may be)                 |        |

2 This rule will come into force from 1st January, 1928

## APPENDIX G.

## Form 9

In the form of 'Decree in Appeal' cancel the words "from Memorandum of Appeal" to "the following reasons, namely":—

Rule No 11 of 1910

Given under my hand and the seal of the Court, this day of . 19

*Seal*

*Judge*

Notice—If you admit the claim either in whole or in part you should come prepared to pay into Court the money due by virtue of such admission together with the costs of the suit, to avoid execution of any decree which may be passed against your person or property, or both.

Form No 10

Insert the words 'or proof of the above having been duly made by the declaration of' after the words 'proof of the above having been duly taken by me on the oath of'

Form No 11

Substitute the following for the existing Form No, 11 —

"No 11

Declaration—OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (Order V rule 18)

*Title*

I a process server of this Court declare —

(1) On the day of 19 I received a summons issued by the Court of in Suit No of 19 in the said Court dated day of 19 for service on (2) The said was at the time personally known to me and I served the said summons on him on the day of 19 at about o'clock in the noon at by tendering a copy thereof to him and requiring his signature to the original summons notice

(a)

(b)

Or

(2) The said not being personally known to me pointed out to me a person when he stated to be the said and I served the said summons on him on the day of 19 at about o'clock in the noon at by tendering a copy thereof to him and requiring his signature to the original service notice

(a)

(b)

Or

(2) The said and the house in which he ordinarily resides being personally known to me, I went to the said house in and thereon the day of 19 at about o'clock in the noon, I did not find the said

(x)

(y)

or

(2) One at pointed out to me which he said was the house in which ordinarily resides I did not find the said there

(x)

(y)

(a) Here state whether the process served signed or refused to sign the process and in whose presence

(b) Signature of process server

(x) Enter fully and exactly the manner in which the process was served, with special reference to order 5, rule 15 and 17

(y) Signature of the process server



or

(3) If substituted service has been ordered state fully and exactly the manner in which summons was served with special reference to the terms of the order for substituted service

## APPENDIX D.

## Form No 1

Cancel the table under the head 'Cost of Suit' in Form 1 and substitute therefor the following —

## Plaintiff

Rs A

- 1 Stamp for plaint
- 2 Stamp for power
- 3 Stamp for petitions and affidavits.
- 4 Cost of exhibits including copies made under the Bankers' Books Evidence Act, 1891
- 5 Pleader's fee on Rs
- 6 Subsistence and travelling allowance of witnesses (including those of party if allowed by Judge)
- 7 Process fees
- 8 Commissioners' fees
- 9 Demi paper
- 10 Costs of transmission of records
- 11 Other costs allowed under the Code and General Rules and Orders
- 12 Adjournment costs not paid in cash (to be added or deducted as the case may be)

## Defendant

Rs A

- 1 Stamp for power
- 2 Stamp for petitions and affidavits
- 3 Costs of exhibits including copies made under the Bankers' Books of Evidence Act, 1891
- 4 . . . . .
- 5 . . . . .
- 6 party, if allowed by Judge).
- 6 Process fees,
- 7 Commissioners' fees
- 8 Demi paper
- 9 Costs of transmission of records
- 10 Other costs allowed under the Code and General Rules and Orders
- 11 Adjournment costs not paid in cash (to be deducted or added as the case may be)

## Form No 2

Cancel the table under the head 'costs of suit' in Form No 2 and substitute therefor the following :—

## Plaintiff

RS A P

- 1 Stamp for plaint
- 2 Stamp for power
- 3 Stamp for petitions and affidavits
- 4 Cost of exhibits including copies made under the Bankers' Books Evidence Act, 1891
- 5 Pleader's fee on Rs
- 6 Subsistence and travelling allowance of witnesses (including those of party, if allowed by Judge)
- 7 Process fees
- 8 Commissioners' fee
- 9 Demi paper
- 10 Cost of transmission of records
- 11 Other costs allowed under the Code and General Rules and Orders
- 12 Adjournment costs paid in cash (to be added or deducted as the case may be)

## Defendant

Rs A P

- 1 Stamp for power
- 2 Stamp for petitions and affidavits
- 3 Costs of exhibits including copies made under the Bankers' Books Evidence Act, 1891.
- 4 Pleaders' fee
- 5 Subsistence and travelling allowance of witnesses (including those of party if allowed by Judge)
- 6 Process fees
- 7 Commissioners' fee.
- 8 Demi paper
- 9 Costs of transmission of records
- 10 Other costs allowed under the Code and General Rules and Orders
- 11 Adjournment costs not paid in cash (to be deducted or added as the case may be)

2 This rule will come into force from 1st January, 1928

## APPENDIX G.

## Form 9

In the form of 'Decree in Appeal' cancel the words "from Memorandum of Appeal" to "the following reasons, namely".—

Rule No 11 of 1910

## APPENDIX H.

Form No. 14.

Cancel columns 20 to 27 of Form No. 14—and substitute therefor the following columns.

|  |                                                                                                                 |                      |
|--|-----------------------------------------------------------------------------------------------------------------|----------------------|
|  | 20. No of Execution application as per execution application register and the date of application.              | EXECUTION            |
|  | 21. Relief sought. If money, amount claimed.                                                                    |                      |
|  | 22. Order and date thereof. If portion of relief not granted what portion                                       |                      |
|  | 23. Against whom order made                                                                                     |                      |
|  | 24. For what amount to be stated                                                                                |                      |
|  | 25. Amount of cost                                                                                              | RETURN OF EXECUTION. |
|  | 26. Adjustment and satisfaction reported, if any.                                                               |                      |
|  | 27. Amount paid into Court                                                                                      |                      |
|  | 28. Persons arrested                                                                                            |                      |
|  | 29. Whether judgment debtor committed to jail, if not, why not<br>If committed to jail the period of stay in it |                      |
|  | 30. Minute of other return, other than arrest and payment.                                                      |                      |
|  | 31. Amount or relief still due and why execution petition is closed                                             |                      |
|  | 32. If petition is infructuous why and to what extent                                                           |                      |
|  | 33. Appeal, if any, against order in execution and if so, the result.                                           |                      |

## APPENDIX IV

Rules made by the Chief Court of the Punjab and the High Courts of Lahore under S 122

## ORDER II

8.—After rule 7 of order II, insert —

"8 (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action.

(2) When the plaintiff has selected the cause of action with which, he will proceed the Court shall pass an order giving him time within which to submit amended plans for the remaining causes of action and for making up the Court fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of Order VI and as required by the provisions of the Court fees Act."

## ORDER V

Rule 10—To rule 10 the following proviso was added —

"Provided that in any case if the plaintiff so wishes the Court may serve the summons in the first instance by registered post (acknowledgment due) instead of in the mode of service laid down in this rule." 24 11 1927

Rule 15—In rule 15 after the words "where in any suit the defendant can not be found" the following words were inserted —

"or is absent from his residence

## ORDER VII

2.—In the second paragraph of rule 2 of Order VII after the words "and the defendant" insert "or for moveables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, and after the words "the amount" insert "or value."

Rules 19 to 25.—Add the following after rule 18

19 Every plaint or original plaint shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioner subsequently added shall immediately on being so added file a proceeding of this nature.

20 An address for service filed under the preceding rule shall be within the  
" or petition is filed or of the  
" es des, if within the limits of the  
at Lahore

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just.

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present a copy of the notice, summons or other process  
the date fixed, such party  
notice, summons or other  
tered post, and such service  
s or other process had been

personally served

summons or other processes  
ided by Order III, Rule 5  
given by the party

24 A party who desires to change the address for service given by him as aforesaid shall file a verified petition and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform and may be either served upon the pleaders for such parties or be sent to them by registered post as the Court thinks fit.

## ORDER XXXII.

1. To rule 1 the following paragraph shall be added :—

any costs in the suit as if he were the plain

2 substituted for sub rules (3) and (4) —

per . . . . . taint a list of relatives of the minor and of

as guardian for the suit for a minor defendant The list shall constitute an appl

no, by the plaintiff under sub rule (2) above

(4) The Court may, at any time after institution of the suit call upon the plain

compliance may reject the plaint

ment of a guardian for the suit and any i

proposed guardian has no interest in the matters in controversy in the suit adver

to that of the minor and that each person proposed is a fit person to be so appointe

(6) No order shall be made on any application under this rule except upon noti

competent in th

natural gu

in whose care the minor is, and after hearing any objection which may be urg

on behalf of any person served with notice under the sub rule

Provided that the Court may, if it sees fit, issue notice to the minor also "

Rule 4—New sub rule (2 A) was inserted after sub rule (2) —

(2 A) Where a minor defendant has no guardian appointed or declared b

competent authority, the Court may, subject to the proviso to sub-rule (1) appoint

as his guardian for the suit a relative of the minor

If no proper person be available who is a relative of the minor, the Court shal

and failing such other defendant shal

2 to appoint one of its officers", and

"but the Court may presume such consent to have been given, unless it i

expressly refused"

## ORDER XXXVII

Rule 1—The word and and new clause (e) were added —

and

(e) the Court of the District Judge and Subordinate Judges of the First  
Class of the Delhi Province and the Courts of the District Judges and Subordinate  
Judges of the First Class in the Civil Districts of Lahore and Amritsar in the Province  
of the Punjab

Rule 3—To rule 3 the following sub rule was added —

(3) The provision of section 5 of the Indian Limitation Act, 1908, shall apply  
to applications under sub rule (1)

## ORDER XLI

, if satisfied that  
with the production

Rule 35—The following further proviso was added —

Provided also in the case of the High Court, that in the absence of a Judge who  
passed a decree, or  
or the Deputy Ri  
Judge or Judges,  
such decree on beh

Rule 38—After rule 37 new rule 38 shall be added —

"38 (1) An address for service filed under Order VII, rule 19, or Order VIII,  
rule 11, or subsequently altered under Order VII, rule 24, or order VIII, rule 12,  
shall hold good during all appellate proceedings arising out of the original suit or  
petition

## APPENDIX IV

Rules made by the Chief Court of the Punjab and the High Courts of Lahore  
under S. 122

## ORDER II

8.—After rule 7 of order II, insert —

"8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court amend the plaint by striking out the remaining causes of action.

(2) When the plaintiff has selected the cause of action with which, he will proceed the Court shall pass an order giving him time within which to submit amended pleadings for the remaining cause, if necessary. Should the plaintiff fail to do so, the Court shall proceed as provided in rule 13 of the Court-fee Act."

### ORDER V

Rule 10—To rule 10 the following proviso was added —

"Provided that in any case if the plaintiff so wishes the Court may serve the summons in the first instance by registered post (acknowledgment due) instead of in the mode of service laid down in this rule." 24.11.1937

Rule 15 — In rule 15 after the words "where in any suit the defendant can not be found" the following words were inserted: —

"or is absent from his residence"

## ORDER VII

2—In the second paragraph of rule 2 of Order VII after the words "and the defendant" insert "or for moveables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate," and after the words "the amount" insert "or value."

**Rules 19 to 25** —Add the following after rule 18

19. Every plaint or original plaint shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature.

in the  
of the  
of the

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *ex motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just.

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process the date fixed such party notice, summons or other tered post, and such service s or other process had been

personally served

23 Where a party engages a pleader, notices, summons or other processes for service on him shall be served in the manner prescribed by Order III, Rule 5, unless the Court directs service at the address for service given by the party.

24  
aforesaid  
of the r  
parties  
served upon the pleaders for such parties or be sent to them by registered post as the  
Court thinks fit

25 Nothing in these rules shall prevent the court from directing the service of a notice, summons or other process in any other manner, if, for any reasons, it thinks fit to do so.

### Order VIII

Rule 1--In Rule 1, the following was added --

Rule 1—In Rule 1 the following was added —  
 "and with such written statement shall produce in court all documents in his possession or power on which he bases his defence or any claim for set off"

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set off he shall enter such documents in a list to be added or annexed to the written statement.

Rules 11 and 12 ~ Add the following rules. —

Rules 11 and 12 - Add the following rules -  
 "11 Every party, whether original added or substituted, who appears in any  
 sum or other proceeding shall on or before the date fixed in the summons, notice or  
 sta g  
 del 19  
 del 21  
 p21, 19

12. Rules 20, 22, 23, 24 and 25 of Order VII shall apply so far as may be, to addresses for service filed under the preceding rule.

## ORDER IX

9 (1)—To rule 9 (1) the following proviso shall be added:—

Provided that the plain iff shall not be precluded from bringing another suit for redemption of a mortgage, although a former suit may have been dismissed for default."

### ORDER XIII

proviso was added —

ified copy shall be recoverable as a document has been produced"

## ORDER XVI

Rule 1.—To rule (1) the following proviso has been added —

Provided that no party who has begun to call his witness shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued or to produce any witness not named in a list which must be filed in Court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence without an order of the Court made in writing and stating the reasons therefor.

15 10 32

2 (1) Add the following as an Exception to rule 2 (1) —

Exception—when applying for a summons for any of its own officers, Government will be exempt from the operation of clause (1)



(c) In the charge of a village lambardar such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No 15 B of Appendix E with one or more sureties for its production

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rules 55, 57 or 60 of this order, the Court may order the resumption of the attached property to the person in whose possession it was before attachment

(3) When property is made over to a custodian under sub clause (a) or (c) of rule 43, a report to the Court shall be drawn up by the custodian

(b) The officer of the Court who made the attachment

(c) The person whose property is attached and made over

(d) Two respectable witnesses

One copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings, under which the attachment has been ordered, one copy will be made over to the person whose property is attached and one copy will be made over to the custodian

The following rules were added —

43A (1) Whenever attached property is kept in the village or place where it is attached the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the property seized

(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule it shall be brought to the Court house and delivered to the proper officer of the Court

(3) A custodian appointed under the second proviso to rule 43 may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him

(4) When any property is taken back from a custodian he shall be granted a receipt for the same

in the village or place where it is

judgment debtor, or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody

The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid be recovered from the proceeds of the property, if sold or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings

43C When an application is made for the attachment of live stock or other moveable property the decree holder shall pay into Court in cash such sum as will cover the cost of the maintenance and custody of the property for 15 days. If within three clear days, before the expiry of any such period of 15 days, the amount of such costs for such further period as the Court may direct be not paid into Court, the Court on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

43D Any person who has undertaken to keep attached property under rule 43 (c) shall be liable to be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him

Rule 45 — Add the following to sub rule (1) —

charges as may be necessary for the property is likely to be fit to be cut or gathered



Rule 5.—In sub-rule (1) (b) insert after the words 'the order by the issue to such other Court' the words 'and to the Court to which it has been transferred for execution'.

In sub-rule (1) (b) (ii) cancel the words 'to execute its own decree' and substitute therefor the words 'to execute the attached decree with the consent of the said decree holder expressed in writing or with the permission of the attaching Court'.

In sub-rule (b) substitute the words "with the knowledge" for the words "after receipt of notice."

Rules 5.—Add the following as sub rule (3).—

(3) The order shall take effect, as against persons claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier."

... .. time of the first attach-  
... .. attachment and sale of  
... .. to prove a title acquired  
subsequent to the date of the first attachment."

Rule 63A.—After rule 63, insert the following new rule.—

"63A. (1) When the property attached is a debt the court executing the decree shall

between the judgment debtor and the garnishee and no separate suit relating thereto shall lie."

Rule 66.—Add to sub rule (2) clause (c) after the word 'property' the following proviso 'Provided that it shall not be necessary for the court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate if any, given by either or both of the parties'

Rule 68.—Substitute the words 'fifteen days' for 'thirty days' and 'one week' for 'fifteen days' in this rule

Rule 69.—In sub-rule (2) substitute the words 'thirty days' for the words 'seven days'.

Rule 75.—In sub-rule (2) after the word 'stored' the following words shall be inserted—'or can be sold to great advantage in an unripe state, such as green wheat or gram'.

Rule 89.—In sub rule (1) cancel the words 'either owing such property or holding an interest therein by virtue of a title acquired before such sale' and substitute the words 'claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person'

ground which the

me other

instance

#### ORDER XXX

1 To rule 1 of Order XXX the following explanation shall be added.—

*Explanation*—"This rule applies to a joint Hindu family trading partnership"

(c) In the charge of a village hmbardar such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No 15 B of Appendix E with one or more sureties for its production

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rules 55, 57 or 60 of this order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment

(3) When property is made over to a custodian under sub clause (a) or (c) of clause (1) the schedule of property annexed to the Bond shall be drawn up by the attachm

- |     |               |
|-----|---------------|
| (a) | attachm       |
| (b) | and made over |
| (c) |               |
| (d) |               |

One copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings under which the attachment has been ordered, one copy will be made over to the person whose property is attached and one copy will be made over to the custodian

it  
and shall visit it report to the Court the fact to the Court

(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule it shall be brought to the Court house and delivered to the proper officer of the Court

(3) A custodian appointed under the second proviso to rule 43 may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him

(4) When any property is taken back from a custodian he shall be granted a receipt for the same

judgment debtor or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody

The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of the property, if sold or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings

43C When an application is made for the attachment of live stock or other moveable property the decree holder shall pay into Court in cash such sum as will cover the cost of the maintenance and custody of the property for 15 days. If within three clear days before the expiry of any such period of 15 days, the amount of such costs for such further period as the Court may direct be not paid into Court the Court on receiving a report thereof from the proper officer may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

43D Any person who has undertaken to keep attached property under rule 43 (1) (c) shall be liable to be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceeding the value of any such property wilfully lost by him

Rule 45—Add the following to sub rule (1) —

"And with every such application such charges as may be necessary for the custody of the crop up to the time at which it is likely to be fit to be cut or gathered shall be paid to the Court

Rule 5—In sub-rule (1) insert after the words "then by the issue to such order Court" the words "and to the Court to which it has been transferred for execution."

In sub-rule (1) (b) (ii) cancel the words "to execute its own decree and substitute the words "to execute the attached decree with the consent of the said decree holder expressed in writing, or with the permission of the attaching Court."

In sub-rule (b) substitute the words "with the knowledge" for the words "after receipt of notice."

Rule 5—Add the following as sub rule (3) —

(3) The orders shall take effect, as against persons claiming under a gratuitous transfer from the judgment debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier."

Rule 58—Add at the end of the proviso to sub rule (1) —

"and that if an objection is not made within a reasonable time of the first attachment the objector shall have no further right to object to the attachment and sale of the same property in execution of the same decree, unless he can prove a title acquired subsequent to the date of the first attachment."

between the judgment debtor and the garnishee and no separate suit relating thereto shall lie.

Rule 66—Add to sub rule (2) clause (c) after the word "property" the following proviso "Provided that it shall not be necessary for the court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate if any, given by either or both of the parties."

Rule 68—Substitute the words "fifteen days" for "thirty days" and "one week" for "fifteen days" in this rule.

Rule 69—In sub-rule (2) substitute the words "thirty days" for the words "seven days".

Rule 75—In sub rule (2) after the word "stored" the following words shall be inserted—"or can be sold to great advantage in an unripe state, such as green wheat or gram".

Rule 89—In sub rule (1) cancel the words "either owing such property or holding an interest therein by virtue of a title acquired before such sale" and substitute the words "claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person".

Rule 90—Add the following proviso as the third para —

"Provided further that no such sale be set aside on any ground which the applicant could have put forward before the sale was conducted."

Rule 98—Insert the words "or on his behalf" after the words "some other

instance

par  
to  
tha

### ORDER XXX

To rule 1 of Order XXX the following explanation shall be added —

*Explanation*—"This rule applies to a joint Hindu family trading partnership"

## ORDER XXXII

persons, with the same effect, as if the list were filed by the plaintiff under sub rule (2) above

(4) The Court may, at any time after institution of the suit call upon the plaintiff to furnish such a list and, in default of compliance may reject the plaint

(5) Any  
furnished  
proposed  
to

to  
bel

dian of the minor or where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under the sub rule

Provided that the Court may, if it sees fit, issue notice to the minor also

Rule 4—New sub rule (2 A) was inserted after sub rule (2) —

(2 A) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may subject to the proviso to sub rule (1) appoint as his guardian for the suit a relative of the minor

If no proper person be available who is a relative of the minor, the Court shall if any, and failing such other defendant shall this rule to appoint one of its officers and rule (3) —

but the Court may presume such consent to have been given, unless it is expressly refused

## ORDER XXXVII

Rule 1—The word and and new clause (e) were added —

(e) the Court of the District Judge and Subordinate Judges of the First class of the Delhi Province and the Courts of the District Judges and Subordinate Judges of the First Class in the Civil Districts of Lahore and Amritsar in the Province of the Punjab

Rule 3—To rule 3 the following sub rule was added —

(3) The provision of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub rule (1)

## ORDER XLI

Rule 35—The following further proviso was added —

Provided also in the case of the High Court, that in the absence of a Judge who  
strar  
sent  
sign

Rule 38—After rule 37 new rule 38 shall be added —

'38 (1) An address for service filed under Order VII rule 19, or Order VIII rule 11, or subsequently altered under Order VII, rule 24, or Order VIII rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the court below and notices and processes shall issue from the Appellate Court to such addresses

(3) Rules 21, 22, 23, 24 and 25 of order VII shall apply, so far as may be, to appellate proceedings"

## ORDER XLII

Rule 2—Add the following rule as rule 2 —

"2 In addition to the copies specified in order XLI rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the court of first instance, unless the Appellate Court dispenses therewith."

## APPENDIX B

## Form No 11

AFFIDAVIT OF PROCESS-SERVERS TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (O 5 r 18)

## Title

The affidavit of \_\_\_\_\_ son of \_\_\_\_\_ make oath and say as follows —  
affirm

(1) I am a process server of this Court

(2) On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ I received a summons \_\_\_\_\_ issue d by the Court of \_\_\_\_\_ in Suit No \_\_\_\_\_ of 19\_\_\_\_, in the \_\_\_\_\_ notice \_\_\_\_\_ said Court dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for service on \_\_\_\_\_.

(3) The said \_\_\_\_\_ was at the time personally known to me and I served the said summons \_\_\_\_\_ on \_\_\_\_\_ him \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at about \_\_\_\_\_ O'clock on the \_\_\_\_\_ noon \_\_\_\_\_ notice \_\_\_\_\_ her \_\_\_\_\_ at \_\_\_\_\_ by tendering a copy thereof to \_\_\_\_\_ him \_\_\_\_\_ and requiring \_\_\_\_\_ his \_\_\_\_\_ her signature to the original \_\_\_\_\_ summons \_\_\_\_\_ notice \_\_\_\_\_

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

or,

(3) The said \_\_\_\_\_ not being personally known to me \_\_\_\_\_ accompanied to \_\_\_\_\_ and pointed out to me a person whom he stated to be the said \_\_\_\_\_ and I have served the \_\_\_\_\_ summons \_\_\_\_\_ on \_\_\_\_\_ him \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ about \_\_\_\_\_ O'clock in the \_\_\_\_\_ noon at \_\_\_\_\_ by tendering a copy thereof to \_\_\_\_\_ him \_\_\_\_\_ and requiring \_\_\_\_\_ his \_\_\_\_\_ her signature to the original \_\_\_\_\_ summons \_\_\_\_\_ notice \_\_\_\_\_

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

or,

(3) The said \_\_\_\_\_ and his house in which he ordinarily resides being personally known to me \_\_\_\_\_ pointed out to me by \_\_\_\_\_

I went to the said house in \_\_\_\_\_ and there on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ ,  
 at \_\_\_\_\_ O'clock in the <sup>fore</sup>noon I did not find the said \_\_\_\_\_  
 after \_\_\_\_\_

I enquired { <sup>a</sup>  
                   { <sub>b</sub> } neighbours

I was told that \_\_\_\_\_ had gone to \_\_\_\_\_ and would not be back till \_\_\_\_\_  
 Signature of process server

or  
 (3) If substituted service has been ordered, state fully and exactly the manner in  
 which the summons was served with special reference to the terms of the order  
 for substituted service

Sworn

\_\_\_\_\_ by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 Affirmed

Empowered under section 139 of the Code of  
 Civil Procedure to administer the oath to defendants

## APPENDIX E

### Form No 15A

#### BOND FOR SAFE CUSTODY OF MOVEABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

(O XXII, r 43)

In the Court of \_\_\_\_\_ at \_\_\_\_\_  
 Civil Suit No \_\_\_\_\_ of \_\_\_\_\_

A B of \_\_\_\_\_

against \_\_\_\_\_

C D of \_\_\_\_\_

Know all men by these presents that we I J of \_\_\_\_\_ etc. and K L of \_\_\_\_\_  
 etc and M N of \_\_\_\_\_ etc, are jointly and severally bound to the Judge  
 of the Court of \_\_\_\_\_ in Rupees \_\_\_\_\_ to be paid to the said Judge, for  
 which payment to be made we bind ourselves and each of us, in the whole, our and  
 each of our heirs, executors and administrators, jointly, and severally by these  
 presents

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 And whereas the moveable property specified in the schedule hereunto annexed  
 has been attached under a warrant from the said Court, dated the \_\_\_\_\_ day of \_\_\_\_\_  
 19\_\_\_\_, in execution of a decree in favour of \_\_\_\_\_ in Suit No \_\_\_\_\_ of \_\_\_\_\_  
 19\_\_\_\_ on the file of \_\_\_\_\_ and the said  
 property has been left in the charge of the said I J

Now the condition of this obligation is that if the above bounden, I J shall duly  
 account for and produce when required before the said Court all and every the  
 property aforesaid and shall obey any further order of the Court in respect thereof  
 then this obligation shall be void, otherwise it shall remain in full force

I J  
 K L  
 M N

Signed and delivered by the above bounden in the presence of \_\_\_\_\_

Form No 15 B

#### BOND FOR THE SAFE CUSTODY OF MOVEABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES

[O XXXI, r 43 (1) (c)]

In the Court of \_\_\_\_\_ at \_\_\_\_\_  
 Civil suit No \_\_\_\_\_ of \_\_\_\_\_

A, B of \_\_\_\_\_

against \_\_\_\_\_

C D of \_\_\_\_\_

Know all men by these presents that we I J of \_\_\_\_\_ etc, and K L, of \_\_\_\_\_  
 and M N of \_\_\_\_\_ etc are jointly and \_\_\_\_\_ severally bound to the  
 Judge of the Court in rupees \_\_\_\_\_ to be paid to the said Judge

for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents

Dated this                      day of                      19

And whereas the moveable property specified in the Schedule hereunto annexed has been attached under a warrant from the said Court, dated the                      19                      in execution of a decree in favour of                      in Suit No                      of 19                      on the file of                      and the said property has been left in the charge of the said I J.

Now the condition of his obligation is that, if the above bounden I J shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void. otherwise it shall remain in full force and be enforceable against the above bounden I J in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I J were a surety for the restoration of property taken in execution of a decree

I J

K. L.

M. N.

Signed and delivered by the above bounden                      in the presence of

## APPENDIX V

### RULES MADE BY THE HIGH COURT OF JUDICATURE AT MADRAS UNDER S 122

#### ORDER III

Rule 4—In sub rule (1) the words "subscribed with his signature in his own hand" have been substituted for the words "in writing signed" and in sub rule (2) the words "a document subscribed with his signature in his own hand" have been substituted for the words "a writing signed"

The following has been added as sub rule (6) —

Secretary of  
is official

Supra 3, 1911 - 2 - 1 -

Rule 5—At the end of the rule insert the following —

"Explanation—Service on a pleader who does not act for his client shall not raise the presumption under his rule"

#### ORDER V.

Rule 5—Delete the first paragraph and substitute the following in lieu thereof —

"5. The Court shall determine, at the time of issuing the summons whether it shall be —

(1) for the settlement of issues only, or (2) for the defendant to appear and state whether he contests or does not contest the claim and directing him if he contest to receive directions as to the date on which he has to file his written statement, the date of trial and other matters and if he does not contest for final disposal of the suit at once, or (3) for the final disposal of the suit, and the summons shall contain a direction accordingly

Rule 15 —Delete the words "the defendant can not be found" and in lieu thereof insert the words "the defendant is absent"

Rule 18 A —Insert the following rule 18 A after rule 18 —

A District Judge, within the meaning of the Madras Civil Courts Act, 1873, may delegate to the Chief Ministerial Officer of the District Court the power to order the issue of fresh summons

to the issue of fresh summons in  
notice board"

Substitute the following for rr 25 and 26 in O 5 —

25 Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate. Provided that, if by any arrangement between the Local Government of the Province in which the Court issuing the summons is situate and the Government of the foreign territory in which the defendant resides the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in such manner as by the said arrangement may have been agreed upon.

26 Where—

(a) In the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council a Political Agent has been appointed, or a Court has been established or continued with power to serve a summons issued by a Court under this code in any foreign territory in which the defendant resides, or

(b) the Governor General in Council has by notification in the Gazette of India declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, or

(c) by any arrangement between the Local Government of the Province in which the Court is situate and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of

served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Make the following amendments and additions to Order 5 —

27 In rule 27 after the words 'sent by registered post' insert the words 'by registered post prepaid for acknowledgment'.

28 In rule 28 after the words 'shall send' insert the words 'by registered post prepaid for acknowledgment'.

29A Insert as rule 29A —

g rules where the defendant is in the Military or Naval forces or His Majesty's service, the summons may be served on the defendant by registered post prepaid for acknowledgment.

#### Order VII

Rule 9—In rule 9 after the word 'and,' occurring in the third line delete the comma and the five following viz, 'if the plaint is admitted' and insert the expression 'along with the plaint' after the words 'shall present'.

#### Order IX

Rule 13—Make the following amendment to order 9, rule 13 —

(1) Renumber rule 13 as rule 13 (1) (2) Insert the following proviso to sub rule (1) —

'Provided further that no court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons if it be satisfied that the defendant had notice of the date of hearing in sufficient time to appear and answer the plaintiff's claim'.



(3) Add the following as sub rule (2) to rule 13 —

"(2) The provisions of section 5 of the Indian Limitation Act 1908, shall apply to applications under sub-rule (1)"

Rule 15—Add the following as rule 15 of Order IX —

'15 (1) Rules 6, 13 and 14 shall apply *mutatis mutandis* to those proceedings in execution falling within section 47 of the code in which notice to the opposite party is required under the provisions of the code

(2) Subject to the provisions of sub rule (2) of rule 13 an application under this rule shall be made within thirty days of the date of the order or where the notice was not duly served, of the date when the applicant has knowledge of the order "

#### ORDER XII

Rule 6—Re number the existing rule 6 as sub-rule (1) and insert the following as sub rule (2) and (3) —

"(2) The Court may also of its own motion make such order to give such judgment as it may consider just, having due regard to the admissions made by the parties

(3) Whenever an order or judgment is pronounced under the provisions of this rule a decree may be drawn up in accordance with such order or judgment and bearing the same date as the day on which the order or judgment was pronounced

#### ORDER XIII

7 Add the following proviso to rule 7 (2) —

Provided that no document shall be returned which by force of the decree has become worthless and for useless

9 Add the following as sub rule (3) —

"(3) Every application under the first proviso to sub rule (1) above shall be made by a verified petition setting forth facts justifying the immediate return of the original and the Court may make such order as it thinks fit for costs of any or all the parties to the application, including any costs incidental to the preparation of the certified copy to be substituted for the original," and may further direct that any party against whom any order for costs is made shall have such costs, if paid, included as costs in the cause "

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the  
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require the party on whose behalf the document was produced to substitute with the least possible delay a certified copy for the original, and shall thereupon cause all the original document to be returned to the applicant and may further make such orders as to costs and charges in this behalf as it thinks fit. If the copy is not so provided within the time fixed by the Court the original document shall be returned to the applicant without further delay

#### ORDER XV

Rule 2—Re number rule 2 as sub rule 2 (1) and insert the following as sub-rule (2) :—

"(2) Whenever a judgment is pronounced under the provisions of this rule a decree may be drawn up in accordance with such judgment bearing the same date as the day on which the judgment was pronounced "

#### ORDER XVI

Rule 4A Insert the following as rule 4 A after rule 4 —

"4 A (1) Notwithstanding anything contained in the foregoing rules, in any suit by or against the Secretary of State for India in Council no payment in accordance with rule 2 or rule 4 shall be required when an application on behalf of Government is made for summons to a Government servant whose salary exceeds Rs 10 per mensem and whose attendance is required in a Court situate more than five mile

from his head quarter; and the expenses incurred by Government in respect of the attendance of the witness shall not be taken into consideration in determining costs incidental to the suit

- (2) When any other party to such a suit applies for a summons to with his application a sum of of the officer according to d shall also pay the same scale, —

#### ORDER XVIII.

Rule 2 —At the end of the rule 2 insert the following "Explanation" —

"Explanation—Nothing in this rule shall affect the jurisdiction of the Court for reasons to be recorded in writing, to direct any party to examine any witness at any stage"

#### ORDER XX.

Rule 1 —The existing rule 1 is re numbered as sub rule 1 (1) and the following is added as sub rule (2) —

(2) The judgment may be pronounced by dictation to a short hand writer in open Court, where the presiding Judge has been specially empowered in that behalf by the High Court

3 For Order 20, rule 3, substitute the following rule —

"(3) The judgment shall bear the date on which it is pronounced and shall be signed by the presiding Judge, where the presiding Judge pronounces his judgment by dictation, and shall be signed by the Judge so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge."

Rule 6 —For rule 6(1) substitute the following —

(1) The decree shall agree with the judgment. It shall contain the number of the suit, the names and descriptions of the parties, their addresses for service and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit

In rule 6, after sub rule (2) the following shall be added :—

(2) In all cases in which an element of charity or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant"

Rule 11 —Substitute the following for rule 11 :—

11(1) Where and in so far as a decree is for the payment of money, the Court may order that the payment of money be made by instalments, with or without interest, and may order that the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit."

Rule 12 —Add the following to rule 12 :—

12(1) Where the Court orders that the payment of money be made by instalments, the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit."

#### ORDER XXI

Rule 2 (2)—Substitute the following for the existing Rule 2 (2) —

"Any party to the suit, or his legal representatives or any person who has become surety for the decree-debtor also may inform the Court of such payment or adjustment

and apply to the Court to issue a notice to the decree holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly."

Rule 11—In sub-rule (2) of rule 11 between clauses (f) and (g) insert the following new clause.—

"(f) whether the original decree holder has transferred any part of his interest in the decree and, if so, the date of the transfer and the name and address of the parties to the transferee."

**Rule 22**—In rule 22 between sub-rules (1) and (2) insert the following :—

“(1A) Where from the particulars mentioned in the application in compliance with the provisions of sub-rule (1), it appears that the original creditor, the Court shall grant the application if the petitioner is not the petitioner, where he is a party to the transfer.”

In sub rule (1) of rule 22 after clause (b) insert the following :—

'Or (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in insolvency.'

(1) Amend Order 21 rule 25 (2) as follows —

Insert the words "or cause him to be examined by any other Court" after the words "examine him."

(2) Add the following proviso to r. 25 (2) :—

Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause.

39 Delete the present sub-rules 4 and 5 of rule 39 of Order 21 and substitute the following —

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together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be paid to the officer in-charge of the civil prison.

(5) Sums disbursed under this rule by the decree holder for the subsistence and cost of conveyance (if any) of the judgment-debtor shall be deemed to be costs in the suit.

**Rule 40—Substitute the following for rule 40 :—**

"40 (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the court after being arrested in execution of an insolvency or that the cause to stalments, the pay being on links fit make an order disallowing the application for his arrest and detention, or directing his release, as the case may be

(2) Before making an order under sub rule (1), the Court shall take into consideration any allegation of the decree holder touching any of the following matters, namely —

(a) the decree being for a sum for which the judgment debtor was bound in any fiduciary capacity to account,

(b) the transfer, concealment or removal by the judgment debtor of any part of his property after the date of the institution of the suit in which the decree was

passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree holder in the execution of the decree,

(c) any undue preference given by the judgment debtor to any of his other creditors,

(d) refusal or neglect on the part of judgment debtor to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it,

(e) the likelihood of the judgment debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree holder in the execution of this decree

(3) While any of the matters mentioned in sub rule (2) are being considered the Court  
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furnish  
by the Court

sted  
rule (1) it shall case  
rested and subject

ten days or release him on his surety for his appearance at the expiration of the specified period if the decree be not sooner satisfied

When the Court sees fit to leave a judgment debtor in the custody of an officer of the court and the judgment debtor does not pay the costs incidental to such intermediate custody it shall be competent for the Court to require the decree holder, on pain of his application for arrest being disallowed to pay into Court such sum as the Judge deems sufficient to cover such costs including *batta* for process server, subsistence of the judgment debtor and cost of conveyance if any and sums disbursed by the decree holder under this proviso shall be deemed to be costs in this suit

holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment debtor and the escort for the journey to and from the prison Sub rule (5) of rule 39 shall apply to such payments

For Order 22 r 43 substitute the following rules viz —

43(1) Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment debtor the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody likely to exceed its value, the attaching officer may sell it at once and provided also that when the property attached consists of live stock agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule he may at the instance of the judgment debtor or of the decree holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached—

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No 15A

of Appendix E to this schedule with one or more sufficient sureties for its produc-

(2) Whenever an attachment made any of the reasons specified in rule 55 or rule may order the restitution of the attached property it was before attachment

village or place where it is  
the fact to the Court and shall

retained  
rule, it  
Court

43B (1) Whenever attached property kept in the village or place where it is instance it is so retained shall provide if it is in charge of an officer of

or any person claiming  
for feeding the same

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings

rule. —  
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53 Add the following as sub-rule, 1 (c) to Order 21, rule, 53 —

"(c) If the decree sought to be attached has been sent for execution to another Court which passed the decree shall send a copy of the said notice to the

Rule 89—At the end of sub rule (1) insert the following proviso —

"Provided that where the immoveable property sold is liable to discharge only a portion of the decree debt, the payment under clause (b) of this sub rule need not exceed such amount as under the decree the owner of the property sold is liable to pay"

sale — from the date of

not — to any cause  
such time as may be fixed by the Court — good within

## ORDER XXII

Rule 4 — "except as herein-

(4) — from the necessity to substitute the legal representative of any such defendant who has been declared *ex parte* or who has failed to file his written statement or who having filed it, has failed to appear and contest at the hearing, and the judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place

5 Add the following as a proviso to Order 22, r 5 —

Provided that an Appellate Court before determining it may direct any lower Court to take evidence thereon and to return the evidence so taken together with its finding and reasons and may take such finding and reasons into consideration in determining the question

11A—In Order 22, after r 11, add the following as 11A —

tions and applications presented out of time shall be posted before a Judge for disposal

#### ORDER XXV

Rule 1—The following shall be inserted as sub rule (4) —

ement of champerty or maintenance is proved,  
the defendant demand security for the estimated  
such proportion thereof as from time to time  
Court may think just."

15—Re number the existing r 15 in Or XXVI as r 15 (1) and insert the following as sub-rule (2) —

and for expenses of such witnesses under r 2 of Or XVI

#### ORDER XXVI A.

1 The Court may in any suit issue a commission to such persons as it thinks fit to translate accounts and other documents which are not in the language of the Court

2 The report of the Commissioner shall be evidence in the suit and shall form part of the record

3 Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expense of the commission to be, within a time to be fixed paid into Court by the party at whose instance or for whose benefit the Commission is issued

#### ORDER XXVII

5—For Order 27 r 5 substitute the following rule —

The Court in fixing the day for the Secretary of State for India in Council to answer the plaint shall allow not less than three months time from the date of summons for the necessary communication with the Government through the proper channel and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government and may extend the time at its discretion

#### ORDER XXIV

1A—Insert as Rule 1A of Order 29 —

1A. In suits against a Local Authority the Court in fixing the day for the defendant to appear and answer shall allow not less than two months' time between the date of summons and the date for appearance.

#### ORDER XXII

Rules 3 and 4.—substitute rules 3 and 4 by new rule 3 —

"3. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit  
Qualifications to be a next friend or guardian.

Provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than the guardian shall act as the next friend of the minor or to be appointed his guardian for the suit unless the Court considers for reasons to be recorded that it is for the minors' welfare that another person be permitted to act or be appointed as the case may be

(3) Where the defendant is a minor, the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for the minor

(4) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. The application, where it is by the plaintiff shall set forth in the order of their suitability a list of persons (with their full addresses for service or notice in Form No 11A set forth in Appendix H hereto) who are competent and qualified to act as guardian for the suit for the minor defendant. The Court may, for reasons to be recorded, in any particular case exempt the applicant from furnishing the list referred to above

(5) The application referred to in the above sub rule whether made by the plaintiff or on behalf of the minor defendant shall be supported by an affidavit verifying the fact that the proposed guardian has not or that one of the proposed guardians has any interest in the matters

persons to act as guardian for the minor for the suit

(6) An application for the appointment of a guardian for the suit of a minor shall not be combined with an application for bringing on record the legal representatives of a deceased plaintiff or defendant. The applications shall be by separate petitions

(7) No order shall be made on any application under sub rule (4) above except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or where there is no guardian, upon notice to the father or other natural guardian of the minor or where there is no father or other natural guardian to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule. The notice required by this sub rule shall be served six clear days before the day named in the notice for the hearing of the application and may be in Form No 11 set forth in Appendix H hereto

(8) Where the application is by the plaintiff, he shall, along with his application and affidavit referred to in sub-rules (4) and (5) above, produce the necessary forms in duplicate, filled in to the extent that is possible at that stage, for the issue simultaneously of notices to two at least of the proposed guardians for the suit to be selected by the Court from the list referred to in sub rule (4) above together with a duly stamped voucher indicating that the fees prescribed for service have been paid

If one or more of the proposed guardians signify his or their consent to act, the Court shall appoint one of them and intimate the fact of such appointment to the person appointed by registered post. If no one of the persons served signifies his consent to act, the Court shall proceed to serve simultaneously another selected two, if so many there be, of the persons named in the list referred to in sub-

(9) No person shall, witho

No person shall be appointed guardian without his consent

applicant himself be the proposed

(10) Where the Court finds no person fit and willing to act as guardian, for the suit, the Court may appoint any of its officers or a pleader of the Court to be the guardian and may direct that the costs to be incurred by that officer in the performance of his duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of the costs as justice and the circumstances of the case may require

(11) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the

Funds for a guardian other than

## Order XXXII

### Rule 6 (2)

Add the following proviso to sub rule (2) :—

Provided that the court may in its discretion dispense with such security in cases where the next friend or guardian for the suit is the manager of a joint Hindu family or the Karamdar of a Malabar Talar and the decree is passed in favour of the joint family or the Talar

7—Add the following in Order 32, rule 7 —

for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter, to which a minor or other person under disability is a party shall recite the sanction of the Court thereto and shall set out the terms of the compromise, as in Form No. 24 in Appendix D to this Schedule.

14A—In Order 32 after r 14, add the following as rule 14A —

or the suit of a  
fiction, except  
quasi judicial  
dure and may  
ad applications



17—Add as rule 17 of Order 32 —

of a minor or other person under  
 • Court in fixing the day for the  
 than two months' time between

### ORDER XL

Rule 4—Substitute the following for rule 4 of order XL of the Code of Civil Procedure —

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the Receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the Receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety if any for the receiver; but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs. Provided that the Court may, where the account is disputed by the parties and is of a complicated nature or where it is alleged that loss has been occasioned to the property or by the wilful default or gross negligence of the receiver refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.

(3) If the receiver fails to pay any amount which he has been ordered to pay under sub rule (2) of this rule within the period fixed in the order the Court may direct such amount to be recovered either from the security (if any) furnished by him under rule 3 or attachment and sale of his property, or, if his property has been attached under sub rule 1 of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance (if any) of the sale proceeds to the receiver.

### ORDER XLI

ry case in which the  
 when a copy is applied

special or Local Act  
 t, IX of 1908 do not  
 ave not been granted  
 llate Court may admit  
 2 copy of the decree or  
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Add the following sentence to sub rule (2) of r 1 —

The memorandum shall also contain a statement of the valuation of the appeal

reasons for extending the period of limitation) until notice has been given to the respondent and his objections, if any, to the Court acting under the provisions of section 5 of Act 1908 have been heard

Rule 5—Substitute the following for the existing sub-rule (1) to rule 5 of order XLI —

'5 (1) An appeal shall not operate as a stay of proceedings under a decree or

order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause stay of execution of such decree and may, when the appeal is against a preliminary decree, stay the final decree in pursuance of the preliminary decree or the execution of any such making of a final decree if already made.

Rule 9.—In rule 9, delete sub-rule (2) and substitute the following in its place —  
“Such book shall be called the Register of Appeals.”

Rule 14.—Insert the following as a provision to sub-rule (1) —

Provided that the appellate Court may dispense with service of notice on respondents against whom the suit has proceeded *ex parte* in the Court from whose decree the appeal is preferred.”

15. In order 41, rule 18, after the words “cost of serving the notice” insert the words “or if the notice is returned unserved, to deposit within any subsequent period fixed the sum required to defray the cost of any further attempt to serve the notice”

Re number rule 19 as rule 19 (1) and insert the following as sub-rule (2) —

2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1)”

Rule 23.—Substitute the following for the present Rule 23 —

Where the Court from whose decree an appeal is preferred has disposed of the case upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court in reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of the judgment and directions to the original trial court, and proceed with the original trial.

shall, subject to all just exceptions be evidence during the trial after remand

Rule 31.—Substitute the following for rule 31 —

31. The judgment of the Appellate Court shall be in writing and shall state —

- (a) the points for determination,
- (b) the decision thereon
- (c) the reason for the decision, and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled

and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring therein provided that, where the presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand writer, an open Court the transcript of the judgment so pronounced shall after such revision as may be deemed necessary, be signed by the Judge.

“ . . . . . he names and description or service and a clear . . . . . ”

#### ORDER XXI A (NEW)

Appeals to the High Court from the Original decrees of subordinate Courts.

1. The rules contained in order XXI shall apply to appeals in the High Court of Judicature at Madras with the modifications contained in this order

2 (1) The memorandum of appeal shall be accompanied by the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court

(2) Notwithstanding anything contained in rule 22 of Order XXI the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him

3 (1) If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance

(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub rule above, he shall not be allowed to translate or print any part of the record

Provided that a respondent may apply by petition for further time and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default, and notice thereof shall be given to the appellant and all parties who have entered appearance shall pay the costs of all

of appearance shall  
service of any notice

(2) If a party appears in person the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred

Provided that if such party subsequently appears by a pleader he shall state in the vakalat an address for service within the city of Madras and shall give notice

shall be that of his  
at that address

5 The Court may direct that service of a notice of appeal or other notice or order for acknowledgment served which party has given any notice or

be sufficiently  
the pleader, or  
by an officer of the Court, between the hours of 11 a m and 5 p m at the address for service of the party to be served

7 Notices which may be served by a party or his pleader under Rule 6, or which are sent from the office of the Registrar, may, unless the Court otherwise directs, be sent by Registered Post, and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered at the time of service thereof and the posting thereof shall be a sufficient service

8 If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately

9 A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice board after the case has been registered

10 (1) If upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of Court, the Court may hear the appeal or dismiss it, or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers

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Registrar  
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### MEMORANDUM OF OBJECTIONS

12 (1) If the acknowledgment mentioned in Rule 22 (3) of Order XLI is not filed, the respondent shall, together with the memorandum of objections file so many copies thereof as there are parties affected thereby

(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar

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XLI, &c  
&c

respondent may file an affidavit stating the facts and the Registrar may direct with the service of the copies mentioned in Rule 12(1)

judgment  
Court and  
e Judges  
ssary

## ORDER XLI—B (New)

1 The rules of Order XLIA shall apply so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court

Provided that it shall not be necessary to file copies of the judgment and decree appealed from

2 Notice of the appeal shall be given in manner prescribed by Order XLI A Rule 6 or if the party to be served has appeared in person in manner prescribed by Rule 5 of the said Order

## ORDER XLII (New)

## APPEALS FROM APPELLATE DECREES

1 The rules of Order XLI and Order XLI A shall apply, so far as may be to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this Order

appeal  
copies  
and  
one of  
shall be

accompanied by the following papers —

first instance and of the Appellate  
judgments of the said Courts one

the construction of a document a  
shall be presented with the memor

andum of appeal

Provided that if such documents not in the English language and the appellant

## ORDER XLIII

Rule 1—Substitute the following for 1 (d) of order XLIII of the Code of Civil Procedure:

(d) and order under rule 13 or rule 15 of order IX rejecting an application (in a case open to appeal) for an order to set aside a decree or order passed *ex parte*

Substitute the following for sub rule (5) of rule 1 of order XLIII of the Code of Civil Procedure —

(5) An order under rule 1 or 4 of order XLI except an order under the proviso to sub rule (2) of rule 4

Rule 2—Substitute the following for 12 —

2 The rules of Order XLI and of Order XLI A shall apply so far as may be, to appeals from the orders specified in Rule 1 and other orders of any Civil Court from which an appeal to the High Court is allowed under any provision of law

Provided that if such documents not in the English language and the appellant shall be presented with the memorandum of appeal

Rule 3—Substitute the following for rule 3 of Order XLIII of the Code of Civil Procedure —

3 (1) The provisions of Order XLII shall apply so far as may be to appeals from Appellate Orders

accompanied by  
first instance and  
Court

(3) If any ground of appeal is based upon the construction of a document, a printed or typewritten copy of such document shall be presented with memorandum of appeal —

Provided that, if such document is not in the English language and the appellant appears by a pleader, and English translation of the document certified by the pleader to be a correct translation shall be presented

#### Order XLVII

Rule 7 — In sub rule (1) substitute the word "order" for the word "application" occurring after the words "on the ground that the"

#### Appendix B.

##### FORM No 1

before

After Form No 1 insert the following as Form No 1 A —

"No 1 A

SUMMONS FOR ASCERTAINING WHETHER A SUIT IS CONTESTED OR NOT, AND IF NOT CONTESTED FOR ITS IMMEDIATE DISPOSAL.

(O V, rr 1, 5)

(Title)

To

you are hereby  
duly instructed, and  
liable to answer all material questions relating to the suit (or who shall be accompanied by some person able to answer all such questions) on the day of 19, at o'clock in the noon and to state whether you contest or do not contest the claim and if you contest, to receive directions of Court as to the date on which you have to file the written statement, the date of trial and other matters

Take notice that in the event of the claim not being contested the suit shall be decided at once

Take further notice that in default of your appearance on the day and hour before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the court this day of 19.

Judge

Notice—If you admit the claim you should pay the money into court together with the costs of the suit, to avoid execution of the decree which may be against your person and property or both

After Form No 12 insert the following as Form No 12 A.

No 12A

NOTICE TO THE PROPOSED GUARDIAN OF A MINOR DEFENDANT  
RESPONDENT

(ORDER XXXII, rr 3 and 4)

(Title)

To

(Name, description and place of residence of proposed guardian)

Take notice that X plaintiff in has presented a petition to the Court praying that you be appointed guardian *ad litem* to the minor defendant (s) respondent (s), and that the same will be heard on the day of 19

2 The affidavit of X has been filed in support of this application.

3 If you are willing to act as guardian for the said defendant (s) respondent (s) you are required to sign (or affix your mark to) the declaration on the back of this notice

4 In the event of your failure to signify your express consent in manner indicated above take future notice that the Court may proceed under Order XXXII, r 4, Code

of Civil Procedure, to appoint some other suitable person or one of its officers as guardian *ad litem* of the minor defendant (s) aforesaid  
respondent (s)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ (Signed).

(To be printed on the reverse)

I hereby acknowledge receipt of a duplicate of this notice and consent to act as guardian of the minor defendant (s) therein mentioned  
respondent (s)

(Signed) Y. Z.

Witnesses

1  
2"

Form No 13 A—Insert the following as Form No 13 A after Form No 13 in Appendix B of schedule I —

### No 13 A

Certificate of attendance to an officer of Government summoned as a witness in a suit to which the Government is a party

(ORDER XVI, r 4 A)

### CAUSE TITLE

This is to certify that \_\_\_\_\_ (name) \_\_\_\_\_ (designation) being a Government servant from the province of \_\_\_\_\_ (name) was summoned to give evidence in his official capacity on behalf of the plaintiff in the above suit and was in attendance  
defendant matter  
in this Court from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
(inclusive) and that a sum of Rupees \_\_\_\_\_ has been paid into Court by the plaintiff towards his travelling and sub sistance allowance for \_\_\_\_\_ days  
defendant  
according to the Seal prescribed by the Government of Province of \_\_\_\_\_ (name) and that the said amount \_\_\_\_\_ has been \_\_\_\_\_ remitted to the Government treasury at \_\_\_\_\_ to be credited to Government under the head "XVI A—Miscellaneous Fees and Fines "  
\_\_\_\_\_ will be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Presiding Judge or Chief Ministerial Officer

### APPENDIX D TO SCHEDULE I

Form No 10 A—Insert in Appendix D the following as Form No 10 A —

### FORM No 10 A

Final decree for sale [Order 34, Rule 5 (2) or Order 34, Rule 8 (4) ]

### TITLE

Upon reading the preliminary decree passed in the above suit and the application of the plaintiff dated \_\_\_\_\_ and upon hearing

Mr \_\_\_\_\_ for plaintiff and Mr \_\_\_\_\_ for defendant and it appearing that the payment directed by the said decree has not been made

It is hereby decreed as follows —

(1) That if a mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after defraying thereout the expenses of the sale) be applied in payment of what is declared due to plaintiff in the aforesaid preliminary decree  
defendant  
together with subsequent interest and subsequent costs and that the balance, if any, be paid to the defendant or other person entitled to receive it, (2) that if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full the plaintiff be at liberty to apply for a personal decree for the  
defendant

amount of the balance, and (3) that the  $\frac{\text{defendant}}{\text{plaintiff}}$  do also pay  $\frac{\text{plaintiff}}{\text{defendant}}$  Rs for the cost of this application

(Here enter description of mortgaged property in English or in the language of the Court)

score out the decree under

has not been

> B —

### FORM No 10 B

Final decree for redemption (Order 34, Rule 3 (1), Order 34, Rule 5 (1) and Order 34, Rule 8 (1))

### TITLE

Upon reading the preliminary decree in the above suit on and the application of the  $\frac{\text{defendant}}{\text{plaintiff}}$  I, A No , dated and after hearing Mr pleader for the and Mr pleader for the and it appearing that the payment directed by the aforesaid decree has been made :— It is hereby decreed as follows:—

That the  $\frac{\text{plaintiff}}{\text{defendant}}$  do deliver up to the  $\frac{\text{defendant}}{\text{plaintiff}}$  or to such person as he appoints all documents in his possession or power relating to the mortgaged property and do also retransfer the property to the  $\frac{\text{defendant}}{\text{plaintiff}}$  free from the mortgage and from all incumbrances created by the  $\frac{\text{plaintiff}}{\text{defendant}}$  or any person claiming under him (or by those under whom he claims) and do also put the  $\frac{\text{defendant}}{\text{plaintiff}}$  in possession of the property

### SCHEDULE

Description of the mortgaged property

The costs of the  $\frac{\text{defendant}}{\text{plaintiff}}$  in this proceeding —

Particulars

Amount

Note—(1) In the case of a decree under Order 34 rule 8 (1), score out the words plaintiff and defendant above the lines, in the case of decree under Order 34, rule 3 (1) and rule 5 (1), score out the words plaintiff and defendant below the lines

(2) The words "or by those, under whom he claims" will be inserted only if the mortgagee derives title from an original mortgagee

Form No 24—Add the following as Form No 24 in Appendix D —

### FORM No 24

[Decree sanctioning a compromise of a suit on behalf of a minor or lunatic.]

" " "

" between A B, the plaintiff and *ad litem* of the other part, to this Court that the said e said minor, this Court doth minor, and with the consent

(Set out the terms of the compromise)

### APPENDIX E TO SCHEDULE I

Form No 15—For the word "Dated" substitute the words "Given under my hand and the seal of the Court, this day of ."

pendix E :—

charge of person

interested and sureties

ORDER XXI, RULE 43

In the Court of  
of

at

Civil Suit No

A. B of \_\_\_\_\_

against

C D of \_\_\_\_\_

Know all men by these presents that we I J of \_\_\_\_\_ etc, and  
K L of \_\_\_\_\_ etc, and M N of \_\_\_\_\_ etc, are jointly and severally  
bound to the Judge of the Court of \_\_\_\_\_ in Rupees \_\_\_\_\_ to  
be paid to the said Judge, for which payment to be made we bind ourselves, and each  
of us in the whole, our and each of our heirs, executors and administrators, jointly  
and severally, by these presents

\_\_\_\_\_ schedule hereunto annexed

dated the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_, in execution of a decree in favour of \_\_\_\_\_ in suit No \_\_\_\_\_ of 19 \_\_\_\_\_  
on the file of \_\_\_\_\_ and the said property has been left in the charge of  
said I J

Now the condition of this obligation is that, if the above bounden I J shall duly  
account for and produce when required before the said Court all and every the prop-  
erty aforesaid and shall obey any further order of the Court in respect thereof, then  
this obligation shall be void otherwise it shall remain in full force

I J

K L

M N

Signed and delivered by the above bounden \_\_\_\_\_ in the presence of  
Form No 29 —Add the following as a "Note" to Form No 29

(Proclamation of Sale)—of Appendix E to Schedule I of the Code of Civil  
Procedure, 1908 —

"Note—The title deeds relating to the property have not been filed in Court,  
and the purchaser will take the property subject to the risk of there being mortgages  
by deposit of title deeds or mortgages not disclosed in the encumbrance certificate"

Form No 39.

Substitute the following for the old one —

Order for delivery to certified purchaser of land at a sale in execution (O 21, r 95)

(Title)

To

The bailiff of the Court

WHEREAS \_\_\_\_\_ has become the certified purchaser of \_\_\_\_\_ at a sale in  
execution of decree in suit No \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_ you are hereby  
ordered to put the said \_\_\_\_\_ the certified purchaser, as aforesaid, in  
possession of the same, and you are hereby further required to state in your return  
whether there are crops on the land and whether you have delivered them to the  
certified purchaser

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_

19 \_\_\_\_\_

Judge

APPENDIX F TO SCHEDULE I

Form No 9 —For Form No 9 of Appendix F, substitute—  
Form No 9

Appointment of a Receiver

(Order XL r 1)

TITLE.

WHEREAS it appears to the Court that in the above suit it is just and convenient  
to appoint a receiver of the properties specified below (or whereas the properties  
specified below have been attached in execution of a decree passed in the above suit  
on the \_\_\_\_\_ day of \_\_\_\_\_ 192 \_\_\_\_\_ in favour of \_\_\_\_\_ )



any Court (except suits for rent) or (3) institute appeals in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs 1,000 or (4) expend on the repairs of any property in any period of two years more than half of the net annual rent of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would be let when in a fair state of repair, provided that such amount shall not exceed Rs 1,000

And it is further ordered that the parties to the above suit and all persons claiming un-  
 immoveable,  
 account book  
 And it is fu-  
 perty, moveable and immoveable, and collect the rents, issues and profits of the said  
 immoveable property, and that the tenants and occupiers do attorn and pay their

shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such receiver

And it is further ordered that the said receiver do out of the first monies to be received by him pay the debts due from the said  
 and shall be entitled to retain in his hands the sum of Rs for  
 current expenses, but,  
 as the same come to  
 in every months  
 filed on the day of and to be passed on the day of He  
 shall be entitled to commission at the rate of Rs per cent on the net amounts  
 collected by him or to the sum of Rs per month (or as the case may be) as his  
 remuneration (or he shall act without any remuneration)

And it is further ordered (where

GIVEN under my hand and the seal of the Court, this day of 19

#### APPENDIX G TO SCHEDULE I

FORM No 6—Insert the following note in red ink in Form No 6, namely —

"Also take notice that if an address for service is not filed before the aforesaid date, this appeal is liable to be heard and decided as if you had not made an appearance"

FORM No 6A—In Appendix G, insert the following as Form No 6A —

Form No 6A (Order XLIA, rule 2)

Notice to Respondent

(CAUSE TITLE)

Appeal from the of the Court of dated the day of 19  
 To

Respondents

(order) has been presented by  
 urt and that if, you intend to  
 s Court and give notice thereof  
 service of this notice on you

If no appearance is entered on your behalf by yourself, your pleader or some one by law authorized to act for you in this appeal, it will be heard and decided in your absence

The address for service of the appellant is that of his pleader Mr A B (insert address) *Ma tras*

(If the appellant appears in person, insert his address for service)

GIVEN under my hand and the seal of this Court this  
day of 19

Registrar

[Interlocutory application No of 19 has been made by appellant and execution has been stayed (or other order made) by order dated the day of 19]

Form No 6B—In appendix G, insert the following as Form No 6B —

From No 6B (Order XLI A, rule 3)

Memorandum of Appearance

(CAUSE TITLE)

Take notice that the Respondent intends to appear and defend the above appeal and that his address for service of all notices and process is (insert address)

The said respondent requires a list of the papers which the appellant proposes to translate and print

Dated the day of 19

(Signed) C D

Vakil for Respondent

To the Registrar High Court of Judicature Madras

No 9

Schedule to the Code of Civil  
'Memorandum of Appeal' and

No 12 A

Certificate of leave to Appeal to His Majesty in Council

O XLV r 7 C P C

(In cases where the subject matter of the appeal is of sufficient value and the findings of the Courts are not concurrent)

Read petition presented under O XLV r 3 of the Code of Civil Procedure praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree of this Court in suit No of 192

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and the other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondents (if he appears) this Court doth certify that the amount of the subject

matter of the suit in the Court of first instance is Rs 10 000 value upwards Rs 10 000 and the

amount of the subject matter in dispute on appeal to His Majesty in Council is

also of the value of Rs 10 000 upwards of Rs 10 000 or that the decree appealed from involves directly some claim or question to respecting property of the value of Rs 10 000 and that the decree appealed from does not affirm the decision of the lower Court

No 12 B

Certificate of leave to appeal to His Majesty in Council

O XLV, r 7, C P C

(In cases where the subject matter is of sufficient value and the findings of the Court concurrent)

Read petition presented under O XLV, r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree of this Court in final order suit No \_\_\_\_\_ of 192 \_\_\_\_\_

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of \_\_\_\_\_ for the petitioner and of \_\_\_\_\_ for the respondent (if he appears) this Court doth certify that the amount of the subject-matter of the suit in the Court of first instance is Rs 10 000 and the amount of the subject matter in dispute on appeal to His Majesty in Council is upwards of Rs 10 000 also of the value of Rs 10,000 or that the decree appealed against involves directly some claim or question to indirectly respecting property of the value of Rs 10,000 and that the affirming decree appealed from involves the following substantial question (s) of law, viz —

- (1)
- (2)

No 12 c

Certificate of leave to appeal to His Majesty in Council

O XLV r 7 C P C

(In cases where the subject matter in dispute is either not of sufficient value or is incapable of money valuation)

Read petition presented under O XLV r 3 of the Code of Civil Procedure praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree of this Court in final order suit No \_\_\_\_\_ of 192 \_\_\_\_\_

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of \_\_\_\_\_ for the petitioner and of \_\_\_\_\_ for the respondent (if he appears) this Court doth certify that the amount of the subject-matter of the suit both in the Court of first instance and in this Court is below Rs 10 000 in value incapable of money valuation, this Court in the exercise of the discretion vested in it is satisfied that the case is a fit one for appeal to His Majesty in Council for the reasons set forth below, viz —

- (1)
- (2)

#### APPENDIX H TO SCHEDULE I

FORM No 11 — Substitute the following form No 11 of Appendix H —

Form No 11

Notice to Guardian appointed or declared, or to Father or other Natural Guardian, or to the Person in charge of the Minor

[ORDER XXII, RULE 3(5)]

Title

To

Guardian, or person

in for the suit for the said minor, you are hereby required to take notice that, unless within \_\_\_\_\_ days from the service upon you of this notice an application is made to this

GIVEN under my hand and the seal of this Court this

day of 19

Registrar.

{Interlocutory application No. \_\_\_\_\_ of 19 \_\_\_\_ has been made by appel-  
lant, and execution has been stayed (or other order made) by order dated the  
day of \_\_\_\_\_ 19 \_\_\_\_ }

Form No. 6B.—In appendix G, insert the following as Form No. 6B —

From No. 6B (Order XLI-A, rule 3)

### Memorandum of Appearance

(CAUSE TITLE)

Take notice that the Respondent intends to appear and defend the above appeal, and that his address for service of all notices and process is (insert address)

The said respondent requires a list of the papers, which the appellant proposes to translate and print

Dated the                      day of                      19                      .

(Signed) C. D.

*Vakil for Respondent.*

To the Registrar, High Court of Judicature, Madras

No 9

Code of Civil  
"Appeal," and

No 12 A

**Certificate of leave to Appeal to His Majesty in Council.**

Q XLV, r 7, C, P C

(In cases where the subject matter of the appeal is of sufficient value and the findings of the Courts are not concurrent)

Read petition presented under O XLV r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree of this Court in suit No final order

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and the other papers material to the application and upon hearing the arguments of \_\_\_\_\_ for the petitioner and of \_\_\_\_\_ for the respondents (if he appears) this Court doth certify that the amount of the subject-matter of the suit in the Court of first instance is Rs 10,000 and the value upwards Rs 10,000

amount value of the subject-matter in dispute on appeal to His Majesty in Council is also of the value of  $\frac{\text{Rs. } 10,000}{\text{upwards of Rs. } 10,000}$  or that the  $\frac{\text{decree}}{\text{final order}}$  appealed from involves  $\frac{\text{directly}}{\text{indirectly}}$  some claim or question  $\frac{\text{to}}{\text{respecting}}$  property of the value of  $\frac{\text{Rs. } 10,000}{\text{upwards of Rs. } 10,000}$  and that the  $\frac{\text{decree}}{\text{final order}}$  appealed from does not affirm the decision of the lower Court.

No 12 B.

*Certificate of leave to appeal to His Majesty in Council.*

O. XLV, r. 7, C. P. C.

(In cases where the subject matter is of sufficient value and the findings of the Court concurrent)

Read petition presented under O XLV, r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the  $\frac{\text{decree}}{\text{final order}}$  of this Court in suit No of 192 .

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondent (if he appears) this Court doth certify that the  $\frac{\text{amount}}{\text{value}}$  of the subject-matter of the suit in the Court of first instance is  $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$  and the  $\frac{\text{amount}}{\text{value}}$  of the subject matter in dispute on appeal to His Majesty in Council is also of the value of  $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$  or that the  $\frac{\text{decree}}{\text{final order}}$  appealed against involves  $\frac{\text{directly}}{\text{indirectly}}$  some claim or question  $\frac{\text{to}}{\text{respecting}}$  property of the value of  $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$  and that the affirming  $\frac{\text{decree}}{\text{final order}}$  appealed from involves the following substantial question (s) of law, viz :—

(1)

(2)

No 12 c

Certificate of leave to appeal to His Majesty in Council

O XLV, r 7, C P C

(In cases where the subject matter in dispute is either not of sufficient value or is incapable of money valuation)

Read petition presented under O XLV r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the  $\frac{\text{decree}}{\text{final order}}$  of this Court in suit No of 192

the petition and the grounds of material to the application and ner and of for the respondent (if he appears) this Court doth certify that the  $\frac{\text{amount}}{\text{value}}$  of the subject-matter of the suit both in the Court of first instance and in this Court is  $\frac{\text{below Rs } 10,000 \text{ in value}}{\text{incapable of money valuation}}$ , this Court in the exercise of the discretion vested in it is satisfied that the case is a fit one for appeal to His Majesty in Council for the reasons set forth below, viz :—

(1)

(2)

## APPENDIX H TO SCHEDULE I

FORM No 11 —Substitute the following form No 11 of Appendix H —

Form No 11

Notice to Guardian appointed or declared, or to Father or other Natural Guardian, or to the Person in charge of the Minor

[ORDER XXXII, RULE 3(5)]

Title

To

rdian, or person

for the suit for  
within  
is made to this

Court for the appointment of you or of some friend of the said minor to act as <sup>his</sup> ~~her~~ <sub>some</sub> day of

191

Form No 11A.

Notice to proposed Guardian

[ORDER XXXII, r 4 (3)]

Title

To

residing at

Take notice that the abovenamed petitioner has made an application to this court to appoint you guardian for the suit of minor defendant in No of 19, and that the said application will be heard on the day of next Given under my hand and the seal of the Court, this day of 19 Forms No 14 to 25—Omitted

## APPENDIX VI.

## RULES MADE BY THE HIGH COURT OF PATNA UNDER S 122

## ORDER III

Order III rule 4(3) of  
3, no advocate shall be  
r any person unless he

presents an appointment in writing, duly signed by such person or his recognized agent or by some other agent duly authorized by power of attorney to act in his behalf, or  
on behalf of

'Rule 5  
(3) of rule 7  
shall act for any person in the High Court unless he has appointed for the purpose in the manner prescribed by sub rule (1) and the appointment has been filed in the High Court'

Order III sub rule (2) and  
vil Procedure 1908 no pleader

## ORDER V

Rule 10—Add the following to rule —

Provided that in any case the Court may of its own motion or on the application of the plaintiff, send the summons to the defendant by post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or in endorsement by postal servant that the defendant refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service

## ORDER VII

## RULES 19 TO 22

ing  
on  
all,

particulars —

- 1 The name of the street and number of the house (if in a town)
- 2 The name of the town or village,
- 3 The post office,
- 4 The district,
- 5 The Munsiffi (if in Bihar and Orissa) or the District Court (if outside Bihar and Orissa)

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu*, or any party may apply for an order to that effect and the Court may make such order as it thinks just

22 . . . . . him as afore-  
 said . . . . . idment of the  
 recor . . . . . other parties to  
 the suit as the Court may deem it necessary to inform, and may be either served  
 upon the pleaders for such parties or be sent to them by registered post, as the Court  
 thinks fit."

## ORDER VIII

Rule 6—To rule 6 (1) the following shall be added —

"and the provisions of Order VII, rules 14 to 18 shall, *mutatis mutandis* apply to a defendant claiming set off as if he were a plaintiff"

Rules 11 and 12—After rule 10 add the following rules —

"12 Rules 20 and 22 of order VII shall apply, so far as may be, to addresses for service filed under the preceding rule"

## ORDER XII

Substitute the following for rule 6 in Order XII—

6 Where admissions of fact have be otherwise, the Court may, at any stage of of its own motion, without waiting for the tween the parties, make such order or give such judgment, as it thinks just

## ORDER XIII

Rule 1—In rule 1, after the words "at the first hearing of the suit" should be added the words —

'Or, where issues are framed, on the day where issues are framed, or within such further time as the court may permit"

Add the following as sub rule (A) in rule 9 Order XVII—

in the  
is pro

## ORDER XVI

2 (1)—Add the following proviso to O 16 r 2 (1),—

Provided that the Secretary of State shall not be required to pay any expenses summons, and the , who is summoned or of matters with

(3)—Add the following proviso to rule 3 :—

ernment, who has  
party, of facts,  
ad to deal, in his

(1) If the officer's salary does not exceed Rs 10 a month, the Court shall at the time of the service of the summons make payment to him of his expenses as determined by rule 2 and recover the amount from the Treasury

(iii) more  
 than 5 Court.  
 In such vern-  
 ment.

Rule 8—Add the following to rule 8 :—

"Provided that a leave of the Court, be  
 served by the party ne, by personal service. If  
 such service is not reasonable diligence has  
 been used by the party or his agent to effect such service, then the summons shall  
 be served by the Court in the usual manner.

#### ORDER XXI.

Rule 104.—After 103 insert the following rule :—

"104 For the purpose of all proceedings under this order service on any party

#### ORDER XXVI.

Rule 14—Substitute the following for sub-rules (2) and (3) of rule 14 ~

(2) The commissioner shall then prepare and sign a report or the commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if necessary) by metes and bounds. The commissioner or commissioners shall append to the report, or where there is more than one to each report, a schedule showing the plots and areas allotted to each party and also, unless otherwise directed by the Court, a map showing in different colours the plots or portions of plots allotted to each party. In the event of a plot being sub divided, the area of each sub-plot shall be given in the schedule, and also measurements showing how the plot is to be divided. Such report or reports with the schedule and the map, if any, shall be annexed to the commission and transmitted to the Court, and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied and when drawing up final decree shall incorporate in the decree the schedule, and the map, if any mentioned in sub rule (2) above, as confirmed or varied by the Court. The whole report or reports of the Commissioner or Commissioners shall not ordinarily be entered in the decree. Where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

#### ORDER XXXII.

Rule 4.—In sub-rule (4) for the words "where there is no other person fit and willing to act as guardian for the suit" in the first sentence of the sub-rule substitute the following :—

"Where the person whom the Court, after hearing objections, if any, under sub rule (4) of rule 3, proposes to appoint as guardian for the suit, fails within the time fixed in a notice to him to express his consent to be so appointed".

#### ORDER XLI.

Add the following as rule 14 (A) in Order XLI—

the service of  
 representative of a  
 r, either at any  
 from or in any  
 claimed against  
 such opposite party or respondent or his legal representative either in the original  
 case or appeal.



Rule 38 —Add the following rule after rule 37 —

'38 (1) An address for service filed under order VII rule 19 or order VIII, rule 11 or subsequently altered under order VII, rule 22, or order VII rule 12 shall hold good for all notices of appeals and all appellate proceedings arising out of the original suit or petition

(2) Every memorandum of appeal shall state the addresses for service given by  
 and notices and processes shall issue

shall apply, so far as may be to appellate

### APPENDIX D.

#### FORM No 1

Substitute the following for the Schedule of Courts of suits in the form of decree No 1.—

| Plaintiff                             | Amount<br>Rs A P | Defendant                           | Amount<br>Rs A P |
|---------------------------------------|------------------|-------------------------------------|------------------|
| 1 Stamp for plaint                    |                  | Stamp for power                     |                  |
| 2 Stamp for power                     |                  | Stamp for petition or affi<br>davit |                  |
| 3 Stamp for petition or affi<br>davit |                  | Costs for exhibits                  |                  |
| 4 Costs for exhib ts                  |                  | Pleader s fee                       |                  |
| 5 Pleader s fee on Rs                 |                  | Subsistence                         |                  |
| 6 Subsistence                         |                  | (a) for defendant or his<br>agent   |                  |
| (a) for plaintiff or his agent        |                  | (b) for witnesses                   |                  |
| (b) for witnesses                     |                  | Commissioner s fee                  |                  |
| 7 Commissioners' fee                  |                  | Service of process                  |                  |
| 8 Service of process                  |                  | Copying or typing charges           |                  |
| 9 Copying or typing charges           |                  |                                     |                  |
| TOTAL                                 |                  | TOTAL                               |                  |

### APPENDIX E.

#### FORM No 38

Substitute the following for FORM No. 38 —  
 No 38

Certificate of Sale of Land (Order XXI, Rule 94) District  
 In the court of at  
 Execution Case No of 19

decree holder  
 Versus

judgment debtor

This is to certify that  
 caste by occupation  
 District has been declared the purchaser at a sale by  
 public auction on the day of 19 of the property specified  
 below in execution of the decree in Suit No of this Court (1) and that  
 the said sale has been duly confirmed by this court

GIVEN under my hand and the seal of the Court this  
19

day (2) of

*Judge*

Specification and price of properties (3)

(1) If the decree has been received by transfer from other court enter the name of that court

including the name of each  
situated should be fully

stated

## APPENDIX G.

### FORM No 3

In the Schedule of costs in the form of decree in Appeal add 'copying or typing charges below the item 'pleaders' fee on Rs in the columns For Appellant and respondent, and number the new entry in first column as "5"

## APPENDIX H

### FORM No 7

Add the following Note at the foot —

Note—The commissioner has power under chapter X of the Indian Evidence Act to control the examination of witnesses

### FORM No 11

For Form No 11 substitute the following forms —

#### No 7

Notice to minor defendant and guardian of application for appointment of the guardian to be guardian for the suit (O 32 r 3)

*Title*

To

WHEREAS an application has been made above suit for the appointment of you as guardian for the suit to the minor defendant you the said minor and you are hereby required to take notice that unless within 21 days from the service upon you of this notice you give your consent to be appointed to act as guardian, the Court will proceed subject to the decision of any objection that may be raised to appoint an officer of the Court to act as guardian to you the minor for the said suit

GIVEN under my hand and the seal of this Court this

19

day of

*Judge*

### FORM No 11A

Notice to minor defendant and guardian of application for appointment of another person to be guardian for the suit (O 32, r 3)

To

Minor defendant

Guardian (appointed by authority or natural, or the person in whose care the minor is)

WHEREAS an application has been presented on the part of the plaintiff in the above suit for appointment of (1) as guardian for the suit to the minor defendant, you the said minor and you (2) are

\* Here insert name of guardian

(1) Here insert name and description of proposed guardian

(2) Here insert name of guardian upon whom the notice is to be served

(2)  
(1)

## SUBSTITUTE THE FOLLOWING FORM FOR FORM NO 14.

Register of Civil Suits (O 4 r 2)

Court of the \_\_\_\_\_ at \_\_\_\_\_

Register of Civil suits in the year 19 \_\_\_\_\_

| NUM<br>BER<br>OF<br>SUITS | PLAIN<br>TIFY         |      | DEFEN-<br>DANT |                    | CLAIM |             | JUDG-<br>MENT      |             | APPEAL                              |      | ADJUSTMENT OR<br>SATISFACTION<br>OF DECREES<br>OTHERWISE THAN<br>BY EXECUTION | EXECUTION |                 |                              |                                                           | RESULT OF<br>EXECUTION |      |                                   | Orders in appeals<br>section 141 C P Code with date<br>and name of Court. | 29 | 30 | Remarks |                     |              |                             |                |                        |                                                   |                                     |         |
|---------------------------|-----------------------|------|----------------|--------------------|-------|-------------|--------------------|-------------|-------------------------------------|------|-------------------------------------------------------------------------------|-----------|-----------------|------------------------------|-----------------------------------------------------------|------------------------|------|-----------------------------------|---------------------------------------------------------------------------|----|----|---------|---------------------|--------------|-----------------------------|----------------|------------------------|---------------------------------------------------|-------------------------------------|---------|
|                           | Serial number of suit | Name | Description    | Place of residence | Name  | Description | Place of residence | Particulars | When the cause of action<br>accrued | Date |                                                                               | For whom  | For what amount | Number and year of<br>appeal | Order on appeal with<br>date and name of<br>pellate court | Particulars            | Date | Number and dnc of ap<br>plication |                                                                           |    |    |         | Date of final order | Against whom | For what amount if<br>money | Amount of Cost | Amount paid into Court | Name of person if any<br>detained in civil prison | Minute or other result<br>with date |         |
| 1                         | 2                     | 3    | 4              | 5                  | 6     | 7           | 8                  | 9           | 10                                  | 11   | 12                                                                            | 13        | 14              | 15                           | 16                                                        | 17                     | 18   | 19                                | 20                                                                        | 21 | 22 | 23      | 24                  | 25           | 26                          | 27             | 28                     | 29                                                | 30                                  | Remarks |
|                           |                       |      |                |                    |       |             |                    |             |                                     |      |                                                                               |           |                 |                              |                                                           |                        |      |                                   |                                                                           |    |    |         |                     |              |                             |                |                        |                                                   |                                     |         |

Note 1.—Where there are numerous plaintiffs or numerous defendants the name for the first defendant only as the case may be, need be entered in the register. Note 2.—Case remanded by appellate Courts under Order XLI rule 23 C. P. Code will be re admitted and entered in the General Register of suits under this original numbers. In each case the letter R will be affixed to the number to be entered in column 2. Note 3.—In column 14 should be indicated whether the decision was *ex parte*, or compromise or on contest against all or any of the defendants. Note 4.—When the Court of execution is other than the Court which passed the decree, the name of the executing Court should be given in column 20.

## APPENDIX VII.

RULES MADE BY THE HIGH COURT OF RANGOON UNDER S 122,  
ORDER V.

Rule 15—For the words "where in any suit the defendant cannot be found" substitute the words "where the defendant is absent" Omit the word "male" between the word "adult" and the word "member."

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originating petition  
ating his address

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a date fixed for his  
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ie jurisdiction of  
is filed, or of the

suit, appeal  
defendant  
be placed

ed by sub rule (1)  
able to have his  
of prosecution, and, if a  
ny struck out and to  
Any party may apply  
urt may on such application,

by him for service, and no  
ss can be served is  
ixed on the outer  
has been given as  
effectual as if the

rocesses  
rule 5,

beyond the limits of Burma, it shall, unless it is written in English, be accompanied by a translation in English or in the language of the locality in which it is to be served

Rule 22—In rule 22 the following proviso shall be added —

"Provided that where such summons is to be served within the limits of the town of Rangoon the Court may, in addition to or in substitution of any other mode of service, send the summons by registered post to the defendant at the place within such limits where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service thereof."

Rule 23 A.—In Or V, the following shall be inserted as r 23 A:—

23 A (1) Before re-transmitting a summons received from another Court for service, the Court shall either take down the deposition of the person serving the summons as to the time when, and the manner in which the summons was served, or cause the person to make an affidavit before the bailiff, if the bailiff has been empowered to administer oaths, and shall transmit the same with the

(2) In the case of processes received from India, if the person on whom the summons is to be served is not personally known to the process server an affidavit of the said person that he is not the person named in the summons shall be filed with the Court in Burma and when the person on whom the process is to be served is not personally known to the process server the case, in connection with which the process was issued, shall not be heard *ex parte* without an affidavit or deposition of some person who pointed out to the process-server the person to be served on his ordinary residence

The onus shall be upon the person at whose instance the summons is issued, either himself or by an agent, to point out to the process server the person on whom the process is to be served or his ordinary residence or place of business

(4) When the summons has been returned by the process server under r 17 a declaration of due service or of failure to serve shall be recorded in Form, Civil 47 and sent with the summons to the Court by which it was issued

Rule 25.—In rule 25 the words 'may be addressed' shall be substituted for the words 'shall be addressed'

Proof of service.—The summons may be served by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service thereof

#### ORDER VII

Rule 9.—After the word 'present' in the further line of rule 9 add the following —  
On the day on which the plaint is admitted."

#### ORDER IX

Rule 13.—Add the following as second proviso to rule 13 —

Provided also that no decree or order shall be set aside under this rule nearly on the ground that there has been an irregularity in the service of the summons if the Court is satisfied that the defendant was aware of the date of the hearing in sufficient time to enable him to appear and answer the plaintiff's claim. Substitute 'decree or order for decree' wherever the word occurs in rule 13

#### ORDER XII

first occurs substitute  
it the following —  
own motion give  
it just

add the following as sub rule (2) —

(2) A decree or order passed under this rule may be executed at any time notwithstanding that other questions between the parties still remain to be decided in the case

#### ORDER XIII

To Or XIII r 1 the following shall be added as sub rule (3) —

(3) The High Court of Judicature at Rangoon directs that such lists shall be prepared in Form <sup>Judicial</sup> General 23 which will be given free of charge to parties wishing to tender documents in evidence

in rules (3) (4) and (5) —  
be admitted on behalf of the  
in which they are admitted  
thus A B C etc and the documents admitted on behalf of the defendant with  
figures (thus 1, 2, 3 etc

(4) When a number of documents of the same nature are admitted as for example a series of receipts for rent the whole series shall bear one number or capital letter, a small number or small letter being added to distinguish each paper of the series

- (3) Every document or admission shall be entered in a list in Form Judicial  
General 25, prepared by the Bench clerk and signed by the Judge  
To Or XIII, r 5 sub rule (3), the following shall be added —  
A note of the return should be made in the list in Form Judicial  
General 25  
To Or XIII, r 7, sub rule (2), the following shall be added —  
Who shall give a receipt for them in column 6 of the list in Form Judicial  
General 25  
In Or XIII, r. 10 sub r (3), shall be re numbered as (5) and the following shall be inserted as sub rules (3) and (4) —

r the record, it shall do so by sending a  
cord is required No summons to produce  
Keeper, Chief clerk, or official of any Court

- (4) Whenever a Judge sends for the record of another suit or case, or other official papers, and uses any part of such record or papers as evidence in a trial before him, he shall direct that an authenticated copy of the part so used shall be put up with the trial record, and shall further direct, at the expense of which party such copy shall be made

In Or XIII, the following shall be inserted as rr 10 and 10 B —

10 A Exhibits with their accompanying lists, shall not be filed with the record until after the termination of the trial

10 B If any exhibit included in the index of contents of the trial record is withdrawn after judgment the fact should be noted in the column of remarks of the index, and it should be stated whether a copy has been substituted or not

#### ORDER XVI

party—  
the travelling and other expenses,  
of a Government servant who may be required to be summoned at the instance of Government to give evidence in his official capacity,

(b) the amount to be paid into Court for the travelling and other expenses of a Government servant whose salary exceeds Rs 10 and may be required to be summoned at the instance of a party other than the Government to give evidence in his official capacity in a Court situate at a distance of more than five miles from his headquarters shall be equivalent to the travelling and halting allowances admissible under the Civil Service Regulations

In .. —  
Su .. of witnesses,  
in Co Small Causes of  
Rangi ..  
O, .. re to and from  
the C .. been performed  
by rail or steam boat, actual travelling expenses up to a limit of Rs 2 a day by boat and of four annas a mile by road, and an allowance for each day's absence from home of ten annas to those who are residents of places other than the place where Court is held and of eight annas to those who are residents of the place where the Court is held

(2) *Petty village officers*—The same rates as above for railway or steam boat fare or actual travelling expenses by boat or road up to the limit of Rs 2 a day by boat and of four annas a mile by road, and an allowance for each day's absence from home of fourteen annas to those who are residents of the places other than the place where the Court is held, and of twelve annas to those who are residents of the place where the Court is held

(3) *Persons of higher ranks of lifemen and Headmen of Circles*—Second the Court, or where the journey is by boat, actual travelling expenses up to a limit of Rs 4 a day by boat and annas six a mile by road, and an allowance not to exceed except in special cases, Re 15-0 per each day's absence from home

(3) When a process is forwarded for service by one court in Burma to another process server the said person attached to the summons

is issued,  
on whom

(4) When the summons has been returned by the process-server under r 17, a declaration of due service or of failure to serve shall be recorded in Form, Civil 47 and sent with the summons to the Court by which it was issued

Rule 25.—In rule 25 the words "may be addressed" shall be substituted for the words "shall be addressed."

25A —After

25A Whe

Province of Bur  
of service send

he is residing or carrying on

signed by the defendant or

refused service may be deemed

proof of service thereof.

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endant  
a face

## ORDER VII

Rule 9 — After the word "present" in the further line of rule 9 add the following —  
On the day on which the plaint is admitted "

## ORDER IX

## ORDER XIX

|      |        |
|------|--------|
| R    | titute |
| jud  | ig     |
| such | give   |

Add the following as sub rule (2) —

(2) A decree or order passed under this rule may be executed at any time notwithstanding that other questions between the parties still remain to be decided in the case.

### ORDER XIII

To Or XIII r 1 the following shall be added as sub-rule (3) —

(3) The High Court of Judicature at Rangoon directs that such lists shall be prepared in Form <sup>Judicial</sup> ~~General~~ 23 which will be given free of charge to parties wishing to tender documents in evidence.

pla thus A B C etc and the documents admitted on behalf of the defendant with figures thus 1, 2, 3 etc

(4) When a number of documents of the same nature are admitted, as, for example a series of receipts for rent, the whole series shall bear one number or capital letter, a small number or small letter being added to distinguish each paper of the series.



(5) Every document or admission shall be entered in a list in Form  $\frac{\text{Judicial}}{\text{General 25}}$ , prepared by the Bench clerk and signed by the Judge

To Or XIII, r 5 sub rule (3), the following shall be added —

A note of the return should be made in the list in Form  $\frac{\text{Judicial}}{\text{General 25}}$

To Or XIII, r 7, sub rule (2), the following shall be added —

Who shall give a receipt for them in column 6 of the list in Form  $\frac{\text{Judicial}}{\text{General 25}}$

In Or XIII, r 10 sub r (3), shall be re numbered as (5) and the following shall

r the record it shall do so by sending a  
cord is required No summons to produce  
Keeper Chief clerk, or official of any Court

(4) Whenever a Judge sends for the record of another suit or case, or other official papers and uses any part of such record or papers as evidence in a trial before him, he shall direct that an authenticated copy of the part so used shall be put up with the trial record, and shall further direct, at the expense of which party such copy shall be made

to and to B —  
shall not be filed with the record

to B If any exhibit included in the index of contents of the trial record is withdrawn after judgment the fact should be noted in the column of remarks of the index, and it should be stated whether a copy has been substituted or not

#### ORDER XVI

In Or XVI add the following to r 2 (1) —

Provided that in cases to which Government is a party—

(a) no payment into Court will be required for the travelling and other expenses, of a Government servant who may be required to be summoned at the instance of Government to give evidence in his official capacity,

(b) the amount to be paid into Court for the travelling and other expenses of a Government servant whose salary exceeds Rs 10 and may be required to be summoned to give evidence in his  
five miles from his head  
vances admissible under

In Order XVI, r 2 the following shall be substituted for sub r (3) —

Subject to the provisions of sub r (2), travelling and other expenses of witnesses  
in Courts of Small Causes, of

Rangoon,

Ordina

the Court by the 10 vest class, or where the journey could not have been performed by rail or steam boat, actual travelling expenses up to a limit of Rs 2, a day by boat and of four annas a mile by road, and an allowance for each day's absence from home of ten annas to those who are residents of places other than the place where Court is held and of eight annas to those who are residents of the place where the Court is held

(2) *Petty village officers*—The same rates as above for railway or steam boat fare or actual travelling expenses by boat or road up to the limit of Rs 2 a day by boat and of four annas a mile by road, and an allowance for each day's absence from home of fourteen annas to those who are residents of the places other than the place where the Court is held and of twelve annas to those who are residents of the place where the Court is held

(3) *Persons of higher ranks of life such as Clerks, Trades people, Village Head men and Head men of Circles*—Second class railway or steam boat fare to and from the Court, or where the journey could not have been performed by rail or steam boat, actual travelling expenses up to a limit of Rs 4 a day by boat and annas six a mile by road and an allowance not to exceed except in special cases, Re 1 8-0 per each day's absence from home

(4) *Persons of Superior Rank*—The actual sum spent in travelling to and from the Court with an allowance according to circumstances not to exceed except in home such as *Medicine or Law*—A special the above, a lodging allowance not persons in class (3) and Rs. 2 for persons in classes (4) and (5) may be allowed for each night necessarily spent away from home if the Court is satisfied that the witness has to pay for his night's lodging. When an amount exceeding this scale is sanctioned as a special case, it shall not exceed the actual amount spent.

Provided that—

(i) A Government servant whose salary exceeds Rs. 10 per mensem giving evidence in his official capacity in a suit to which Government is a party.—

(a) when giving evidence at a place more than five miles from his headquarters shall not receive anything under these rules, but shall be given a certificate of attendance.

(b) when giving evidence at a place not more than five miles from his headquarters, shall, in cases where the Court considers it necessary, receive under these rules actual travelling expenses, but shall not receive subsistence, special or expert allowances.

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were the officer of the Court whose duty it is to effect service of summons

To Or XVI r 9 the following shall be added —

" If a person summoned is a public officer or servant of the Railway the witness an to arrange for

### Order XVIII

Rule 2—Add the following as a proviso to sub rule (2) —

Provided that the court may in its discretion call upon the other party to proceed under this sub rule upon the evidence for the party having the right to begin is complete if it considers that the other party will not be prejudiced by so proceeding and that unnecessary inconvenience and delay will thereby be avoided.

The following shall be substituted for r 5 of Order XVIII —

his own presence  
Such person shall after reading over the deposition to the witness append a certificate at the foot of the deposition form as follows —  
Red over  
Interpreted by me in Burmese or (as the case may be) and acknowledged correct  
his witness shall be  
y or in the pre  
ordinarily in the  
completed shall  
Judge may direct  
to be read over in

Signature  
Interpreter or Clerk

The Judge shall, if necessary, correct the deposition and shall sign it

Rule 8—Rule 8 shall be deleted. Rule 14—In sub rule (1) for the words "this order" the words and figures and Rules 13 shall be substituted

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dechant  
um Then

5 Every affidavit to be used in a Court of Justice should be entitled 'In the Court of \_\_\_\_\_ at \_\_\_\_\_,' naming the Court. If there is a case in Court, the affidavit in support of \_\_\_\_\_ or in opposition to an application respecting it, must also be entitled 'In the case of \_\_\_\_\_,'

6 Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively and as nearly as may be, shall be confined to a distinct portion of the subject.

7 Every person other than a plaintiff or defendant in a suit in which an application is made, making an affidavit shall be described in such a manner will serve to identify him clearly that is to say by the statement of his full name the name of his father, his profession or trade and the place of his residence

8 When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively, using the words 'I affirm' (or 'make oath') and say"

9 When the particular fact is not within the declarant's own knowledge, but the declarant must use the (add), "and verily believe received such information its or copies of documents procured from any Court of Justice or other source, the deponent shall state what is the source from which they were procured and his information or belief as to the truth of the facts disclosed in such documents

written, or appears to the Commissioner to be illiterate or not fully to understand the contents of the affidavit the Commissioner shall cause the affidavit to be read and explained to him in a language which he understands. If it is necessary to employ an interpreter for this purpose the interpreter shall be

be guided by the provisions of the Indian Oaths Act, 1873

## ORDER \X

To Or XX the following shall be added as rr 21 and 22 —

21 As soon as the decree of a Court of first instance in a suit relating to land in a district in which there is a Land Records establishment has become final, or if the decree has been appealed against, when the decree on appeal has become final, and the interest of any party to the suit in any land included in the survey has been affected thereby, the Court of the first instance shall certify the nature and extent of such change of interest in each plot of land in suit to the Superintendent of Land Records of the district in which the land is situated.

22 The copy of the certificate so made shall be sent by the presiding officer of the Court

### ORDER XXI

1. When a decree is sent for execution and the decree holder transfers the property, the Court shall send the copy of the decree and the diary of the execution proceedings to the transferee.

Rule 6—To rule 6, the following proviso shall be added, namely:—

"Provided that where a transfer is effected under the proviso to rule 5 it shall not be necessary to send the above documents."

Rule 10—To rule 10 the following shall be added:—

At the time of presenting the application for execution or at the time of admission thereof the holder of a decree may, if he wishes deposit in Court the fees requisite for all necessary proceedings in the execution."

In Or XXI, the following shall be inserted as r 10 A

10 A If no application is made by the decree holder within six months of the date of the receipt of the papers the Court shall return them to the Court which passed the decree with a certificate stating the circumstances as prescribed by s 41

2. When a decree relating to land is sent for execution and the decree holder transfers the property, the Court shall send the copy of the decree and the diary of the execution proceedings to the transferee. The application must be accompanied by a certified extract from the latest *Kamin* or town map with the boundary of the land in question marked with a distinctive colour. The particulars specified in the annexed instructions which have been issued regarding the filling up of forms of process concerning immovable property, must also be furnished so far as they are not given in the plan. In the case of other moveable property a plan is not required but such of the particulars in the annexed instructions as can be given must be supplied:—

1. If the property to be sold is agricultural land which has been cadastrally surveyed and of which survey map exists, the area, *Kamin* number latest holding number (if different kinds of holding e.g. rice land and garden holdings are numbered in different series the kind of holding must be stated) field numbers (if the property does not coincide with one complete holding), year of *Kamin* map from which the holding number is taken, and revenue last assessed upon the land must be given.

2. In the case of other agricultural land the area and village tract within which it falls distance and direction from nearest town or village and boundaries should be specified.

3. In the case of land in large towns the area, block or quarter name or number the lot number (if there are separate series of lots, the series should be stated and where the land forms part only of a lot, particulars regarding that part) the holding number in the latest town survey map if any, and years of the map, the rent or revenue last assessed on the land, must be given.

4. In the case of buildings situated in the large town when the land on which such buildings stand is not affected, the name or number of the street or, if the street has neither name or number, the quarter or block name or number, the number of the building in the street or if it has no number, the lot number, must be given.

5 In the case of immovable property situated in a small town or village, such of the particulars in paragraphs 3 and 4 above as can be given should be given  
and age of

(2) The costs of the certified extract should be reckoned in the costs of the application  
be specified

Rule 16—For the first proviso to rule 16 the following shall be substituted namely —

“Provided that, where the decree or such interest as aforesaid has been transferred, all be given to the transferer, the transfer is filed with the court has heard his objections

one year the words

and a day shall also be specified on or before which it shall be returned to the Court  
namely —

Rule 26—In sub rule (3) of rule 26 for the word may the words shall unless sufficient cause is shown to the contrary shall be substituted

Rule 31—In sub rules (2) and (3) of rule 31 for the words six months the words three months shall be substituted

The following shall be added as sub-rule 4) of rule 31 —

(4) The Court may on application extend the period of three months mentioned in sub rule (2) and (3) to such period not exceeding six months in the whole as it may think fit

38A The actual cost of conveyance of a civil prisoner shall be borne by the Court ordering his arrest or requiring his attendance at Court, as the case may be, and shall not be charged to the judgment creditor

In Order XXI, rule 39 the following shall be inserted as sub rule (2A) —

2A When a civil prisoner is kept in confinement at the instance of more than one decree holder he shall only receive the same allowance for his subsistence as if he were detained in confinement upon the application of one decree holder. Each decree holder shall however, pay the full allowance for subsistence and when the debtor is released the balance shall be divided rateably among the decree holders, and paid to them

In order XXI following shall be inserted as rules 45A and 45B —

45A (1) Before issuing a warrant for the attachment of moveable property

(2) In sending the warrant for execution to the Bailiff the Court Clerk shall certify at the foot of the warrant that the receipt granted by the Bailiff for the necessary fees has been filed in the record the Bailiff shall then endorse on the warrant the name of the process server to whom it is issued for execution. If a temporary property the process server shall file a receipt in his date from

(3) At the time of granting the receipt in Form 15A for payment is made by the decree holder as required by sub rule (1), the Bailiff shall file in the lower portion of the form the date on which the fees paid are exhausted.

warning the decree-holder that the property will not be kept under attachment after that date, unless further fees are paid before that date.

If the further fees required are not paid, the attachment shall cease as soon as the period for which fees have already been paid expires. In such a case the amount paid prior to the cessation of the attachment shall not be allowed to the attaching decree holder as costs.

(4) The payment of fees under sub-rule (1) shall be made in cash to the Bailiff and the amount shall at once be entered in Bailiff's Register No II. The Court Clerk shall on receipt of the Bailiff's acknowledgment (Form 15) file it in the record and make an entry to that effect in the diary.

(5) Temporary peons employed for the custody of attached property shall be remunerated at the rate provided for in r 15 of the rules regarding process serving establishments, provided that the total remuneration disbursed shall in no case exceed the amount of the process fees actually paid under the foregoing sub-rules.

Permanent peons shall be presumed to be remunerated at the same rate as temporary peons but if the services of the former are utilised, the fees paid shall be credited direct into the Treasury to "Process Servers' Fees"—"XVIA, Law and Justice—Courts of Law"—"Court Fees realised in cash."

(6) The remuneration of temporary peons employed to take charge of attached property shall be paid direct by the Bailiff to them on the order of the Judge.

Before the rent be paid payment deposits and the all amounts previously drawn have been disbursed to the proper persons

(7) When the order has been signed by the Judge, the money shall be disbursed by the Bailiff at once to the peon or peons concerned, whose acknowledgment of receipt shall be taken in Bailiff's Register II. If, however, the amount has been transferred to Bailiff's Register I the Bailiff shall draw the amount necessary for payment from the Treasury as if it were a repayment of deposit and shall then disburse the amount due to the peon or peons concerned, whose acknowledgment of receipt shall be taken in Bailiff's Register I.

(8) When the attachment is brought to a close or has not been effected if the Judge finds it is not of calculation the amount paid in and properly chargeable for peons and the total amount of the fees actually paid under sub-rules 1 and 3 exceeds the total amount of the chargeable for peons including the amount of the last payments, he shall order that the excess be refunded to the payer.

(9) The Judge shall in all cases in which a refund is to be made, issue to be Bailiff an order to the effect that the amount shall be placed on the record to make such refund.

If a sum is sent part of the amount paid by the decree-holder to pay such refund is in the hands of the Bailiff that officer shall make the refund in the ordinary way prescribed in his Register II for repayments. If the amount has been credited into the Treasury he shall prepare a bill for the amount to be refunded in the prescribed treasury form and shall . . . . . and of the signing the refund order, . . . . . Before for refund by examining . . . . . available by the Judge will be in . . . . . on signed at the Treasury or Sub-Treasury . . . . . for payment

or the attachment ing decree holder pay of peons employed to take charge of it, for such period as the Bailiff may think fit

*Explanation*—The costs in question might be for example, (a) rent of building in which to store attached furniture, (b) cost of conveying the attached property from the place of attachment to Court or to a secure place of custody, (c) cost of feeding and tending live-stock, (d) cost of proceeding to the place of attachment to sell perishable property.

(2) If the attaching decree holder fails to comply with the Bailiff's requisition, the warrant shall not be issued.

(3) Sums thus deposited shall be entered in the Bailiff's Registers I and II and and re-payments thereof shall be made according to existing orders. A receipt for

be present, the option of having where, on condition that a suitable place for its safe custody is duly provided. The option so given may be subsequently withdrawn by order of the Court.

Where the attached property consists of cattle these may be employed so far

attaching officer.

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property seized  
of property without  
officer shall receive the  
orders

it by the Bailiff, on  
by the Court If the  
the Court premises,

or in the personal custody of the Bailiff, he may subject to the approval of the Court, make, such arrangement for its safe custody under his own supervision as may be most convenient and economical

(10) If there be a cattle pound maintained by Government or any Local authority in or near the place where the Court is held, the Bailiff shall be at liberty to place in it such attached live-stock as can be properly there kept in which case the pound keeper will be responsible for the property to the Bailiff and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description

(11) Whenever property is attached, and any person other than the judgment-  
y part of it, the officer shall nevertheless, unless  
the attachment of the property so claimed,  
the claimant to prefer his claim to the Court.

(12) If the decree-holder shall withdraw an attachment or if it shall cease under sub r. (2) or (4), the Bailiff's officer shall inform the debtor or in his absence, an adult member of his family that the property is at his disposal

(13) If any portion of the deposit made under sub r. (1) or (4) remains unex-  
pended it shall be refunded to the decree-holder in the manner prescribed for such  
difference between the cost of attachment  
costs referred to in r. 45 A) and the sums  
shall, unless the difference is due to the  
the sale proceeds of the attached property,  
, from the attaching decree-holder on the  
still a deficiency, the amount shall be paid

Rule 46—Sub rule (3) of rule 46 shall be deleted.

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In sub-clause (ii) of clause (b) of sub rule (1) of rule 53 for the words "its own" the words "the attached" shall be substituted.

To Sub clause (ii) of clause (b) of sub-rule (1) of rule 53 the following shall be added namely,—

"With the consent of the said decree-holder expressed in writing or with the permission of the attaching Court."

In sub rule (6) of rule 53 for the words 'after receipt of notice thereof' the word 'with the knowledge thereof' shall be substituted

Rule 54—To rule 54 the following shall be added as sub rule (3), namely —

"(3) The order of attachment shall take effect, as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under sub-rule (2) whichever is the earlier"

23 In Or XXI, the following shall be inserted as r 57 A —

57A A judgment-debtor may secure release of his attached property by giving security to the value thereof to the Court,

Rules 63 A to 63 G —The following rules and heading shall be inserted after rule 63 —

### Garnishee orders

63 A Where a debt has been attached under rule 46 the debtor prohibited under clause (i) of sub rule (1) of the amount of the debt due payment shall discharge him as the same

63B Where a debt has been attached under rule 46, and the garnishee does not pay the amount of the debt into Court in accordance with the foregoing rule, the Court on the application upon the garnishee not pay into Court the amount as may be sufficient to cover of such notice

er the Court may issue against the garnishee

(2) If the garnishee disputes his liability to pay as aforesaid, may order that liability be tried as though such issue, and upon the notice as shall be just

63 D Whenever it appears to the Court that the person has a lien or other claim against the person to appear and state the nature and particulars of his claim, if any, upon such debt and prove the same if necessary

63E After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing, the Court may make such order as is provided in the rules of Court and may think upon terms, to be satisfied by the person or persons if any or such third or other person

63F. Payment made with any order made by the Court against the judgment debtor an amount paid or levered, shall be deemed to be paid



In Or XXI, the following shall be substituted for r 65 .—

65 (1) Sales shall be conducted by the Bailiff or Deputy Bailiff, but the duty may be entrusted to a process server when the property is moveable property not exceeding Rs 50 in value, and when in the opinion of the Court, for reasons recorded in the diary of the case, the Bailiff or Deputy Bailiff cannot personally conduct the sale

(2) Subject to the terms of the proviso to r 43 and of r 74 some one day in each week shall be set apart and regularly observed for holding sales in execution of decrees, and some well known place in the vicinity of the Court house or the public bazar shall be selected for the purpose

(3) Subject as aforesaid, and unless the Court is of opinion that for any special reason a sale on the spot where the property is attached or situated will be more  
oveable,

and any changes therein, shall be reported for the information of the High Court

(4) The following scale is laid down as to the amount which may be deducted from the proceeds of the sale of property sold in execution of the decree, as the expenses of sale and paid to the officer conducting the sale under the orders of the Court as his authorized commission —

When the proceeds of sale do not exceed Rs 500—5 per cent

Where they exceed Rs 500 and do not exceed Rs 5,000—5 per cent on the first Rs 500 and 2 per cent on the remainder

Where they exceed Rs 5,000—at the above rate on the first Rs 5,000 and 1 per cent on the remainder

The calculation of the commission shall be on the whole amount realised in pursuance of one application for execution

(5) Subject to the provisions of sub-rule (13) of rule 4C no further sum beyond this authorized commission and the cost of conveyance of property to the place of

of rule

or fee in respect of any sale or property (mortgaged or otherwise) held in execution or pursuance of any decree or order of the Court directing or authorizing such sale then that allowed by sub rule (4) above

tered in Register II and in Bailiff's

e added at the end of sub rule (2) —

y in the case of moveable property

not exceeding Rs 250 in value

Rule 69—In sub rule (2) of rule 69 for the words 'seven days' the words "thirty days" shall be substituted

Rule 72 In sub rule (2) of rule 72 for the words 'with such permission' the words 'the property' shall be substituted. Sub rules ( ) and (3) of rule 72 shall be cancelled, and the figure and brackets ' (2) ' occurring at the beginning of sub rule (2) shall be deleted

In Order XXI, the following shall be inserted as rule 81A .—

81A Whenever guns or other arms in respect of which licenses have to be sold by public auction in

due notice to the Magistrates and of the time such arms, so that proper

steps may be taken by the police to enforce the requirements of the Indian Arms Act

Rule 90—In order XXI, for the present proviso to rule 90 the following shall be substituted

"Provided that no application to set aside a sale shall be admitted unless—

(a) it discloses a ground which could not have been put forward by the applicant before the sale was conducted, and

(b) the applicant deposits with his application the amount mentioned in the sale-warrant or an amount equal to the amount realised by the sale, whichever is less, and in case the application is unsuccessful the costs of the opposite parties shall be a first charge on the amount so deposited

In sub rule (6) of rule 53 for the words "after receipt of notice thereof" the word "with the knowledge thereof" shall be substituted

Rule 54—To rule 54 the following shall be added as sub rule (3), namely —

"(3) The order of attachment shall take effect, as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had on which the order was duly

r 57 A —

57A A judgment debtor may secure release of his attached property by giving security to the value thereof to the Court.

Rules 63 A to 63 G —The following rules and heading shall be inserted after rule 63 —

#### Garnishee orders

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63B Where a debt has been attached under rule 46 and the garnishee does not pay the Court calling not pay as may be sufficient to satisfy the decree together with the costs of execution A copy of such notice shall, unless otherwise ordered by the Court, be served on the judgment debtor

63C (1) If the garnishee does not pay into Court the amount of the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and the costs of execution and if he does not appear in answer to the notice issued under rule (3B) or does not dispute his liability to pay such debt to the judgment debtor then the Court may order the garnishee to comply with the terms of such notice and on such order execution may issue against the garnishee as though such order were a decree against him

(2) If the garnishee appears in answer to the notice issued under rule 63B and dispute his liability to pay the debt attached the Court instead of making an order as aforesaid may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and may proceed to determine such issue and upon the determination of such issue shall pass such order upon the notice as shall be just

63D Whenever in any proceedings under the foregoing rules, it is alleged by the garnishee that the debt attached belongs to some third person or that any third person has a lien or charge upon or interest in it, the Court may order such third person to appear and state the nature and particulars of his claim, if any upon such debt and prove the same if necessary

63E After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing as ordered the Court may pass such order as is provided in the foregoing rules or make such other order as the Court shall think upon terms to all cases with respect to the lien, charge or interest if any or such third or other person, as shall seem just and reasonable

63F. Payment made by or levied by execution upon the garnishee in accordance with any order made under these rules shall be a valid discharge to him as against the judgment debtor and any other person ordered to appear under these rules, for the amount paid or levered, although such order or the judgment may be set aside or revised

63G  
foregoing r  
shall be in  
unless otherwise directed, be retained out of the money recovered by him under the garnishee order and in priority to the amount of his decree "

In Or. XXI, the following shall be substituted for r 65 :—

65 (1) Sales shall be conducted by the Bailiff or Deputy Bailiff, but the duty may be entrusted to a process server when the property is moveable property not exceeding Rs 50 in value, and when in the opinion of the Court, for reasons recorded in the diary of the case, the Bailiff or Deputy Bailiff cannot personally conduct the sale

one day in  
in execution of  
the public

for any special  
reason a sale on the spot where the property is attached or situated will be more beneficial to the judgment-debtor, all property whether moveable or immoveable, attached in execution of the decree shall be sold at the time and place selected

The day to be set apart and the place selected for holding the sales and any changes therein, shall be reported for the information of the High Court

(4) The following scale is laid down as to the amount which may be deducted from the proceeds of the sale of property sold in execution of the decree, as the expenses of sale and paid to the officer conducting the sale under the orders of the Court as his authorized commission —

When the proceeds of sale do not exceed Rs 500—5 per cent

Where they exceed Rs 500 and do not exceed Rs 5,000—5 per cent on the first Rs 500 and 2 per cent on the remainder

Where they exceed Rs 5,000—at the above rate on the first Rs 5,000 and 1 per cent on the remainder

The calculation of the commission shall be on the whole amount realised in

45B no further sum beyond  
of property to the place of

(6) When a sale of immoveable property is set aside under the provisions of rule 92 (2) below no commission shall be paid to the Bailiff for selling the property

(7) No officer of a Subordinate Court shall receive any larger commission or fee in respect of any sale or property (mortgaged or otherwise) held in execution or pursuance of any decree or order of the Court directing or authorizing such sale

entered in Register II and in Bailiff's  
diary

In Order XXI, rule 66, the following shall be added at the end of sub rule (2) —  
Provided that no such notice shall be necessary in the case of moveable property not exceeding Rs 250 in value

Rule 69—In sub rule (2) of rule 69 for the words 'seven days' the words "thirty days" shall be substituted

Rule 72 In sub rule (2) of rule 72 for the words "with such permission" the words "the property" shall be substituted Sub rules (1) and (3) of rule 72 shall be cancelled, and the figure and brackets ' (2)' occurring at the beginning of sub rule (2) shall be deleted

In Order XXI, the following shall be inserted as rule 81A :—

which licenses have to be  
sold by public auction in  
due notice to the Magis-  
trates, and of the time

and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Indian Arms Act.

Rule 90—In order XXI, for the present proviso to rule 90 the following shall be substituted

"Provided that no application to set aside a sale shall be admitted unless—

(a) it discloses a ground which could not have been put forward by the applicant before the sale was conducted, and

(b) the applicant deposits with his application the amount mentioned in the sale-warrant or an amount equal to the amount realised by the sale, whichever is less, and in case the application is unsuccessful the costs of the opposite parties shall be a first charge on the amount so deposited

Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud "

In Order XXI the following shall be inserted as rules 94A and 94B —

94A A copy of every sale certificate issued under rule 94 shall be sent forthwith to the Sub-Registrar within whose sub district the land sold or any part thereof is situate

94B If in execution of a decree any interest in land is sold, the names and addresses of the purchaser or purchasers and the interest thereby acquired shall be certified to the Superintendent of Land Records as soon as the sale has been confirmed under rule 92 (1)

Rule 98—For rule 98 substitute the following namely —

'98 Where the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession the Court may also, at the instance of the applicant or of its own motion order the judgment debtor or any person acting at his instigation or on his behalf, to be detained in the civil prison at the cost of Government for a term which may extend to thirty days "

Rule 99—For the rule 99, the following shall be substituted namely —

'99 Where the court is not so satisfied it shall make an order dismissing the application

#### ORDER XXIII

28 Add the following proviso to rule 3 of Order XXIII —

Provided that before recording and passing a decree in accordance with an agreement, compromise or satisfaction in a suit instituted under the provisions of S 92, C P Code, the Court shall direct notice returnable within a reasonable time to be given to the Government Advocate, Burma or the officer with whose consent, the suit was instituted of the agreement compromise or satisfaction proposed to be recorded. The Government Advocate or such officer as aforesaid may thereupon appear before the Court and be heard in the matter of such agreement, compromise or satisfaction

#### ORDER XXV

The following order XXV shall be substituted for the order XXV —

#### ORDER XXV

##### *Costs and security for costs in special cases*

1 (1) Where at any stage of a suit it or when there are more plaintiffs than of British India and that such plaintiff does, possess any sufficient immoveable property within British India other than the property in suit, the Court may either of its own motion or on the application of any defendant order the plaintiff or plaintiffs within a time fixed by it to give security for the payment of all costs incurred and likely to be incurred by any defendant

(2) Whoever leaves British India under such circumstances as to affect reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub rule (1)

(3) On the application of any defendant in a suit for the payment of money in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India

2 Where, it is proved to the satisfaction of the Court that the plaintiff is deriving assistance from or is being maintained by a person in consideration of a promise to give to such person a share in the subject matter or proceeds of the suit, or in consideration of having transferred his interest in the subject matter of the suit, the Court may, either of its own motion or on the application of any defendant,

(a) award costs on a special scale to be decided by the Court, and approximating to the actual costs reasonably incurred by the defendant,

(b) at any stage of the suit, order the plaintiff, within a time fixed by it, to give security for the payment of the estimated amount of such costs or such proportion thereof as the Court may think just

3(1) In the event of security demanded under rule 1 or rule 2 not being furnished within the time fixed the Court shall make an order dismissing the suit unless the plaintiff is permitted to withdraw therefrom

(2) Where a suit is dismissed in order to set the dismissal aside, that he was prevented by any sufficient cause, within the time allowed, the Court shall as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

(3) The order of dismissal shall not be set aside unless notice of such application has been served on the defendant

### Order XXVI

The following shall be substituted for sub-rule (1) of rule 18 of Order XXVI —

When a commission is issued under this Order the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders, unless otherwise directed by the Court within fifteen days

To Order XXVI, the following shall be added as rules 19 to 26 respectively —

Fees to Commissioners for local investigation and Commissioners of partition, or to take accounts or for the examination of witnesses

19 Civil Courts in issuing commissions will be guided by the provisions of rule 15, and subject to the provision of rule 23 will exercise their own judgment in fixing a reasonable sum for the expenses of the commission

20 Under Government of India Resolution in the Home Department (Judicial No. 10—1101, dated the 21st July, 1875), Judicial officers are prohibited from accepting any remuneration for executing commissions issued by Courts of other provinces

21 It is to be understood that no part of the fee sent for the execution of a commission is to be accepted, either personally or on behalf of Government. The execution of a commission is an official act which Judicial officers are bound to perform when called upon and is not work undertaken for a private body

22 In all cases the unexpended balance, which remains after all charges have been deducted, should be returned to the Court issuing the commission

23 The following fees are to be allowed to the commissioners of partition or to take accounts, or for the examination of witnesses, namely:—

Commissioners' fees for every effective meeting shall not exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour

Fees to commissioners for administering an oath or solemn affirmation to a declarant of an affidavit

24 When under the orders of a Court in the Town of Rangoon, or of a District Court, an oath or solemn affirmation is administered to a declarant of an affidavit, at his request elsewhere than at the Court, a fee of Rs 16 shall be paid by the said declarant

Provided that—

(a) the administration of the oath or of solemn affirmation elsewhere than in Courts shall be authorized by the Court by order in writing,

(b) if more than one affidavit is taken at the same time and place, the fee shall be Rs 8 for each affidavit after the first,

(c) in no case shall the fees for taking any number of affidavits at the same time and place exceed Rs 80,

(d) in pauper suits and appeals, when the affidavit of a pauper is taken, no fee shall be charged

25 Affidavits taken under r 24 shall be taken out of Court hours. The fees shall be retained by the commissioner for administering the oath or solemn affirmation

26 No fee shall be charged for the administration of an oath under the order of any Court other than those specified in rule 24

## Order XXXII.

Rule 3.—For rule 3, the following rule shall be substituted :—

for the suit. Such list shall be in the form of an application duly verified and requesting that one of such suit, and shall state for each or declared by competent minor, or a stranger, and shall give the address of each of such persons.

also be obtained

to be so appointed

except upon competent

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except upon  
competent  
e father or  
no father or other natural  
after hearing any objection  
notice under this sub rule"

Rule 4.—For rule 4, substitute—

"4 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit provided that the interest

no person other than such guardian shall act as the next friend of the minor, or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded that it is for the minor's welfare that another person be permitted to act or be appointed

(3) In guardian, the natural guardian of the minor, or the person in whose care the minor is, should, subject to the provisions of this rule, ordinarily be appointed his guardian for the suit

(4) No person shall without his consent be appointed his guardian for the suit

(5) Where none of the persons mentioned in rule 3, or of the persons mentioned by

in the performance of his duties as such guardian shall be borne either by the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for re payment or allowance of such costs as justice and circumstances of the case may require. An Advocate or Pleader of the Court shall be an officer of the Court for this purpose."

## ORDER XXXIV.

The following shall be substituted for r 2 of Or XXXIV :—

"(2) In a suit for foreclosure if the plaintiff succeeds the Court shall either—

directing—

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points, all  
and shall,  
and from  
or, where

if necessary put the defendant in possession of the property, but

(B) that if such payment is not made within the said period the defendant shall be debarred from all right to redeem the property or

(II) order that an account be taken of the amount due on the mortgage for principal and interest, and after the taking of the said account, pass a preliminary decree as above

3 of Or XXXIV —

int declared due as aforesaid  
costs as are mentioned in r

terms of

id decree

and, also if necessary,—

(c) ordering him to put the defendant in possession of the property

The following shall be substituted for sub r (1) of r 4.—

(1) In a suit for sale, if the plaintiff succeeds, the Court shall act as prescribed in r 2 except that instead of the direction contained cl B thereof, there shall be the following direction —

That if such payment is not made within the said period the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after defraying there out the expenses of the sale) be paid into Court and applied in payment of what is due to the plaintiff as aforesaid together with subsequent interest on the said amount at the rate of six per cent per annum from the last day of the said period up to the actual date of realisation by the plaintiff and subsequent costs and that the balance (if any) be paid to the defendant or other persons entitled to receive the same

The following shall be substituted for sub r (1) of r 5 of Or XXXIV —

Court the amount due as aforesaid within the  
rent costs as are mentioned in r 10 to the Court

r up the documents which under the terms of  
deliver up and, if so required

(b) Ordering him to re transfer the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) Ordering him to put the defendant in possession of the property The follow ing shall be substituted for r 7 of Or XXXIV —

In a suit for redemption if the plaintiff succeeds, the Court shall either —

(i) pass a preliminary decree declaring the amount which will be due to the defendant on the mortgage for principal and interest at the mortgage rate six months from the date of the decree and for his costs of the suit (if any) awarded to him and directing—

(A) that if the plaintiff within the said period pays into Court the said amount, the defendant shall deliver up to the plaintiff or to such persons as he appoints all documents in his possession or power relating to the mortgaged property, and shall, if so required, re transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title by those under whom he claims and shall, if necessary put the plaintiff in possession of the property, but

(B) that if such payment is not made within the said period the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all rights to redeem, or (unless the mortgage is by conditional sale), that the mortgaged property be sold, or

(II) order that an account be taken of the amount due to the defendant on the mortgage for principal and interest and after the taking of the said account, pass a preliminary decree as above

36 The following shall be substituted for sub r (1) of r 8 of Or XXXIV.—

Where the plaintiff pays into Court the amount due as aforesaid within the said period together with such subsequent costs are mentioned in r 10 to the Court shall pass a decree—

## Order XXXII

Rule 3—For rule 3 the following rule shall be substituted —

'3 (1) Where any of the fact of his minority shall be proved

(2) For this purpose persons whom the plaintiff for the suit. Such list shall be requested that one of the suit and shall state for each or declared by competent person or persons and

End of

also be used

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shall be appointed

under this rule except upon order by an authority competent upon notice to the father or, no father or other natural

guardian to the person in whose care the minor is and after hearing any objection which may be urged on behalf of any person served with notice under this sub rule

Rule 4—For rule 4 substitute the following —

'4 (1) as next of kin of such of a next

(2) no person appointed recorder

or be appointed as the case may be

(3) In the event of there being no such guardian the natural guardian of the minor or if there is no natural guardian the person in whose care the minor is should be subject to the proviso to sub rule (1) ordinarily be appointed his guardian for the suit

(4) No person shall without his consent be appointed his guardian for the suit or of the persons mentioned by rule (2) of rule 3 is fit and so application is made on behalf of the plaintiff may appoint any of its officers or be incurred by such officer shall be borne either by the plaintiff or the minor is interested, and may give directions for repayment or allowance of such costs as justice and circumstances of the case may require. An Advocate or Pleader of the Court shall be an officer of the Court for this purpose

## ORDER XXXIV

The following shall be substituted for rule 2 of Order XXXIV —

'(2) In a suit for foreclosure if the plaintiff succeeds the Court shall order—

(1) pass a preliminary decree declaring the amount which will be due to the plaintiff on the mortgage for principal and interest (at the mortgage rate) six months from the date of the decree and for his costs of the suit (if any, awarded to him and directing—

the Court

if necessary put the defendant in possession of the property, but



(B) that if such payment is not made within the said period the defendant shall be debarred from all right to redeem the property, or

(II) order that an account be taken of the amount due on the mortgage for principal and interest, and after the taking of the said account, pass a preliminary decree as above

The following shall be substituted for sub r (1) of r 3 of Or XXXIV —

(1) Where the defendant pays into Court the amount declared due as aforesaid, within the said period together with such subsequent costs as are mentioned in r 10 to the Court shall pass a decree—

documents which under the terms of  
, and if so required—  
property as directed in the said decree

possession of the property

The following shall be substituted for sub r (1) of r 4.—

(1) In a suit for sale, if the plaintiff succeeds, the Court shall act as prescribed in r 2, except that instead of the direction contained cl B thereof, there shall be the following direction —

That if such payment is not made within the said period the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after defraying there out the expenses of the sale) be paid into Court and applied in payment of what is due to the plaintiff as aforesaid together with subsequent interest on the said amount at the rate of six per cent per annum from the last day of the said period up to the actual date of realisation by the plaintiff and subsequent costs and that the balance (if any) be paid to the defendant or other persons entitled to receive the same

The following shall be substituted for sub r (1) of r 5 of Or XXXIV —

Where the defendant pays into the Court the amount due as aforesaid within the said period together with such subsequent costs as are mentioned in r 10 to the Court shall pass a decree—

(a) Ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required

(b) Ordering him to re transfer the mortgaged property as directed in the said decree,

possession of the property The follow

—

In a suit for redemption, if the plaintiff succeeds, the Court shall either —

(1) pass a preliminary decree declaring the amount which will be due to the defendant on the mortgage for principal and interest at the mortgage rate six months from the date of the decree and for his costs of the suit (if any) awarded to him and directing—

(A) that if the plaintiff within the said period pays into Court the said amount, the defendant shall deliver up to the plaintiff or to such persons as he appoints all documents in his possession or power relating to the mortgaged property, and shall, if so required re transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title, by those under whom he claims and shall, if necessary, put the plaintiff in possession of the property, or

sold, or

(II) order that an account be taken of the amount due to the defendant on the mortgage for principal and interest and after the taking of the said account, pass a preliminary decree as above

36 The following shall be substituted for sub r (1) of r 8 of Or XXXIV.—

Where the plaintiff pays into Court the amount due as aforesaid within the said period together with such subsequent costs are mentioned in r, to the Court shall pass a decree—

- (a) Ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and if so required—
- (b) ordering him to re-transfer the mortgaged property as directed in the said decree, and, also, if necessary,—
- (c) ordering him to put the plaintiff in possession of the property

## ORDER XXXVII

37 In Or. XXXVII, r. 2 sub r (2), the following shall be inserted after the words "pursuance thereof"—

Or of his applying for such leave within ten days from the service of the summons on him and on proof that the summons was duly served on him more than ten days before

## ORDER XXXIX.

Rule 1—In clause (a) of rule 1 the words "or wilfully sold in execution of a decree" shall be deleted

In the last sentence of rule 1 the word "sale" occurring between the words "alienation" and "removal" shall be deleted

## Order XL

For rule 2, the following shall be substituted, namely —

2 The fees to be paid as remuneration for the services of the receiver shall be in accordance with the following scale —

(a) On rents or outstandings recovered or on the proceeds of the sale of moveable or immoveable property unless for special reasons, to be recorded, the Court orders the remuneration to be at some other rate—5 percent

(b) For taking charge of money or of moveable or immoveable property which is not sold, unless for special reasons it is otherwise ordered by Court, on the estimated value—1 per cent

(c) For any special work not provided for above, such remuneration as the Court on the application of the receiver shall order to be paid

## ORDER XLI

Rule 1—The following shall be substituted for sub-rule (2) of rule 1 —

(2) The memorandum shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively. When Burmese dates are given the corresponding English dates shall be added. The memorandum shall also contain —

(i) the full names and addresses of all parties,

(ii) particulars (class, number, year and Court) of the original proceedings, and

(iii) the value of appeal (a) for Court fees, and (b) for jurisdiction

Material corrections or alterations shall be authenticated by the initials of the person signing the memorandum

many copies

to the decree of that Court, or to the legal representative of any such opposite party or respondent if deceased"

## ORDER XLIII,

Rule 1—The rule 1, the following shall be added as clause (ii) namely —

(ii) A garnishee under rule 63 C or rule 63E, and an order as to costs in garnishee proceedings under rule 63 G of order XXI"

## Order XLV

Rule 9A—Substitute the following for rule 9 A —

in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court, or on or to the legal representative of any such opposite party

n or given to an  
to be served on  
her at the hearing

and under rule 8 shall be given  
Court house of the Judge of  
the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct "

## ORDER XLVIII

39 In r 3 of Or XLVIII the following shall be inserted after the word 'appendices' —  
or such forms as may be prescribed by the High Court of Judicature at Rangoon'

## ORDER LII

*The following shall be added as Order LII —*

## ORDER LII

*Appellate Side Rules of Procedure*

The rules contained in the First Schedule to the Code 1908, shall so far as they are inconsistent with or contrary to the Rules here with published and so far as the practice and procedure of the Appellate side of the High Court of Judicature at Rangoon only are concerned be deemed to have been thereby altered or superseded. The Rules relating to Appeals from original decrees contained in order XLI of Schedule I to the Code of Civil Procedure so far as they are not inconsistent with or contrary to these rules shall apply to appeals under clause 13 of the Letters Patent from decrees and orders made by a single Judge of the High Court or by Division Court in the exercise of its Original Civil Jurisdiction

*Preliminary*

Side, shall  
The term  
t Registrar,

## Appellate Side

2 Except upon close holidays the offices of the Court shall be open to the public on business from 10 30 A M until 4 30 P M on all week days except Saturdays, and all Saturdays from 10-30 A M until 2 P M

*Initiation of Proceedings*

half will be on the left side

They shall contain —

- (i) The full names and addresses of all parties,
- (ii) Particulars (No, class year and court) of the original proceedings and in the case of second Appeal of the First Appeal,
- (iii) The value of the appeal or application —

use shown may accept an appeal or  
undertaking that such particulars

The matters shall be divided into paragraphs numbered consecutively and each paragraph shall contain as nearly as may be a separate ground of objection or allegation. Dates and figures shall be filled in before presentation. When native dates are given, the corresponding English dates shall always be added

by the initials of the

presented to the Deputy

Registrar

5. Memoranda of appeal and application shall be accompanied by as many copies thereof as there are respondents and by certified copies of the following documents :—

- (1) the decree or order against which an appeal or an application is made ;  
such decree or order is founded, unless the Court

6 Whenever a memorandum of appeal or application is presented to the Registrar and it is in his opinion that the relief claimed is undervalued, he may order the valuation amended.

Appeals and applications which are insufficiently stamped must be submitted for orders to the Judges

- (a) if presented on the last day of the period of limitation, or
- (b) if the period of limitation will expire within the time asked for to pay the

is amended the Deputy Registrar

revision shall be fixed by order of the Registrar prescribed by order XXI of the Code of Procedure as provided for in rule 26

payment of process fees unless

An endorsement over the signature of the Registrar on the memorandum of appeal or application has been struck off under this rule shall be made on the memorandum of appeal or application

(2) On the application of the appellant or applicant and on sufficient grounds being shown to his satisfaction a Judge may order an appeal or application struck off the file under this rule to be restored to the file as of the date on which it was

the appellant  
present a fresh

Records of the  
file as provided

11 and 12

13 The  
service of the

steps to cause the  
for substituted

record and granting postponements.

Registrar orders the  
called out before the  
respondent may put in  
postponed date and his signature taken

#### Practs

15 Warrants, notices and other processes shall be signed sealed and issue by the Deputy Registrar provided that every warrant or order committing a person to custody in jail shall be signed by the Judge

17 If the person to be served is personally known to him or to any of his officers who is at the time available, the Bailiff shall cause the process to be served forthwith. If the person to be served is not so known the Bailiff shall forthwith communicate with the party desiring to have the process served or with his advocate appointing a time at which one of his officers will be available and ready to proceed to effect service, and requesting

service

served in Burma, but beyond the local court, or outside of Mandalay Town shall be sent by post to the court of widest jurisdiction not being a District Court at the headquarters of the Township in which the person to be served resides. If the notice is to be served out of Burma it shall be sent for service as provided by section 28, Order V, rules 21, 23 and 25 to the Court named by the party.

20 Unless otherwise ordered a second or subsequent notice or process shall not be issued until after the one previously issued has been returned.

21 Processes to be served on a party to a case may be served on his advocate, if any, and when so served shall be presumed to be duly communicated and made known to the party for whom such advocate appears. For the purposes of this rule an advocate who has once appeared or entered an appearance on behalf of a party shall be deemed to continue to be his advocate unless and until he withdraws his appearance by a statement to that effect made in and recorded by the Court or unless or until he or such party intimates in writing to the Deputy Registrar that he has ceased to be the advocate for such party.

22 To bring promptly to notice the failure to serve process every process issued after the first shall have its number, second, third, fourth, and so on written clearly on it.

23—32 (Deleted)

*List to be maintained by the Deputy Registrar*

33 The Deputy Registrar will maintain and keep posted up three lists of pending civil appeals, applications for revision, and miscellaneous applications.

A List of all incomplete cases

B List of cases ripe for

C List of cases ripe for

The Chief Clerk shall be

from day to

day

34 No case shall be put on the B or the C list until notices on all respondents have been duly served and the necessary Translations and Bench copies have been prepared.

35 The B list shall contain all cases ripe for hearing in which any party is not known to be represented by an advocate.

36 When a case has been placed on the B list and the Deputy Registrar before the date fixed for hearing receives intimation that all parties are represented by advocates the case shall forthwith be transferred to the bottom of the C list.

37 Cases in the B list shall be called on the day fixed for hearing and shall either be for disposal on that or immediately subsequent days of sitting or shall be postponed under the orders of the Court to some subsequent fixed date.

38 When a case has once been transferred to the C list, no further date will be fixed for hearing but it will come up for hearing in its turn, as it stands on that list, unless for special reasons it is otherwise ordered, with notice to the parties or

reason

appear in

date or

specified

date

40 On every Friday the Deputy Registrar shall issue a list of cases which will be on the lists for disposal during the following week. This list will include cases

fixed for admission, miscellaneous applications for disposal and B list cases fixed for the last Friday in each month the Deputy Registrar shall show the cases for the day taken from the warning list issued on the Friday of the previous week.

42 At the close of the week, unless the Court has otherwise ordered, the remaining cases of the Week's list shall be transferred to the top of the list of cases for hearing for the following week.

in Divorce Act in which a decree for dissolution of matrimony or a letter shall invariably be submitted for confirmation, asking him to inform the decree into consideration at the expiry of six months from the date on which it was pronounced with a view to confirming it or passing such order as may seem fit, if either party wishes to make any application relating to the decree he or she must do so within the said period of six months and that if no such application is made the court will proceed to pass orders in the absence of the parties.

44 (Omitted)

#### *The Diary.*

to show as concisely as possible every case, and the party or parties present in the case. Very short proceedings and orders such as orders not purely formal have to be made, the Bench clerk should put up a judgment form with the file when submitting it to the judge.

#### *The Judgment*

by the Judge himself or be delivered orally and note thereof in writing or in shorthand shall be taken by the Judge for correction and for signature.

Rule 31 of Order XI I shall not apply to the High Court.

#### *Decrees and formal orders*

47 on both sides (if any) before the decree is signed. It should not be necessary to refer to any other documents to ascertain what it really means and implies.

48 When in interlocutory and miscellaneous proceedings an order is made by the Judge after stating his reason therefor and in any case in which a party may desire it, a formal order shall be drawn up containing the number of case, the names of the parties, the order or result of the order made, the cost incurred and by whom paid and in what proportion the costs are to be paid.

49. Every decree and formal order shall bear the date on which the judgment or order was pronounced by the judge, but the date on which the Judge or the Deputy Registrar has actually signed an order or the Deputy Registrar, a decree, shall be noted beneath his signature.

50. Every decree and formal order shall be posted on the Court Registry's office, a decree in the name of the Judge or signature of the Judge. The case shall be taken up at the first convenient opportunity to speak to the Judge or decree.

51 If a party or an advocate intimates to the Deputy Registrar immediately after an order has been passed by a Judge that he wishes to see the formal order before it is submitted to the Judge for signature, the same procedure as for decrees shall be adopted in respect of the draft formal order.

#### *General*

52 In every appeal and petition, if any Burmese name is not spelled in accordance with the Government system of transliteration the Deputy Registrar shall cause

concerned shows any good reason

wer Court it should nevertheless be correctly spelled in the High Court of the name as previously incorrectly spelled being added in brackets, if necessary, to prevent confusion. The same rule shall be applied as far as practicable to names of natives of India. But any person who writes English has the right to spell his own name in any way he likes, and the spelling of his ordinary signature should be adopted in all documents in Court.

53 No correspondence relating to cases before the Court can be attended to but any person having business in the Court, or its office shall transact the same in person or by a duly authorized agent, or Advocate.

54 The Registrar, Deputy Registrars, Assistant Registrars, the Chief Translator and the Senior Interpreters attached to the High Court for Burmese, Hindustani, Gujarati, Chinese, Tamil and Telugu, are empowered to administer the oath to deponents of affidavits to be filed in the High Court.

The Senior Interpreters shall exercise the power conferred by this rule only within the precincts of the Court.

55 The Superintendent Appellate side shall certify the copies referred to in Order XLI, rule 37.

### *Appeals to the Privy Council*

leave to appeal to His Majesty in Council decree or order to be appealed from, subject 2 of the Indian Limitation Act, 1908.

His Majesty in Council shall be presented to the Deputy Registrar who if the petition is in order will issue notice in the form attached on the Respondent to show cause before a Bench consisting of at least two Judges why the certificate prayed for should not be granted.

58 When a certificate is granted the Appellant shall within the period prescribed by Order XLV Rule 7 give security for the costs of the Respondent to the extent of Rs 4,000 in cases of special magnitude and importance the Court may require not in any case be required

of cash or Government security for the costs of these rules and of the provisos to sub-rule (1) of rule 7 in Order XLV, it may be furnished in some other form approved by the Court. Cash deposited under this rule shall be paid to the Bailiff of the Court. Government security so deposited shall be made over to the

a security

linarily file application to a draft affidavit. The security is tendered, on the date the Court is called not be

required, and in the case of land on which there are buildings which are brought tendered, on the date the Court is called not be

notice of him to show for granting judgment

63 If the security tendered appears to the Court to be unsatisfactory the Appellant shall be so informed.

64 In every security bond, the Appellant shall bind himself to pay such costs of the opposite party as may be allowed by the Court in the event of the appeal not being prosecuted.

65 Within the period prescribed by Order XLV, rule 7, the Appellant shall also deposit with the Bailiff of the Court the sum of Rs 1,000 or such sum as

of printing, translating, or the admission of an surety or make the deposit with due diligence to the Court for an order admitting the Appeal), the Court may, on its own motion or on the application of any party, cancel the certificate if it is to the costs of the Appeal, if the Court shall think fit, in its opinion of the Court, the justice of the case requires

67 When the Court admits the appeal, it shall always clearly state in its order who are actual parties at the time of admission

68 On a certificate being granted to appeal to His Majesty in Council the Deputy Registrar shall immediately call for the transmission of the record and all material papers. The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require

69 The Deputy Registrar shall on payment to him of a fee of Rs 16, prepare an index of the papers which make up the record. This index shall be prepared within three weeks of the date of receipt of the records or of the date of deposit required by Rule 65 whichever is later. As soon as the index is ready, a notice in form attached shall be issued by the Deputy Registrar requiring the advocates of both parties to attend his office for the purpose of settling the index within the time specified in the notice. If the Advocates fail to attend or to settle the index within the time aforesaid the matter shall be reported for the orders of the Court without further delay. Any costs incurred on such account shall be borne in manner as the Court directs

70 The Registrar or the Deputy Registrar as well as the parties and their legal Agents shall endeavour to exclude from the record all documents, (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents, but the documents omitted to be copied or printed shall be enumerated in a manuscript list to be transmitted with the record

71 If the parties are agreed as to the papers to be omitted, those papers shall not be transcribed. Where in the course of the preparation of a record one party objects to the inclusion of the document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included and the Court allows the document to be included, the records, as printed, shall with a view to the subsequent adjustment of the costs of and incidental to such document indicate in the index of papers or otherwise, the fact that and the party by whom, the inclusion of the document was objected to

72 Where there are two or more appeals arising out of the same matter and the Court is of opinion that it would be for convenience of the Lords of the Judicial Committee and all parties concerned that the appeal should be consolidated, the Court may direct appeals to be consolidated.

73 An appellant who has obtained a certificate for the admission of an appeal may at any time prior to the making of an order admitting the appeal withdraw the appeal on such terms as to costs and otherwise as the court may direct

74 An appellant, whose appeal has been admitted shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council

the  
ma-  
cer  
be

order of His Majesty in Council, and costs of the appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court thinks fit to direct



ted fails to show  
 e preparation of the  
 of the Respondent  
 not be issued that  
 the appeal has not been effectually prosecuted by the Appellant and if the Court  
 sees fit to issue such a certificate the appeal shall be deemed as from the date of  
 r of  
 o by

77 Where at any time between the admission of an appeal and the despatch of the record to England the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may notwithstanding the admission of the appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court is the proper person to be substituted, or entered on the Record in place of, or in addition to the party who has died, or undergone a change of status and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express order of His Majesty  
 there has been undue delay in making  
 Appellant or the party interested to  
 within such time as the Court may direct, and, if he fails to comply with such Order, the Court may call upon him to show cause why a certificate should not be issued that the appeal has not been effectually prosecuted, and if the court sees fit to issue such a certificate the appeal shall be deemed as from the date of such certificate, to stand dismissed for non prosecution without express order of His Majesty in Council and the costs of the appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct

78 Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal the Court may, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in change of status  
 this application  
 necessary steps  
 and, if he fails to  
 Registrar of the

#### Privy Council

79 The supplementary records dealing with revivor of appeals should be transmitted to England in manuscript and not in print

#### *Order of arrangement of the papers prefixed by index*

80 The Deputy Registrar shall arrange the papers in the transcript in two parts in the order specified below and shall prefix and index to each part He shall also attach to each part a certified list of all papers omitted from the transcript under Rule 70

#### PART I

##### *Original Court*

- 1 Index to Part I
- 2 Diary Sheet of the Original Court
- 3 Plant
- 4 Written Statement
- 5 Examination of the Court under Order X
- 6 Issues Settled
- 7 Oral evidence for the party beginning, including evidence given by a witness for such party on commission
- 8 Oral evidence for the opposite party or parties, including evidence given by a witness for such party or parties on Commission
- 9 The judgment of the Original Court
- 10 The decree of the Original Court

##### *Appellate Court*

- 11 The diary sheet of the Appellate Court
- 12 The memorandum of appeal to the Appellate Court

- 13 Respondent's memorandum of objections under Order XLI, Rule 23
  - 14 The Judgment of the Appellate Court
  - 15 The decree of the Appellate Court
  - 16 The application for a certificate and for leave to appeal to His Majesty in Council
  - 17 The certificate granted
  - 18 The Deputy Registrar's certificate that the provisions of Order XLV, Rule 7, has been complied with
  - 19 The Order declining the appeal admitted
- Appendix 1A—Interlocutory proceedings and orders in the Original Court and Appellate Court, except such as the parties agree should be excluded, or the Court directs to be excluded
- Appendix 1B—List of papers excluded

## PART II

20. Index to Part II

21. Exhibits

Appendix II—List of formal and other documents excluded

## NOTE.

*Records*—Part I should be arranged strictly in chronological order in the same order as the index. Part II should be arranged in the most convenient way for the use of the Judicial Committee as the circumstances of the case require. The documents should be printed as far as suitable in chronological order mixing plaintiff's and defendant's documents. Each document should show its exhibit mark, (unless this is clear from the exhibit). Documents of the same nature, such as a series of correspondence or other documents, other than the one under appeal should be kept together. The order in the record of the documents in Part II will probably be different from the order of the index and the proper page number of each document should be inserted in the printed index.

The parties will be responsible for arranging the record in proper order for the Judicial Committee and in difficult cases Counsel may be asked to settle it.

(3) *Numbering of documents*—The documents in Part I should be numbered consecutively. The documents in Part II should not be numbered apart from the exhibit mark.

(4) *Heading of documents*—Each document should have a heading which should consist of the number or exhibit mark, and the description of the document in the index, without the date.

(5) *Marginal note*—Each document should have a marginal note which should be repeated on each page over which the document extends, viz.—

## Part I

(a) Where the case has been before more than one Court the short name of the Court should first appear. Where the case has been before only one Court the name of the Court need not appear.

(b) The marginal note of the document should then appear consisting of the number and the description of the document in the index with the date, except in the case of oral evidence.

Plaintiff's evidence  
note consisting  
of the number and description  
of the document in the index  
with the date

## PART II

The word "Exhibit" should first appear. The marginal note of the exhibit should then appear consisting of the exhibit mark and the description of the document in the index with the date.

Plaintiff's evidence  
note consisting  
of the number and description  
of the document in the index  
with the date

Omission  
may appear  
printed "

A long series of documents, such as accounts, rent rolls, inventories, etc., should not be printed in full, unless Council so advise, but the parties should agree to short extracts being printed as specimens

Every document should be carefully edited for the printer avoiding the repetition of unnecessary titles and omitting formal portions

81 The charges for translation and copying shall be regulated by the rules dealing with the matters. It shall not be necessary to translate any papers which have already been translated

82 All translations whether previously made or made for the purpose of the Appeal to His Majesty in Council, shall be authenticated by the person by whom they were made,

83 The notices in India shall be limited, in the absence of any express direction by the Court, to the notice of application for this certificate of admission, notice declaring the Appeal admitted and notice of the transmission of the Record to England, and in all cases where a party has appeared, service on the advocate shall be deemed to be sufficient notice

84 When the Record is to be printed the style to be adopted shall be as follows —

(i) The form known as *demi quarto* (1 e 54 ems in length and 42 in width) shall be followed

(ii) The size of the paper used shall be such that the sheet when folded and trimmed shall be 11 inches in length and 8½ inches in width

(iii) The type to be used in the text shall be *Pica* type, but *Longprimer* shall be used printing accounts, tabular matters and notes

(iv) The number of lines in each page of *Pica* type shall be 47 or thereabouts and every tenth line shall be numbered in the margin

85 When the Record is printed in India, 100 copies of the transcript shall be struck off. Twenty copies shall be supplied to the party at whose cost the record is printed. Any other party to the suit shall be supplied with copies of the record on payment of the cost price. Copies so supplied shall not be certified. A charge of Re 1 for every 750 words shall be made for proof reading. Money paid for proof reading shall be credited to Government

in England, one certified  
s Privy Council, Whitehall  
index of all the papers and  
record shall be transmitted

to the Agents in England by or on behalf of the parties to the Appeal

87 When the transcript has been printed in India, and 100 copies struck off under rule 85 40 copies shall be sent, at the expenses of the Appellant, to the Registrar of His Majesty's Privy Council one of which shall be certified to be correct by the Deputy Registrar of the Court by his signing his name on, initialling every eighth page thereof and by affixing the seal of the Court thereto. Where part of the record is printed in India and part is to be printed in England, this rule shall, as far as practicable apply to such parts as are printed in India and such as are to be printed in England respectively

88 All costs incurred in British India whether allowed by the Court under rule 64 or otherwise, shall be recoverable, as if they were the amount of a decree for money

#### FORM A (Rule 60)

*Bond by an Appellant to His Majesty in Council for security for the costs of the Respondent when currency notes are or cash is deposited*

Signed by the said

native of  
r Judge of the High  
to be paid  
which payment well  
natives.  
day of

Signature of Appellant  
in the presence of

Address  
On

Son of

WHEREAS I the above bounden was  
an appellant in Civil 1st Appeal No. of 19 in the said High Court  
the respondent 2nd

and whereas the decision of the Court upon the said appeal having been adverse to me I presented a petition to the said Court praying for a certificate on which an appeal to His Majesty in Council might be admitted. And whereas such certificate was granted to me on the day of 19. And whereas I was called upon to furnish security for the costs which may be incurred by the Respondent in this Court and before His Majesty's Privy Council upon or in consequence of my said appeal to His Majesty to the amount of Rupees. And whereas on the day of 19 I deposited in the said High Court the sum of Rs.

Now the condition of the above written bond is such that if the said Respondent shall be paid such costs as I or my heirs or legal representatives shall be ordered to pay to him by the decree or order of His Majesty in Council or by order of this Court as costs incurred on or in consequence of my said appeal then the above written bond shall be void and of no effect otherwise the same shall remain in full force and virtue. And I hereby agree and declare that the said amount deposited by me as aforesaid shall remain under the control of the said High Court as and for security for payment by me or my heirs or legal representatives of such amount or amounts as may be made payable by me or them as costs as aforesaid and that upon my failure to pay such amount or amounts the Court may order that the said amount deposited or so much thereof as may be necessary shall be paid towards the discharge of the amount or amounts which may be payable by me or my heirs or legal representatives as aforesaid. Provided that the said amount so deposited shall be returned to me or my heirs or legal representatives as aforesaid.

## FORM B (Rule 60)

*Bond by an Appellant to His Majesty in Council for security for the costs of the Respondent when Government Promissory Notes are deposited*

Know all men by these presents that I son of native of now residing at am held and firmly bound to the Senior Judge of the High Court of Judicature at Rangoon in the sum of Rupees to be paid to the said Senior Judge his successors in office or assigns for which payment well and truly to be made I bound myself and my heirs and legal representatives

In witness whereof I have hereunto set my hand at this day of 19

Signed by the said

Signature of Appellant

in the presence of

son of

Address  
Occupation

WHEREAS I the above bounden

was an appellant in Civil 1st  
the respondent 2nd

Appeal No. of 19 in the said High Court and whereas the decision of the Court upon the said appeal having been adverse to me I presented a petition to the said Court praying for a certificate on which an appeal to His Majesty in Council might be admitted and whereas such certificate was granted to me on the day of 19. And whereas I was called upon to furnish security for the costs which may be incurred by the Respondent in this Court and before His Majesty's Privy Council upon or in consequence of my said appeal to His Majesty in Council to the amount of Rupees. And whereas on the day of 19 I endorsed and delivered to the Registrar of the said Court the Government Promissory notes particulars of which are set out in the schedule hereunder. Now the condition of the above written bond is such that if the said Respondent shall be paid such costs as I or my heirs or legal representative shall be ordered to pay to him by the decree or order of His Majesty in Council or by the order of this Court as costs incurred on or in consequence of my said appeal then the above written bond shall be void and of no effect otherwise the same shall be and remain in full force and virtue.

And I hereby agree and declare that the Government Promissory notes deposited by me as aforesaid or such other Government Promissory notes as may be held in lieu thereof and the interest which may accrue thereon shall remain under the control of the High Court of Judicature at Rangoon as and for security for payment by me or my heirs or legal representative of such amount and amounts as may be made payable by me or them as costs as aforesaid and that upon my or of their failure to pay such amount or amounts the said Court may order that the same be sold and that the proceeds be applied so far as they may extend towards the discharge of the said amount or amounts — Provided that if the costs  
Res  
vern  
wise

The Schedule above referred to —

| No<br>1 | Date<br>2 | Rate of interest<br>3<br>Rs | Amount<br>4<br>Rs |
|---------|-----------|-----------------------------|-------------------|
|         |           |                             |                   |

*Notice to show cause why a certificate of Appeal to His Majesty in Council should not be granted (Rule 57)*

CODE OF CIVIL PROCEDURE ORDER XLV Rule 3 (2) IN  
THE HIGH COURT OF JUDICATURE AT RANGOON

CIVIL MISCELLANEOUS APPLICATION No OF 19  
Arising out of Civil Appeal No of 19  
Vs Applicant  
Respondent

To  
through  
amount or value and nature  
of the Code of Civil Procedure  
or that it is otherwise a fit one for Appeal to His Majesty in Council  
The day of 19 is fixed for you to  
show cause why the Court should not grant the certificate asked for  
GIVEN under my hand and the seal of the Court this day of 19  
Process fee, Rs realized

Deputy Registrar

*Notice to Advocates to settle index in paper book of the Privy Council Appeal (Rule 69)*

IN THE HIGH COURT OF JUDICATURE AT RANGOON

CIVIL MISCELLANEOUS APPLICATION No OF 19  
Arising out of Civil Appeal No of 19  
Vs Appellant to England  
Respondent to England

Take notice that (1) an index of all documents included in the transcript record of the above case and (2) a list of all other papers etc, not so included have been

prepared You are requested to attend the office of the Deputy Registrar for the purpose of settling the Index within one week from the date hereof

Deputy Registrar  
Appellate-side.

The <sup>19</sup>  
*Notice to Respondent of a Mission of Appeal to the King in Council*  
[Code of Civil Procedure, Order XLV, Rule 3]

# IN THE HIGH COURT OF JUDICATURE AT RANGOON

|                                    |                 |
|------------------------------------|-----------------|
| CIVIL MISCELLANEOUS APPLICATION No | of 19           |
| Arising out of Civil               | Appeal No of 19 |
| Vs                                 | Applicant       |
|                                    | Respondent      |

To  
WHEREAS

the in the above case, has furnished the security and made the deposit required by or by Rule 7, of the Code of Civil Procedure, 1903

Take notice that the Appeal of the said Applicant to His Majesty in Council has been admitted on the day of 19.

GIVEN under my hand and the seal of the Court this day of 19.  
Process fee Rs realised Deputy Registrar.

*Notice of the transmission of the Record to England*

# IN THE HIGH COURT OF JUDICATURE AT RANGOON

|                      |    |                        |            |
|----------------------|----|------------------------|------------|
| Dated Rangoon the    | 19 | Civil Miscellaneous No | of 19      |
| Arising out of Civil |    | Appeal No              | of 19      |
|                      |    |                        | Applicant  |
|                      |    |                        | Respondent |

To  
1. Please take notice that the printed Records in the above cause under Appeal to His Majesty in Council will be despatched to the Registrar, Privy Council, by the mail leaving on the 19.

2. You are requested to send a senior clerk to the Appellate Side to receive 20 printed Records and a copy of payment order for Rs being unexpended balance to be refunded to you under order dated the 19.

Deputy Registrar  
Appellate Side

## ORDER LIII

*The following shall be inserted as Order LIII ~*

Rules for the conduct of suits in the Rangoon Small Cause Court "

## PART I Preliminary

Court Rules 1922,  
1st Act, 1920 They  
to all proceedings  
to all proceedings

2. All previous rules so far as they are inconsistent with these rules are hereby superseded and the rules theretofore contained in schedule I to the Act and in Order LV of the Code are hereby annulled, but not so as to affect anything duly done or suffered thereunder

3 In these rules unless there be something repugnant in the subject or context —

(1) The Act means the Rangoon Small Cause Court Act

(2) Bailiff means any Bailiff of the Court

(3) 'The Code' means so much of the Code of Civil Procedure 1908, together with the Schedules and Appendices thereto, as is not expressly or impliedly excluded by the Act or these rules

(4) 'Prescribed' means prescribed by these or any duly authorized rules or Orders or by the code

(5) 'Process' includes a summons to a defendant or to a witness, a notice or any other process (not being a warrant) which has to be served through the Court

4 The procedure to be followed in the Court shall be that laid down in the Code, subject to the provisions of the Act and of these rules

5 All plaints written statements, affidavits, petitions and other proceedings presented to the Court shall be in English and written or typewritten or printed, fairly and legibly, and in the prescribed form. Provided always that in proceedings to which all the parties are Burmans and in which the relief sought does not exceed Rs 500 all pleadings petitions and affidavits may be written, typed or printed in Burmese

6 Written statements, petitions and affidavits unless filed in Court or before the Registrar, shall be presented to the Chief Clerk or to such other officer as may be appointed in that behalf in like manner as is herein after provided for the presentation of plaints

of affidavits  
be served on  
tion are paid  
1

#### *Institution of suits—The Plaint its presentation and Admission*

8 Every suit shall be instituted by the presentation of a plaint

9 The subject matter of the plaint shall be divided into paragraphs as nearly as may be as given the corresponding and places of residence of do so must be satis-

10 A plaint shall be presented to the chief clerk of the Court or to such officer as the Chief Judge may from time to time appoint in that behalf. If the plaint be reasonably legible and be properly stamped signed and verified and otherwise admissible in accordance with the provisions of the code and of these rules it shall be received and a receipt shall be granted to the person presenting it. A diary form the suit shall thereupon be opened by such chief clerk or other officer, who shall enter therein the name of the person presenting the plaint, the date of presentation and the documents (if any) produced or filed with the plaint together with the plaint shall be filed as many copies thereof as there are defendants to the suit. And the chief clerk or such other officer as aforesaid shall there upon place the plaint with the diary form before the Registrar for his written order for the admission of the plaint and his direction for summons to issue upon payment of the necessary fees

11 If it appears to the Registrar that the plaint should for any reason be amended or rejected the matter shall be placed in the daily cause list on a suitable date before the Registrar for admission and the Registrar shall then deal with the matter in question or, (if so desired) place the matter for admission before the

to the suit he shall  
in that behalf shall be  
how the allegations

of presenting the  
- chief clerk or such  
action in the diary,  
must be produced

14 (1) When an original document is produced by the plaintiff under Order VII rule 14, of the Code, the chief clerk shall put thereon his initials and a note of the date of presentation

(2) If a copy of such document is delivered to be filed with the plaint instead of the original the chief clerk shall compare the copy with the original and certify as to its correctness by endorsement

15 When a plaint has been admitted it shall be numbered and registered as a suit only instituted and the chief clerk or other officer as aforesaid shall, upon receipt of the proper fees, issue a summons directed to each defendant

*Summons—its Service—and the service of process is generally*

16 The summons to the defendant shall require the defendant or defendants to enter appearance before the Registrar upon a date to be therein mentioned

17 (1) In all suits for sums not exceeding Rs 50 the summons shall be for final disposal

(2) In all suits the value of which exceeds Rs 1,000 summons shall be for the settlement of issues

(3) And in all other suits the Registrar shall determine, at the time, of issuing the summons, whether it shall be for the settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly

18 (1) In all suits in which summons is for the settlement of issues the defendant when he enters appearance shall be given an opportunity of filing a written statement in answer to the plaintiff's claim and the suit shall be assigned to a particular Judge for trial and a date fixed for hearing

(2) In all other suits a verbal defence may be recorded unless for any reason

the day  
n—

direction of

the Court —

(1) in suits the value of which exceeds Rs 1,000—fourteen days,

(2) in all other cases—ten days

needed for appearance

21 All processes and warrants except committal and release warrants shall be signed sealed and issued by the chief clerk Committal and release warrants and commissions shall be signed by the Judge who ordered them issued or by the Registrar on his behalf

22 Processes or warrants for service or execution within the local limits of the jurisdiction of the Court shall be delivered for service or execution to the Bailiff known to the Bailiff

served forthwith the party applying be served and shall effect service

23 Processes for service in Burma but beyond the local limits of the jurisdiction of the Court shall unless otherwise directed be sent by post to a Court at the head quarters of a township in which the person to be served resides If the process is to be served out of Burma it shall be sent for service as required by section 28 and Order V, Rules 21 to 23 and 25 of the Code to the Court named by the party at whose instance the process is issued

24 Unless otherwise ordered a second or subsequent process shall not be issued until the previous one has been returned

25 Proof of service may be made by affidavits Such affidavits must state fully all particulars which must necessarily be proved before the summons or process can be held to have been duly served The Bailiff is empowered to administer this oath to the deponents of such affidavits



26 No summons or other process shall be served or executed on a Sunday, Christmas Day or Good Friday except by the special leave of the Court

### *Appearance*

27 If the defendants or any of them do not appear and the Court is satisfied that they have been duly served with the summons the suit shall be heard *ex parte* as regards such defendants

28 If the defendants or any of them do appear and wish to defend the suit, the Registrar shall either direct such defendants or defendant to file a written statement before the Judge to whom such case is assigned for trial allowing such time as may be reasonable for the purpose or direct that the case be placed before such Judge the following Court day for orders.

29. Advocate or pleaders instructed to appear and defend on behalf of any one or more defendants in a suit may enter appearance on his or their behalf at any time before the date for appearance by formal notice in writing addressed to the chief clerk and may at the same time file written statements in answer to the plaintiff's claim and the case will thereupon be placed for orders before the Registrar

30(1) A minor can only enter appearance by his guardian *ad litem* And the

(c) The Court may at any time direct the plaintiff or other party having the conduct of the case to pay into Court a sum sufficient to defray such minor's expenses in defending the suit

(3) The procedure provided for by this rule with regard to minors shall be adopted *mutatis mutandis* with regard to persons of unsound mind

31 Subject to the control of the High Court, the Chief Judge may from time to time make such arrangement as he thinks fit for the distribution of the business of the Court among the various Judges thereof

And he may whenever it is necessary or expedient withdraw any suit or proceeding from any Judge and transfer it to himself or to any other Judge for disposal

32 Upon a written statement being filed or a verbal defence recorded the Judge to whom such case is assigned shall fix a date for trial, unless the matter can be disposed of on the pleadings

### *Daily file and Cause Lists*

33 All pending cases shall be entered in the daily file under the respective dates fixed for hearing

34 A daily cause list for each Judge and one for the Registrar shall be prepared from the daily file and shall show the matters for disposal in such order as the Chief Judge shall direct

35 Cases in the daily list shall be called on in turn in the order in which they appear in the list

36 The daily cause lists, shall be affixed to the Court notice boards daily before the Court opens

### *Documents filed in Court*

37 The Chief clerk is authorised to permit party or his pleader to inspect in his presence or in the presence of an officer of the Court any document filed in a suit or proceeding in which he is a party or pleader

38 Subject to the provisions of Order XIII Rule 9 of the Code documents filed in Court may be returned after fifteen days from the date of judgment unless the proceedings have in meanwhile been sent for by the High Court

30 No document not in the English language shall (unless the Court otherwise orders) be read or received in evidence without an authorized translation thereof —

Provided that in cases in which the pleadings may be in the Burmese translation shall not be required of documents written in the Burmese language

40 The Bench Clerk shall make and sign the endorsement required by order XIII, Rules 4 and 6 of the Code, on documents admitted or rejected

### *Summons to Witnesses*

41 A party or his pleader may apply for a summons to a witness in any suit or proceeding at any time after the institution and during its pendency. The application shall be presented to the chief clerk. If he thinks that for any reason

ing scale —

|                                                                         | Maximum | Minimum |
|-------------------------------------------------------------------------|---------|---------|
|                                                                         | Rs      | Rs A    |
| Soldiers, mariners, labourers, carriers, domestic servants, sircars etc | 2       | 0 4     |
|                                                                         | 4       | 1 0     |
|                                                                         | 16      | 2 0     |
|                                                                         | 10      | 1 0     |
|                                                                         | 16      | 2 0     |
|                                                                         | 10      | 2 0     |
| according to rank                                                       | 16      | 6 0     |
| Military or Naval officer according to rank                             | 16      | 6 0     |
| Shroffs bunnias school masters commanders and officers of ships         | 6       | 2 0     |
|                                                                         | 6       | 2 0     |
|                                                                         | 4       | 2 0     |
|                                                                         | 4       | 2 0     |
|                                                                         | 2       | 1 0     |
| Females according to status                                             | 4       | 0 8     |

In special cases or in cases not provided for in the scale the Court shall allow such fees as it thinks fit

Provided—

ing and other expenses  
monied at the instance of

and the other expenses  
who may be required to

attendance.

(b) when giving evidence at a place not more than five miles from his head quarters shall in cases where the Court considers it necessary, receive under these rules actual travelling expenses but shall not receive subsistence special non expert allowances

Thirdly—That a Government servant whose salary does not exceed Rs 10 per mensem giving evidence in his official capacity shall receive expenses from the Court

43 The chief clerk shall issue summons as soon as possible after the Bailiff has endorsed on the application his receipt for the money paid

44 Fees paid to witnesses otherwise than through the Bailiff shall be certified to the Court before a witness is examined, and if not so certified shall not be allowed in taxation of costs

45 In cases where the witnesses reside beyond the local limits of the jurisdiction of the Rangoon Small Cause Court, the Bailiff shall remit the expenses of the witnesses by money order to the Court to which the summons is to be sent for service,

46 The Bailiff shall receive all money by other Courts as expenses of witnesses and commissions

47 On receipt of a summons to a witness issued by another Court, the chief clerk shall send it to the Bailiff who shall note on it whether any and if so, what money has been received as expenses of the witness. If the expenses are sufficient the chief clerk shall then make an order for the issue of the summons

m another-  
any and,  
nt money  
summons

to the witness

49 Any money received as expenses of witnesses which remains unexpended shall be returned by the Bailiff to the Court of issue, under the orders of the Registrar

### COMMISSIONS

50 The hearing of a suit in which a commission has been issued under Order XXVI of the Code shall be postponed until the return of the commission, unless the Court otherwise directs

51 At  
on which  
affidavits,  
and statin\_.

52 In commission for the examination of witnesses which are addressed to the Court and in which the delegation of the commissioner's duties to an Advocate or pleader has not been authorized, the Court or the Registrar shall have power to appoint such advocate or pleader or official of the Court as he may determine to execute the commission

53(1) When an order for the issue of a commission to take evidence on interrogatories has been made, the party obtaining the order shall, within seven days from the date thereof, file his interrogatories, and the documents if any, to accompany the commission, and shall serve a copy of the interrogatories on the  
ss interrogatories, with the  
en days from such service,

(2) If the commission is for the examination of witnesses *visa voce* the party obtaining the order shall file a list of witnesses, and all necessary papers and documents within seven days from the date of the order

54 The party obtaining an order for a commission shall pay the necessary costs of and incident to the same within seven days of the date of the order

55 On default in the observance of these rules by a party obtaining an order for a commission, the commission shall not issue without leave of the Court, and on default by the opposite party he shall not be allowed to join in the commission without such leave

### *Judgments, orders and Decrees*

signature in the hand of a Judge.

(3) If a party or his pleader intimate to the chief clerk immediately after a judgment or order has been passed by a Judge, that he wishes to see the formal decree or order before it is submitted for signature, he may be allowed to do so and if there is any disagreement as to the form of decree or order, of the taxing or the

costs, the case shall be set down on the daily lists, on as early a date as may be convenient, to speak to the minutes of decree.

58 When the court directs that any decree may be paid by instalments, such instalments shall, in the absence of any direction to the contrary, be paid into court monthly, and, in default of payment of any one instalment, the whole decree or the balance thereof shall become due.

### *Execution Proceedings.*

thereon as to whether the requirements of the code and of these rules have been complied with

60 Applications under section 39 of the Code to send a decree or order for execution shall be accompanied by a petition, and shall be accompanied by the other documents mentioned in the order.

61 Order 21, Rule 1, shall be accompanied by the other documents mentioned in the order.

62 The process fees prescribed for the warrant of attachment and for an order of sale shall be annexed to every application for execution by attachment and sale of property

moveable property the approximate value shall be stated according

if moveable property it shall be stated whether the property is to be found shall

be clearly indicated

65 A warrant issued under Order XXI, Rule 24, of the Code, shall be returnable within one month from the date thereof

### *Sale of Attached Property.*

66 As soon as possible after an attachment of moveable property, the Bailiff shall report to the Court the fact of the attachment and shall furnish a list of the articles attached and their approximate value, and shall note if any of them are not liable to attachment or sale

If any of the articles or things fall within the proviso of Order XXI, Rule 43, of the Code, it shall be so stated in the report and list

67 The report and the list shall be submitted to the Third Judge who shall pass such order for the sale as he may think fit, although the decree-holder may not apply for a sale order. A warrant for sale shall be sent to the Bailiff, who shall forthwith prepare and issue a proclamation.

68 Every proclamation shall be advertised in a local Newspaper or advertiser for at least fifteen days (except in the case of property mentioned in the proviso to order XXI, Rule 43, of the Code,) and no proclamation shall issue until the amount sufficient

I, Rule 43, of the Code, shall be attached. Other day on which the

### *Security to Court*

70. the for direct,

cash or in Judge may

dent within the jurisdiction the principal and sureties of value equal to the amount

make an affidavit or affidavits stating that the property which each of them possesses, or that their properties combined, are equal in value to the amount of the security

demand, over and above any incumbrance to which such properties may be liable, and, over and above, the amount for which they have previously given security in the Court or in any other Court and for which they are at the time liable as securities

73 On the application of the Bailiff summonses may be issued to persons named by him to appear before him or to produce before him documents of title for the purpose of his enquiry into the value of the property of any person tendered as a surety

*Bailiff's Commission on sales of Attached Property*

74 The commission to be drawn by the Bailiff on sales of attached property shall be at the rate of 5 percent

The fees paid each month shall be drawn and disbursed to the Bailiff at the end of the month under orders of the Registrar

*Applications generally*

bear the number of such suit unless  
not or arrest before judgment, for  
for sanction to prosecute or mis  
judicial proceedings or in which

76 Every application in writing shall be in the form of a petition, signed by the applicant or his recognized agent, or his pleader and if the Court requires it to be verified shall be verified in the same manner as a plaint

77 On receiving an application the Court shall (if necessary) direct notice to issue for service on the Respondent together with a copy of the application to be supplied by the applicant. The notice shall be served in the same manner as a summons and shall fix date for the hearing of the application

*Applications to set aside Dismissal orders or ex parte Decrees*

set aside a dismissal  
parties on such terms  
in and costs by pay-

Part II

EJECTMENT AND DISTRESSES

A *Recovery of possession of Immoveable Property*

in the form of a plaint  
against the defendant and the  
stating the value of the

suit the annual rental value of the property in respect of which the claim is made shall be deemed to be the value of such suit and such annual value shall be stated in the application

80. When an application has been made under section 17 of the Act, the Court shall by summons call upon the occupant to show cause why he should not be compelled to deliver up the property

81 The summons shall be served on the occupant in the manner provided by the code for the service of summons on a defendant

82 If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Court is satisfied that he is entitled to apply under section 17 of the Act be entitled to an order addressed to the Bailiff directing him to give possession of the property to the applicant on such a day as the Court thinks fit to name in such order

83 Any such order shall justify the Bailiff in entering after the hour of eight in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary and giving possession of such property to the applicant after removing if necessary anything found therein

84. When the applicant at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account, of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser, but any person aggrieved may institute a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity. When no such damage is proved, the suit shall be dismissed; and when such damage is proved, the Court may award such compensation as it may think fit. The costs of the suit shall be borne by the Court in its discretion.

### B—Distress Warrants

85. The Court may, on the application of the debtor, issue a warrant to the Bailiff to distrain the debtor for the rent due to the creditor, and to certify the amount of the rent due to the creditor.

86. The Court may issue a warrant under its seal and returnable within six days in the prescribed form addressed to the Bailiff.

The Court may, at its discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

87. Every distress shall be made after sunrise, and before sunset, and not at any other time.

88. The Bailiff directed to make the distress may enter any dwelling house, the outer door of which may be open, and may break open the door of any room in such dwelling-house in which may be found any stable, out house or others building for the purpose of seizing property liable to be seized.

Provide that he shall not enter or break open the door of any room appropriated for residence of women which by the usage of the country is considered private.

89. In pursuance of the warrant the Bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed hereinafter called the debtor, or such part thereof as may, in the Bailiff's judgment, be sufficient to cover the amount of the rent due to the creditor with the costs of the said distress.

90. The Bailiff may, if he so wishes, use the property so seized in or on the house or premises liable to the rent.

91. On seizure of property under Rule 90 the Bailiff shall make an inventory of such property and shall give notice in writing in the prescribed form to the debtor, or to any other person on his behalf in or upon the said house or premises that such property will be sold pursuant to the provisions of the Act. The date on which the sale will be held shall be stated in the notice and shall be not less than seven days after the date of seizure.

The Bailiff shall, as soon as may be file in the Court copies of the said inventory and notice.

92. The debtor or any other person alleging himself to be the owner of any property seized, or the duly constituted attorney of such debtor or other person, may apply to the Court to discharge or suspend the warrant or to release a distrained article and the Court may discharge or suspend such warrant or release such article accordingly upon such terms as it thinks just and may in its discretion give reasonable application, the warrant shall be.

93. If any claim is made to or in respect of any property seized under these provisions or in respect of the proceeds or value thereof by any person not being the debtor, the Registrar upon the application of the Bailiff who seized the property may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed and the High Court, on proof of the issue of such summons and of the distrainment, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And the Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceeding as it thinks fit and such order shall be enforced as if it were an order made in a suit brought in the Court. The procedure under this rule shall conform as far as may be, to the procedure in an ordinary suit in the Court.

94 In any case under Rule 92 or 93 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit and may for that purpose make such enquiry as he thinks necessary,

and the order of the Judges awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

95 In default of any order to the contrary made by the Court or by the High Court the distrained property shall be sold on the day mentioned in the notice prescribed by rule and the Bailiff shall, on realizing the proceeds pay the amount thereof into judicial deposit, and such amount shall be applied first in payment of the bailiff's commission and the costs of the said distress and then in satisfaction of the debt, and the surplus, if any shall be paid to the debtor.

96 No costs of any distress under these provisions shall be taken or demanded except those mentioned in the scale of fees prescribed in Appendix B to this Schedule.

The Chief Judge may apply the sum so obtained as costs towards the payment of the contingent charges and Bailiff's remuneration as appears to the said Judge expedient.

97 The Registrar shall keep a book in which all sums received as costs upon distresses made and all sums paid as remuneration to the Bailiff and all contingent charges incurred in respect of such distress shall be duly entered. He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under these provisions.

98 No distress shall be levied for arrears of rent except under these provisions.

99 The forms prescribed in Appendix B with such variation as the circumstances may require shall be used for the purposes therein mentioned.

### PART III,

#### SUMMARY PROCEDURE IN SUITS ON NEGOTIABLE INSTRUMENTS

100 (1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed with the original bill of exchange, hundi or promissory note annexed together with as many copies thereof as there are defendants to the suit. The summons shall be in Form No (e) in Appendix C and it shall not be necessary to serve a copy of the plaint on the defendant.

(2) In any case in which the plaint and summons are in such forms respectively

leave from the  
t of his obtain-  
the allegations  
e entitled to a  
is together with  
sum for costs  
than such fixed

sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith,

Provided always that, unless otherwise ordered by the Court, the summons to the defendant shall have been served upon him —

(a) If he resides and is served within the local limits of the jurisdiction of the Court, at least five clear days before the returnable date of the summons.

(b) If he resides and is served without such local limits but in Burma, at least ten clear days before the returnable date of the summons.

(c) If he resides and is served elsewhere in India at least twenty one clear days before the returnable date of the summons.

101 (1) The Court shall upon application by the defendant, give leave to appear and to defer it incumbent may deem su  
such facts as would make  
other facts as the Court

The said office of the Registrar and  
copies thereof must be served on the defendant's pleader not later than three  
clear days before the day fixed for the defendant's appearance

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security framing or recording issues or otherwise as the Court thinks fit

(3) After decree the Court may under special circumstances set aside the decree, and, if n and may leave to the defendant to appear to it seems reasonable to the Court so to do, - - -

102 In any proceeding under this part the Court may order the bill, hundi or note, on which the suit is founded, to be forthwith deposited with an officer of the Court and may further order that all proceedings shall be stayed until the plaintiff has paid for the costs thereof

104 Save as provided by this part the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner

#### PART IV

##### Miscellaneous

105 All acts which may be done by the Court in regard to the appointment or removal of a guardian *ad litem* under order XXXII, Rules 4 and 11, of the Code or in regard to the substitution or addition of parties to a suit may be done by the Court

such security  
erty  
ourt  
for  
ourt  
ing

108 Subject to the sanction of the High Court the Court shall frame such forms as it may think necessary for any proceeding before it and may from time to time alter any of such forms

110 clerk shall send to the Collector of Rangoon a memorandum of the court fees due and payable by the pauper

111 The following portions of Schedule I of the code shall not extend to the court, this is to say -

- (a) So much of the said Schedule as relates to—
- (i) suits excepted from the cognizance of the court or the execution of decrees in such suit,
- (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property,
- (b) Order X Rule 3 (record of examination of parties),
- (c) Order XLVII, Rules 6 and 7,
- (d) Orders XLIX to L. I



## PART V

## PROCEEDINGS UNDER OTHER ACTS

*References under the Rangoon Rent Act 1920*

112—121 —Deleted

123 Such petition shall be signed by the party aggrieved or by his pleader, shall set out concisely and under distinct heads the ground of objection to the decision of the controller and shall be accompanied by a copy of such decision

124 as a reference to the opinion as the case may be and registered thereupon issue of the premises

same time inform the controller and call for the decision complained of and the controller shall all reasonable despatch

126 Upon due service of the notice on the opposite party the matter shall be placed in the cause list of the Chief Judge for disposal

127 If the opposite party appears he shall be given an opportunity of answering the case made in the petition and the matter shall thereafter be set down for hearing and dealt with the manner provided by section 23 of the Rangoon Rent Act, 1920

128 If the opposite party does not appear the Chief Judge shall enquire into the matter and dispose of the same *ex parte*

129 The judgment of the Chief Judge may confirm, vary or reverse the decision of the controller with such orders as to costs as may be in circumstances be reasonable

130 A copy of the judgment of the Chief Judge shall be forwarded to the controller for information and record

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## APPENDIX A

PART I RULE 59)

*Tabular form of Application for Execution*)

IN THE RANGOON SMALL CAUSE COURT

**Holder of the Decree in civil**

The petition of  
Respectfully Showth

*Petitioner*

That your petitioner pray  
the Court to cause the said Decree to be executed upon the Judgment-Debtor, according to the particulars given in accordance with Order No LXI Rule 11(2) of the Code of Civil Procedure 1908

19 .  
*Rangoon.*

*Petalioner*

[illegible]

I the petitioner do hereby declare that the contents in column 1 to 10 of this petition are true to very knowledge and I sign this verification at Rangoon

19

*Petitioner*

Form of Agreement to give jurisdiction to the Court in cases over Rs 2000 in value (section 15 and rule 109) We (or the respective, advocates or pleaders, as the case may be A B of and C D

do hereby agree that the Rangoon Small Cause Court shall have jurisdiction to try this suit brought by A B Against C D for under the provisions of section 15 of the Rangoon Small Cause Court Act 1920.

Witness our hands this day of 19

A B (or E F Advocate for A B)

C D (or G H Advocate for C D)

## APPENDIX B.

### SCALE OF FEES TO BE LEVIED IN DISTRESS FOR HOUSE RENT

| Sums sued for      | Affidavit and Warrants to distrain | Order to sell        | Commission           | Total                |
|--------------------|------------------------------------|----------------------|----------------------|----------------------|
| <sup>1</sup><br>Rs | <sup>2</sup><br>Rs A               | <sup>3</sup><br>Rs A | <sup>4</sup><br>Rs A | <sup>5</sup><br>Rs A |
| 1 and under 5      | 0 4                                | 0 8                  | 0 8                  | 1 4                  |
| 5 and under 10     | 0 8                                | 0 8                  | 1 0                  | 2 0                  |
| 10 and under 15    | 0 8                                | 0 8                  | 1 8                  | 2 8                  |
| 15 and under 20    | 0 8                                | 1 0                  | 2 0                  | 3 8                  |
| 20 and under 25    | 0 12                               | 1 0                  | 2 8                  | 4 4                  |
| 25 and under 30    | 1 0                                | 1 0                  | 3 0                  | 5 0                  |
| 30 and under 35    | 1 0                                | 1 0                  | 3 8                  | 5 8                  |
| 35 and under 40    | 1 0                                | 1 8                  | 4 0                  | 6 8                  |
| 40 and under 45    | 1 4                                | 2 0                  | 4 8                  | 7 12                 |
| 45 and under 50    | 1 8                                | 2 0                  | 5 0                  | 8 8                  |
| 50 and under 60    | 2 0                                | 2 0                  | 6 0                  | 10 0                 |
| 60 and under 80    | 2 8                                | 2 8                  | 6 8                  | 11 8                 |
| 80 and under 100   | 3 0                                | 3 0                  | 7 0                  | 13 0                 |
| Upward of 100      | 3 0                                | 3 0                  | 7 per cent           |                      |

The above scale includes all expenses, except in suits where the tenant disputes the land lords' claim and witnesses have to be summoned in which case each summons in cases where the amount claimed is Rs 40 or under must be paid for at four annas each and twelve annas where the amount claimed is above the amount, and also where pens are kept in charge of property distrained, for annas per day must be paid per man

## FORMS

### IN THE RANGOON SMALL CAUSE COURT Form of Affidavit (Rules 85 to 90)

A B  
C D  
I A B of  
(or affirm) and say that C D  
in the sum of Rs  
and premises No in  
wit, from to  
Sworn or affirmed before me this

Ve  
in the town of  
of  
for arrears of rent of the house  
due for months, to  
at the rate of Rs  
day of

Plaintiff  
Defendant  
make oath  
is justly indebted  
per mensem

Commissioner for

### IN THE RANGOON SMALL CAUSE COURT Form of warrant (Rule 86)

Rangoon Small Cause Court Act, 1920.  
Dated the day of 19

of C, D, on the house and  
sum of rupees,  
f Schedule I Part II, of the

Signed and sealed  
Bailiff.

To E F

IN THE COURT OF THE DISTRICT JUDGE  
 Form of Inventory and Notice (Rule 21)  
 (State particulars of property seized)

I do hereby certify that I have this day seized the moveable property contained in the  
 Inventory for the sum of \_\_\_\_\_ rupees be of the amount of  
 \_\_\_\_\_ and that unless you pay the  
 \_\_\_\_\_ together with the costs of this distress,  
 \_\_\_\_\_ of the Judges or the Registrar of the Rangoon Small  
 Cause Court the same will be sold pursuant to the provisions of  
 the Schedule I, Part II of the Rangoon Small Cause Court Act 1920, at (1)  
 \_\_\_\_\_ at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Signed E. F.  
 Bailiff

APPENDIX

Rule 21

(1) CERTIFICATE OF PRO-NOTE AGAINST MAKER

Rs. A. P.

\_\_\_\_\_ day of \_\_\_\_\_ annexed  
 \_\_\_\_\_ duly executed by the defendant in  
 \_\_\_\_\_ to pay to the plaintiff or order  
 \_\_\_\_\_ together with the interest at the rate of \_\_\_\_\_  
 \_\_\_\_\_ the same or any part thereof (or except  
 \_\_\_\_\_ due to plaintiff for principal and Rs \_\_\_\_\_  
 \_\_\_\_\_ for principal and Rs \_\_\_\_\_ for interest  
 \_\_\_\_\_ of Rs. \_\_\_\_\_ and for cost etc  
 \_\_\_\_\_ I solemnly declare that I am personally  
 \_\_\_\_\_ of the facts stated in this plaint are true to

(Signed) A. B.,  
 Plaintiff

(2) CERTIFICATE OF A PRO-NOTE AGAINST MAKER AND ENDORSER

Cause title  
 Particulars  
 Principal  
 Interest  
 Cost  
 Rs. A. P.

The plaintiff above-named states as follows —

\_\_\_\_\_ hereto and  
 truly believe,  
 the said first  
 on  
 per cent per  
 \_\_\_\_\_ and together with interest thereon at the rate of \_\_\_\_\_  
 annum  
 2 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the second defendant duly  
 endorsed it \_\_\_\_\_ to me for valuable consideration  
 3 The \_\_\_\_\_ is now due to plaintiff for principal and Rs \_\_\_\_\_  
 for interest \_\_\_\_\_ the sum of Rs \_\_\_\_\_  
 The plain \_\_\_\_\_ and for the costs, etc

I, A B the plaintiff above named do hereby declare that except as to the matters stated to be on information and belief, which I believe to be true, I am personally acquainted with the facts of this case, and the facts stated in the plaint are true to my knowledge

(Signed) A B

*Plaintiff.*

(c) SUIT BY PAYEE OR CHEQUE AGAINST DRAWER

*(Cause title)*

*Particulars*

Principal

Interest

Costs

R A P

The plaintiff above named states as follows —

1 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ the defendant for value received duly signed and delivered to the plaintiff the cheque dated the \_\_\_\_\_ day of \_\_\_\_\_ and drawn on the \_\_\_\_\_ Bank for the sum of Rs \_\_\_\_\_ which is annexed hereto and marked with the letter A

2 On the \_\_\_\_\_ day of \_\_\_\_\_ the said cheque was duly presented to the said Bank and was dishonoured of which due notice was given to the defendant

3 The sum of Rs \_\_\_\_\_ is now due to plaintiff for principal and Rs \_\_\_\_\_ for interest

The plaintiff claims judgment for the sum of Rs \_\_\_\_\_ and for costs, etc

(d) SUITS BY THE ENDORSEE OF A BILL OF EXCHANGE AGAINST THE ACCEPTOR AND PAYEE

*Cause title*

*Particulars*

Principal

Interest

Costs

Notarial charges

Rs A P

The plaintiff above named states as follows —

1 The Bill of Exchange dated the \_\_\_\_\_ day of \_\_\_\_\_ hereunto annexed and marked with the letter A was drawn by X Y of \_\_\_\_\_ upon the first defendant for the sum of Rs \_\_\_\_\_ payable three months after \_\_\_\_\_

Notarial charges —

3 The sum of Rs \_\_\_\_\_ is now due to plaintiff for principal and Rs \_\_\_\_\_ for interest

The plaintiff claims judgment for the sum of Rs \_\_\_\_\_ and for costs, etc

(e) SUMMONS (RULE 100)

*Cause title*

To A B of \_\_\_\_\_ (address and description of Defendant)  
WHEREAS \_\_\_\_\_ has instituted a suit against you under Part III of the Rangoon Small Cause Court Rules for Rs \_\_\_\_\_ balance of principal and interest due to him as the payee (or endorsee or as the case may be) of a Pro-note (or Bill of Exchange or Hundi or as the case may be) of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court to appear and defend the suit. In default whereof the plaintiff will be entitled to obtain a decree for the said sum and costs as mentioned below

Leave to appear may be obtained on an application to the Court supported by affidavit showing that there is a defence to the suit on the merits or that if it is reasonable that you should be allowed to appear in the suit

The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ is fixed \_\_\_\_\_ for your appearance before \_\_\_\_\_ the Judge of this Court and the said application and affidavit

IN THE RANGOON SMALL CAUSE COURT  
Form of Inventory and Notes (Rule 91)  
(State particulars of property seized)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of \_\_\_\_\_ rupees being the amount of \_\_\_\_\_ month's rent due to A B on \_\_\_\_\_ and that unless you pay the amount thereof, together with the costs of this distress, or obtain and order from one of the Judges or the Registrar of the Rangoon Small Cause Court to the contrary the same will be sold pursuant to the provisions of of the Schedule I, Part II of the Rangoon Small Cause Court Act, 1920, at (1) \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Dated the \_\_\_\_\_

at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_

19\_\_\_\_

Signed E F  
Bailiff

To C D

### APPENDIX

#### Rule 100

#### (a) SUIT BY PAYER OF PRO-NOTE AGAINST MAKER

(Cause title)

Particulars

Rs A P

Principal

Interest

Costs

The plaintiff above named states as follows —

\_\_\_\_\_ day of \_\_\_\_\_ annexed  
executed by the defendant in  
pay, to the plaintiff or order  
interest at the rate of \_\_\_\_\_

per cent per annum

2 The defendant has not paid the same or any part thereof (or except the sum of Rs \_\_\_\_\_ is now due to plaintiff for principal and Rs \_\_\_\_\_ for interest)

3 The sum of Rs \_\_\_\_\_ for principal and Rs \_\_\_\_\_ for interest  
The plaintiff claims judgment for the sum of Rs \_\_\_\_\_ and for cost etc

I A B the plaintiff above named do solemnly declare that I am personally acquainted with the facts of the case and the facts stated in this plaint are true to my knowledge

(Signed) A B

Plaintiff

#### SUIT BY ENDORSEE OF A PRO-NOTE AGAINST MAKER AND ENDORSER

Cause title

Particulars

Rs A P

Principal

Interest

Cost

The plaintiff above named states as follows —

1 By the pro note dated the \_\_\_\_\_ day of \_\_\_\_\_ annexed hereto and marked with the letter A which was as I am informed by C D and truly believe, duly executed by the first Defendant at Rangoon for value received the said first defendant promised to pay to the second defendant the sum of Rs \_\_\_\_\_ on demand together with interest thereon at the rate of \_\_\_\_\_ per cent per annum

2 On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ the second defendant duly endorsed the promote to me for valuable consideration

3 The sum of Rs \_\_\_\_\_ is now due to plaintiff for principal and Rs \_\_\_\_\_ for interest

The plaintiff claims judgment for the sum of Rs \_\_\_\_\_ and for the costs, etc

I, A B the plaintiff above named do hereby declare that except as to the matters stated to be on information and belief, which I believe to be true, I am personally acquainted with the facts of this case, and the facts stated in the plaint are true to my knowledge

(Signed) A B

*Plaintiff*

(c) SUIT BY PAYEE OR CHEQUE AGAINST DRAWER

*(Cause title)*

*Particulars*

Principal

Interest

Costs

R A P

The plaintiff above named states as follows —

1 On the                      day of                      19                      the defendant for value received duly signed and delivered to the plaintiff the cheque dated the                      day of                      and drawn on the                      Bank for the sum of Rs                      which is annexed hereto and marked with the letter A

2 On the                      day of                      the said cheque was duly presented to the said Bank and was dishonoured of which due notice was given to the defendant

3 The sum of Rs                      is now due to plaintiff for principal and Rs                      for interest

The plaintiff claims judgment for the sum of Rs                      and for costs, etc

(d) SUITS BY THE ENDORSEE OF A BILL OF EXCHANGE AGAINST THE ACCEPTOR AND PAYEE

*Cause title*

*Particulars*

Principal

Interest

Costs

Notarial charges

Rs A P

The plaintiff above named states as follows —

1 The Bill of Exchange dated the                      day of                      hereunto annexed and marked with the letter A was drawn by X Y of                      upon the first defendant for the sum of Rs                      payable three months after date with interest at the rate of                      per cent per annum and was accepted by the first defendant and endorsed to the second defendant to the plaintiff

2 The said bill was duly presented for payment on the                      day of                      and was dishonoured and the plaintiff has incurred the following Notarial charges —

3 The sum of Rs                      is now due to plaintiff for principal and Rs                      for interest

The plaintiff claims judgment for the sum of Rs                      and for costs, etc

(e) SUMMONS (RULE 100)

*Cause title*

To A B of                      (address and description of Defendant)  
WHEREAS                      has instituted a suit against you under Part III of the Rangoon Small Cause Court Rules for Rs                      balance of principal and interest due to

and costs as mentioned below

Leave to appear may be obtained on an application to the Court supported by affidavit showing that there is a defence to the suit on the merits or that if it is reasonable that you should be allowed to appear in the suit

The                      day of                      19                      is fixed                      for your appearance before                      the Judge of this Court and the said application and a

must be filed in the office of the Registrar and copies thereof must be served on the plaintiff or his pleader not later than three clear days before the said day

### PARTICULARS OF CLAIM.

*(As stated in plaint)*

GIVEN under my hand and the seal of the Court this day of \_\_\_\_\_ 19 \_\_\_\_  
*Chief Clerk.*

Notes—(1) If you admit the claim you should pay the money into Court together with the costs of the suit to avoid execution of the decree which may be against your person and property or both

(2) The address for service of plaintiff (insert address)

### ORDER LIV.

The following shall be inserted as order LIV :—

#### I Classification of Civil Records

The records of civil judicial proceedings, whether suits or cases, in all civil Courts other than Small Cause Courts, and exclusive of suits and cases disposed of under Small Cause Court (procedure by courts invested with Small Cause Court) jurisdiction shall be divided into the following four classes :—

#### Class I—Records of—

Class II—Records of the following suits and cases, except such or them as affect immoveable property—

(a) All suits and cases for probate and letters of administration and for the revocation of the same,

(b) Cases under the guardians and Wards Act, 1890, relating to the guardianship of minors and the administration of their property;

(c) Cases under the Indian Lunacy Act, 1912, relating to the guardianship of lunatics and the care of their estates,

(d) Administration suits

Note—An application by an executor or administrator or by the guardian of a minor or lunatic to sell, mortgage etc properly belonging to the estate, is an application in the case and together with all the proceedings connected with it, must form part of the record of the case

#### Class III—Records of—

(a) all suits which do not come under class I or class II,

(b) cases under the Succession (Property Protection) Act 1841, cases under the Succession Certificate Act, 1889, cases under Parts III and IV of the Land Acquisition Act, 1894, cases under the Provincial Insolvency Act 1920, other than those which have been transferred or otherwise dealt with by the Court of Civil Procedure to transfer a

attachment in which immoveable

(d) such other cases as the High Court may from time to time direct to be

of a suit  
 appeal and

property is



*Note*—It is directed that Records of cases under section 14 of the Legal Practitioners Act, 1879, shall be included in Class III of the Rules for the classification of Civil Records

## II—ARRANGEMENT OF RECORDS

2 Every record under Classes I, II and III shall be divided as the trial proceeds into three files A, AA, and B provided that if there are no documentary exhibits, and, in cases other than appeals, shall contents —

(a) Diary

(b)

(c)

(d)

Order VII, Rule 9

ndorsed on the plaint,

(e) List of documents relied on by plaintiff, but not produced Order VII, Rule 14

(f) List of documents produced by the parties at the first hearing Order XIII, Rule 1(2)

(g) Written statements or counter petitions of the parties

(h) Petitions, proceedings and orders in interlocutory matter, and summonses on defendants and process servers reports and affidavits of process servers and identifiers with the orders of the Court thereon in *ex parte* cases

(i) Opening proceedings

(j) Issues

(k) Oral evidence for plaintiff \* taken in Court and on Commission

(l) Oral evidence for defendant † taken in Court and on Commission

(m) Report of Commissioner appointed under Order XXVI

(n) Award of arbitrators or petition of compromise

(o) Report or account of a Receiver

(p) Judgment

(q) Decree

(r) Final decree in mortgage or administration suits

(s) Copies of orders and decree in appeal and revision

(t) Order absolute for sale in mortgage cases, together with proclamation, sale report, order of confirmation, and certificate of sale

The judgment of the Appellate Court, if any, shall be filed after the decree and any further evidence recorded and any finding of the lower court, together with the final order in appeal shall be filed thereafter in that order

File AA shall be called the exhibit record and shall contain besides the fly leaf and the table of contents.—

tain besides the fly leaf

with table of contents—

(a) Power of attorney

(b) Summonses and other processes and affidavits relating thereto. §

\* Substitute defendant † if defendant begins

† Substitute "plaintiff" if defendant begins

‡ Document not admitted in evidence must not be filed with the record, fact should be returned to the party who produced them

§ Summonses on defendants and process servers' reports and affidavit of process servers and identifiers with the orders of the Court thereon in *ex parte* cases should be on the file

- (c) List of witnesses
- (d) Petitions relating to adjournments, attendance of witnesses, etc
- (e) Other papers not included in Trial Record.
- (f) Letters, etc calling for records etc

3 Every record under class IV shall consist of two files, A and B. File A shall contain besides the fly leaf with table of contents —

- (a) Diary
  - (b) Application for execution
  - (c) Papers received from Court which passed the decree, order XXI Rule 6.
  - (d) Plans of lands to be attached
  - (e) Petitions, proceedings, and orders in interlocutory matters
  - (f) Petitions objecting to the execution, other than claims under order XXI, Rule 58
  - (g) Warrants and prohibitory orders issued to effect execution by attachment or delivery of property, and returns thereto
  - (h) Warrant of sale
  - (i) Proclamation of sale
  - (j) Report of result of sale
  - (k)
  - (l)
  - (m)
  - (n)
  - (o) Final order
  - (p) Copy of order in appeal or revision
- File B shall contain all other papers

4 The A file of the trial record of an Appellate Court shall contain, besides the fly leaf with table of contents—

- (a) Diary
- (b) Memorandum of appeal
- (c) Copy of judgment and decree of lower Court
- (d) Written statements if any
- (e) Petitions proceedings and orders in interlocutory matters
- (f) Oral evidence if any
- (g) Judgment
- (h) Decree
- (i) Copy of judgment and decree in second appeal or revision

The B file shall contain all other papers

5 The record of suits decided by Small Cause Courts, or tried under Small Cause Court, procedure, shall consist only of one file

## APPENDIX E

### FORM No 5

In the heading of Form No 5 for the words and figures 'Order 21 rule 6' the word and figures 'section 41' shall be substituted

### FORM No 15 A

The following shall be inserted as Form No 15 A —

#### No 15 A

Form of receipt for money deposited in connection with the attachment of property together with notice to decree holder

In the Court of execution case No

of 19

versus

RECEIVED the sum of Rs. on account of the following expenditure to be incurred in connection with attachment of property as per list appended

|                          |                                           |
|--------------------------|-------------------------------------------|
| Process Fees Rules—      | 1. Custody fees . .                       |
| Rule * 15 (i) (b)        | 2 Feeding charges . .                     |
| (u) (2)—† 17 (i) (c) (u) | 3 Conveyance charges ..                   |
| (2)                      | 4 Other expenses<br>(to be specified) . . |
|                          | <b>TOTAL</b>                              |

| Rs | A | P. |
|----|---|----|
| .  |   |    |
|    |   |    |

N B The decree holder is party warned that the sum deposited by him for receiving charges will be exhausted on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and that unless a further deposit is made before that date the attachment will cease.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 List of Property to be attached \_\_\_\_\_

## APPENDIX VIII.

IN THE CHIEF COURT OF OUDH AT LUCKNOW

NOTIFICATION No 1368 XIV-107-21

April 25, 1927

In continuation of notification no. 3293 XIV—107 21 dated December 1, 1926 under section 122 of the Code of Civil Procedure Act no V of 1908, and with the previous approval of the Local Government, the Chief Court is pleased to make the following amendments in the rules in the first Schedule of the said Code

**First Schedule to the Code of Civil Procedure 1908**

### ORDER III

In Order III rule 5, for the words "on the pleader of any party" substitute the words "on a pleader who has been appointed to act for any party"

#### ORDER IV

To sub rule (2) of Order IV rule 1, add the following words—"and, except with the permission of the presiding officer for reasons to be recorded, no plaint shall be admitted until the necessary process fee has been paid into Court."

## ORDER V

To Order V, rule I, add a new sub rule (tA) after sub-rule (i) as follows —

date of appearance and of the summons, in a bold, clear and easily legible handwriting; provided that—

(a) filing  
filed

(b) . . . . . General  
of the

Court,"

\* Strike out if used in Courts other than the High Court of Judicature at Rangoon and the Small Cause Court, Rangoon

† Strike out if used in the High Court of Judicature at Rangoon and the Small Cause Court, Rangoon

In Order V, rule 2, *omit* the words "or, if so permitted by a concise statement."

In Order V, rule 15, *for* the words "Where in any suit the defendant cannot be found" *substitute* the words "Where a summons has been issued to a defendant on the institution of a suit and he is absent from the address stated in the summons"

In Order V, between rules 20 and 21, *insert* the following —

"20A (1) Where, the defendant resides in British India outside the Province of Oudh and within the limits of headquarters town of a district in that province a summons may be served on him by registered post, and in this case, where an acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service has been received, the process shall, unless the contrary is proved, be deemed to have been served

party, as defined  
town or of a muni

In Order V rule 26 (b), *after* the words, "the summons may," *insert* the words, "in addition to or in substitution for the method permitted by rule 25"

In Order V, rule 27, *insert* the word "air" between the words "Military" and "or"

To Order V rule 28, *add* the following 28 (a), and re number the present rule as (b)

"28 (a) Where the defendant is an officer in His Majesty's Military, Naval or Air forces the Court shall send the summons direct to him for service together with a copy to be retained by him

#### ORDER VII

In Order VII, rule 9 (1), *for* the words "and if the plaint is admitted, shall present" *substitute* the words and shall at the same time, present" also *delete* the words unless the Court present such statements' as well as sub rules (2) and (3), and re number sub rule (4) as sub rule (2) *deleting* the words "or statements"

In Order VII

14 (2) Wh  
claim he shall e  
shall produce in  
sion or power  
if possible state  
summoned for p  
purpose

of

"19 Every plaint or original petition shall be accompanied by an address at which service of notice summons or other process may be made on the plaintiff or petitioner This address shall be called the registered address' and service thereat shall be deemed to be sufficient service

20 Any party subsequently added as plaintiff or petitioner shall, in like manner, file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner

f the district Court  
ner resides or carries

he shall be liable, at the discretion of the Court, to have his suit dismissed or his petition rejected

An order under this rule may be passed by the court *suo motu*, or on the application of any party

23 Where the registered address of the plaintiff or petitioner is within the limits of a headquarters town or of a municipality of India (including Burma) or Ceylon a notice summons or other process may be served on him at that address

by registered post and such service shall be deemed to be as effectual as if the notice or process had been personally served

24. In all cases to which rule 23 does not apply, where a plaintiff or petitioner is not found at his registered address and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If, on the date fixed, such plaintiff or petitioner is not present another date shall be fixed and a copy of the notice, summons, or other process shall be sent to his registered address by registered post and such service shall be deemed to be as effectual as if the notice or

Provided that, where a notice is served on a pleader under the above rule, he shall be given sufficient time to communicate with his client and to receive instructions

his rule this shall  
the absence of an  
further time  
ered address shall  
ment of the record  
her parties to the  
inform and may be  
by registered post,

Court from directing the service  
any reason it thinks fit

#### ORDER VIII

To Order VIII, rule 1 *add* the following as rule 1 (2), and *read* the existing rule 1 as rule 1 (1) —

'1(2) The defendant shall file with his written statement a list of all the documents on which he relies as evidence in support of his case shall produce with written statement such of the documents as are in his possession or power, and shall cause the others to be summoned on a date to be fixed by the Court for the purpose'

of a  
defe  
a document "in the power"  
f a person other than the  
re defendant

To Order VIII *add* the following rules —

'11 Every defendant in a suit or opposite party in any proceeding shall on the first day of his appearance in Court file an address (to be called the 'registered address') for service on him of any subsequent notice, summons or other process, and, if he fails to do so, shall be liable at the discretion of the Court to have his defence or reply if any, struck out, and to be placed in the same position as if he had made no defence or reply

An order under this rule may be passed by the Court *suo motu* or on the application of any party

12 Rules 21, 23 and 25 to 27 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule, and rule 24 shall, in the same manner, apply but as if the words at the beginning. In all cases to which rule 23 does not apply' were omitted

13 Nothing in rules, 11 and 12 shall apply to the notice prescribed by Order XXI, rule 22'

#### ORDER IX

In Order IX, rule 13, *between* the words 'was not duly served or that' and the words 'he was prevented by any sufficient cause', *insert* the words 'notwithstanding due service of the summons,' and at the *end* of the rule *add* the following proviso.

'Provided also that no *ex parte* decree shall be set aside under this rule on the ground that the summons was not duly served, if the Court is satisfied that the defendant had information of the date of hearing sufficient to enable him to appear and answer the plaintiff's claim'

*Explanation*—Where a summons has been served under Order V rule 15, on an adult male member having an interest adverse to that of the defendant in the subject matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule

### ORDER XIII.

*For Order XIII, rule 1 substitute the following —*

"1 (1) The parties or their pleaders shall produce, or cause to be produced, on the date fixed by the Court, under Order VII, rule 14, and Order VIII, rule 1 (2) or on any subsequent date which may be fixed by the Court for the purpose, all the documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has permitted or ordered to be produced

(2) The parties or their pleaders may also file, with the permission of the Court, either on the date of hearing or any subsequent date to be fixed by the Court for the purpose a supplementary list of further documents on which they intend to rely, and such documents shall be produced by them within the time fixed by the Court

(3) The Court shall receive the documents so produced, provided that (whenever the documents are produced at any stage of the cause) they are accompanied by an accurate list thereof prepared in such form as the Chief Court may direct

*Explanation*—A certified copy of a public document is a document 'in the power' of a party but where a document is in the possession of a person other than the plaintiff or defendant it will not be deemed to be 'in the power' of the plaintiff or defendant

*In Order XIII rule 4 (1) (d) insert the words "in the Judge's own hand writing" between the words 'statement' and "of its having been so admitted".*

### ORDER XVI

#### Rule I.

*For Order XVI rule 1 substitute the following —*

1 (1) The Court may, in any suit or class of suits, require any party to file by a date to be fixed by the Court a list of witnesses whom he proposes to produce, and may if necessary direct that such list be kept in a sealed envelope for such time as the Court considers desirable

Where such a list has been called for from any party, the latter shall not, except for special reasons be permitted to summon or produce as witness any person whose name has not been entered in the list

(2) Subject to the provisions of sub rule (1) the parties may, after the suit is instituted obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to

of the Court, himself or by his  
an officer of the Court, but in  
or by his agent shall be included  
in the costs of the suit unless the witness verifies such payment before an officer of  
the Court"

"Provided, also, that the special procedure for the service of summons upon defendant under Order V, rule 20A (1), shall not apply to service of summons under this Order"

### ORDER XVII

*Add the following to Order XVII, rule 2 as sub rule 2(2) and read the existing rule 2 as 2(1) —*

"(2) Where before any such day the evidence or a substantial portion of the evidence of any party has been recorded, and such party fails to appear on such day as if such party were present

failed to appear if he is either  
ent or pleader though engaged

For the existing rule 3 of Order XVII *substitute* the following —

"Where any party to a suit to whom time has been granted fails, without reasonable excuse, to produce his evidence, or to cause the attendance of his witnesses, or to comply with any previous order or to perform any other act necessary to the further progress of the suit for which time has been allowed "the Court may, notwithstanding such default, and whether such party is present or not, proceed to decide the suit on the merits"

### ORDER XXI

In rule 5, for the word 'district' where it occurs *after* the words 'same' and "different," *read* "province"

To rule 6 *add* the following as sub rule (2) and *re number* 6 as 6 (1) —

"(2) Such copies and certificates may, at the request of the decree holder, be handed over to him, or to such person as he appoints, in a sealed cover to be taken to the

*substitute* the following —  
"any"

In rule 17, sub rule (1), *delete* the last sentence beginning with the words "and if they" and ending with the words "to be fixed by it" and *substitute* the following sentence in lieu thereof —

"and if they have not been complied with the Court may allow the defect to be remedied then and there or may fix a time within which it should be remedied, and in case the decree holder fails to remedy the defect within such time, the Court may reject the application"

In rule 22, for the words "one year, wherever they occur in this rule *read* the words "three years"

To sub rule (2) of the rule *add* the following proviso —

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule unless the Judgment-debtor has sustained substantial injury by reason of such omission"

In rule 24(3), *after* the words at the end of the sub rule "be executed," *add* the words, "and a day shall be specified on or before which it shall be returned to Court"

For the existing rule 25 (2) *substitute* the following —

"(2) Where the endorsement is to the effect that such officer is unable to  
or upon affidavit  
common and examine

orders, "the Court shall

*substitute* the words  
'three months or such further time as the Court may, in any special case, for good cause shown, direct'

In rule 32(3), for the words "one year" *substitute* the words "three months," and at the end of the sub rule *add* the words "and the Court may also, for good cause shown, extend the time for the attachment remaining in force for a period not exceeding one year"

In rule 32 (4) for the words "one year" *substitute* the words "three months, or such further time as may have been fixed by the Court under the previous sub rule"

In rule 39(5) *delete* the words "in the civil prison"

In rule 53, sub-rule (1) (b), in the *third line*, and in sub rule (4) in the *eighth line*, *after* the words, "to such other Court" *add* the words, "and to any other Court to which the decree has been transferred for execution"

In sub rule (6), for the words, "after receipt of notice thereof" *read* the words, "after receipt of notice, or with the knowledge thereof"

To rule 54 *add* the following sub rule 54 (3) —

"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property, and against all other transferees from the judgment debtor from the date on which such order is made"

For rule 55 *substitute* the following —

"(1) Where an application has been made to the Court under section 73, sub section (1), for rateable distribution of assets in respect of the property of a

judgment debtor by a person other than the holder of the decree for the execution of which the original order of attachment was passed, notice shall be sent of the sale officer executing the decree

(2) Where—

- (a) the amount decreed [which shall include the amount of any decree passed against the same judgment debtor, notice of which has been sent to the sale officer under sub-rule (1)] with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or,
- (b) satisfaction of the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub rule (1)] is otherwise made through the Court or certified to the Court, or,
- (c) the decree [including any decree passed, against the same judgment debtor notice of which has been sent to the sale officer under sub rule (1)] is set aside or reversed, the attachment shall be deemed to be withdrawn and in the case of immoveable property, the withdrawal shall, if the judgment debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule

For rule 57 substitute the following —

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ation the Court  
e Court omits to

afte  
abs

delivery of the property  
case shall the sale become

In rule 68, for the words fifteen days read the words seven days

In rule 69 (2) for the word 'seven' read the word 'fourteen' and add the following proviso —

'Provided that where the principal judgment debtor or one of the principal judgment debtors if there are more than one appears and gives his consent the Court may dispense with the consent of the other judgment-debtor or judgment debtors who have failed to attend in answer to a notice issued under rule 66

For rule 72(1) substitute the following —

of which property is sold shall be  
rity provided that the judgment debtor  
t apply to the Court to debar the  
and the Court may on such application,  
sing the property or grant permission

to do so on such terms as may seem just

In sub-rule (2) for the words 'with such permission' read the words 'the property sold'

Delete sub rule (3)

In rule 75 (2) after the words 'being stored' insert the words 'or where it appears to the Court that the crop can be sold to greater advantage in an unripe state

To rule 84 (2), add the following—

is rule in a case in

re such sale read the  
rough the judgment

sale shall be entered upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale"

In rule 92, sub-rule (1) after the words 'the Court shall,' insert the words 'subject to the provisions of rule 58 (2)

In rule 98 after the words 'at his instigation' wherever they occur insert the words 'or on his behalf,' and after the words 'thirty days' at the end of the rule



add the words, 'and may order the person or persons whom it holds responsible for  
reason  
him in  
and be

In rule 99 for the words in brackets '(other than the judgment debtor)' read the words in brackets '(other than the persons mentioned in rules 95 and 98 hereof)'

To order add the following rules —

104 The Court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge on a negotiable instrument, or a debt recoverable only in a Revenue Court), or any moveable property not in the possession of the judgment-debtor, issue a notice to any person (hereinafter called the garnishee, liable to pay such debt or to deliver or account for such moveable property calling upon him to deliver into Court the amount due from or the property deliverable by him to the judgment debtor, or so much as may be sufficient to satisfy the decree and the cost of execution and does not dispute his liability to pay such debt or deliver the same, then the Court may order such person to appear and state the nature of his claim if any, upon such debt or property and prove the same, if necessary

105 If the garnishee does not forthwith, or within such time as the Court may allow, pay or deliver into Court the amount due from or the property deliverable by him to the judgment debtor, or so much as may be sufficient to satisfy the decree and the cost of execution and does not dispute his liability to pay such debt or deliver the same, then the Court may order such person to appear and state the nature of his claim if any, upon such debt or property and prove the same, if necessary

106 If the garnishee disputes his liability the Court instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just

107 Whenever in any proceedings under these rules it is alleged or appears to the Court to be probable that the debt or property attached or sought to be attached belongs to some third person, or that any third person has a lien or charge upon, or an interest in it, the Court may order such third person to appear and state the nature of his claim if any, upon such debt or property and prove the same, if necessary

108 After hearing such third person, and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the Court may pass such order as is hereinbefore provided or make such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as to such Court shall seem just and reasonable

109. Payment or delivery made by the garnishee, whether in execution of an order under these rules or otherwise, shall be a valid discharge to him as against the judgment-debtor, or any other person ordered to appear as aforesaid, for the amount paid, delivered, or realized although such order of the judgment may be set aside or reversed

110 Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached under these rules, although one or more members of such firm may be resident out of the jurisdiction

Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the summons pursuant to an order shall be

the rules and of any proceedings made thereon, shall be in the

has been tried and determined, and be subject to the same decree.

(2) Orders not covered by sub rule (1) shall be appealable as orders made in

he

113 All the rules in this Code relating to service upon either plaintiffs or defendants at the address filed or subsequently altered under Order VII or Order VIII shall apply to all proceedings taken under Order XXXI or section 47

114 The following form shall be used under the provisions of rule 104 of Order XXI —

SUIT NO                      OF 19 ,

*Decree holder*

versus

*Judgment debtor*

To

WHEREAS it is alleged that a debt of Rs                      is due from you to the judgment debtor

Or that you are liable to deliver to the above-named judgment debtor the property set forth in the schedule hereto attached, take notice that you are hereby required to do so on or before the said

payment of the said sum, or for the delivery of the said property may be passed against you

Dated this,

day of                      19

*Munsif*

*Subordinate Judge*

At

#### ORDER XXV

To Order XXV, rule I, add sub rules 1 (4) and (5) —

in the property in suit is concerned or may declare that he shall be debarred from claiming any right to or interest in the property in suit

ad him as a

ive security

In case of

any right

to, or interest in the property in suit

#### ORDER XXVI

In rule 18 sub-rule 1 for the full stop, adding for the examination suit, to supply the C

#### ORDER XXXII

sub rule (4) —

ten years of age no such notice shall be

Substitute the following for rule 4 —

4 (4) Where a minor has a guardian appointed or declared by competent authority no person other than such guardian shall act as next friend, except by leave of the Court

(2) Subject to the provisions of sub rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor, or if he is a defendant, or the Court for other reason is to be recorded considers him unfit to act

(3) Every next friend shall, except as otherwise provided by sub rule (5) of this rule, be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor.

(4) The Court may, in its discretion, for reasons to be recorded, award costs of the suit, or compensation under section 35 A or section 95 against the next friend personally as if he were a plaintiff

(5) Costs or compensation awarded under sub rule (4) shall not be recoverable by the guardian from the estate of the minor, unless the decree expressly directs that they shall be so recoverable "

*Add the following rule 4A —*

"4A (1) Where a minor has a guardian appointed by competent authority no person other than such guardian shall be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be appointed

(2) Where there is no such guardian, or where the Court considers that such guardian should not be appointed, it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or where there is no such guardian, the person in whose care the minor is, or any other suitable person who has notified the Court of his willingness to act, or failing any such person an officer of the Court.

*Explanation —* An officer of the Court shall, for the purposes of this sub rule, in Court

Refusal to accept notice shall be presumed to be refusal to act

Refusal to accept notice shall be presumed to be refusal to act

one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require "

#### ORDER XXXIV.

*In rule 4, sub rule (2) after the words "the Court may", insert the words " of its own motion ; or "*

*Read the present rule 15 as rule 15 (1) and add as sub rule (2) the following —*

"Where a decree orders payment of money and charges it on immoveable property on default of payment the amount can be realized by sale of that property in execution of that very decree "

#### ORDER XXXIX

*In rule 1 delete the words or "wrongfully sold in execution of a decree" in clause the words "damaging, alienation," and add the*

"to the Court that the property in suit is in danger of a decree, the Court may also by order grant a temporary injunction restraining the Court executing the decree from confirming the sale held in execution of the decree until the disposal of the suit or until further orders "

#### ORDER XLI.

*For the existing rule 3 (1) substitute the following —*

"3 (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, or accompanied by the copies mentioned in rule 1, sub rule (1),



## APPENDIX IX.

Rules framed by the Court of the Judicial Commissioner Central Provinces under section 125 C. P. Code

### ORDER III

Rules 5 —In rule 5 substitute the words 'on a pleader who has been appointed to act for any party' for the words 'on the pleader of any party'

#### ORDER IV

**Rule 1—Rule 1(1) is substituted by the following sub rule (1) —**

"1 (t) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf a plaint together with as many true copies on plain paper of the plaint as there are defendants, for service with the summons upon each defendant, unless the Court, for good cause shown, allows time for filing such copies

In Rule 1, insert the following sub rule as sub rule (2) and re number, the old sub-rule as sub-rule (3) —

"(2) The Court fee chargeable for such service shall be paid in the case of suits when the plaint is filed, and in the case of all other proceedings when the process is applied for."

## ORDER V

Rule 15—In rule 15 substitute the words "When the defendant is absent or can not be personally served" for the words "Where in any suit the defendant can not be found."

Rule 17 —To rule 17, add the following proviso —

"Provided that where a special service has been issued and the defendant refuses to sign the acknowledgment it shall not be necessary to affix a copy as directed hereinbefore."

sent to him by registered post prepaid for acknowledgment provided that such place is a town or village in the Akola Revenue taluq. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service.

word 'shall'

the Central Provinces, the Court, may, in addition to any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by him, or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service."

Rule 26 — In rule 26 insert the words "in addition to or in substitution for the method permitted by rule 25" between the words "may" and "be sent"

## ORDER VII

and or annex thereto a list of the  
 org with it.

(2) The chief ministerial officer of the Court shall sign such lists and the copies of the plaint presented under rule 1 of Order IV, if, on examination, he finds them to be correct."

Rules 19 to 23 —Insert the following as rules 19 to 23 after rule 18 —

"19 Every plaint or original petition shall be accompanied by an address at which service of process may be made on the plaintiff or the petitioner. The address shall be within the local limits of the civil district in which the suit or petition is filed, or of the civil district in which the party ordinarily resides, if within the limits of the Central Provinces and Berar. This address shall be called the

registered address and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of the final decision and for all purposes including those of execution

20 Any party subsequently added as plaintiff or petitioner shall in like manner file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner

"21 (1) If the plaintiff or the petitioner fails to file a registered address as required in his suit by the C

sub rule (1) the or the rejection of the petition that he was at the proper time, the Court shall set aside the dismissal or the rejection upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or petition

22 Where the plaintiff or the petitioner is not found at his registered address and no age is present at such service and the service is served

change his registered address shall amendment of the record accordingly other parties to the suit or inform"

#### ORDER VIII

Rules 11 to 13— After rule 10 insert the following rules 11—13 —

11 Every defendant in a suit or opposite party in any proceedings shall on the first day of his appearance in Court file an address for service on him of any

12 (1) If the defendant or the opposite party fails to file a registered address as required by rule 11 he shall be liable at the discretion of the Court to have his defence struck out and to be placed in the same position as if he had made no defence. An order under this rule may be passed by the Court *suo motu* or on the application of any party

(2) Where the Court has struck out the defence under sub rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the

13 (1) Where the Court has struck out the defence

(3) Where the Court has struck out the defence under sub rule (1) and has consequently passed a decree or order the defendant or the opposite party as the case may be, may apply to the Court by which the decree or order was passed for a registered address cause from filing the decree or order as against and shall appoint a

day for proceeding with the suit or proceeding

Provided that where the decree is of such a nature that it can not be set aside as against such defendant or opposite party only it may be set aside as against all or any of the other defendants or opposite parties

13 Rules 20, 22 and 23 of Order VII shall apply so far as may be to addresses for service filed under rule 11

## ORDER IX

Rule 13—Add the following as a further proviso to rule 13 —

"Provided also that no such decree shall be set aside merely on the ground of irregularity in service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim

*Explanation*—Where a summons has been served under Order V, rule 15 on an adult male member having an interest adverse to that of the defendant in the subject matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule"

In rule 13 for the words 'he was prevented by any sufficient cause from appearing' the words 'there was sufficient cause for his failure to appear' shall be substituted

Re number the existing rule 13 as sub rule 13(1) and after it, add the following as sub rule (2) —

"(2) The provisions of section 5 of the Indian Limitation Act, IX of 1908 shall apply to applications under sub rule (1)

## ORDER XIII

Rule 9—Add the following as sub rule (2) of rule 9 and re number the present sub rule (2) as sub rule (3) —

"(2) Where the document has been produced by a person who is not a party to the suit, the Court may and at the request of the person applying for the return of the document shall order the party at whose instance the document was produced to pay the cost of preparing the certified copy"

## ORDER XVI

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own officers, Govern

Rule 3—Substitute the following for rule (3) —

3(1) The sum so paid into Court shall except in case of a Government servant, be tendered to the person summoned at the time of serving the summons if it can be served personally

(2) When the person summoned is a Government servant the sum so paid in Court shall be credited to Government

*Exception (1)*—In cases in which Government servants have to give evidence at a Court situate not more than 5 miles from their head quarters the actual travelling expenses incurred by them may when the Court considers it necessary, be paid to them

*Exception (2)*—A Government servant whose salary does not exceed Rs 10 per mensem may receive his expenses from the Court

Rule 4—After the word summoned where it occurs first in sub rule (1) insert the following —

'or where such person is a Government servant, to be paid into Court'

## ORDER XVIII

the  
it deems fit'

the Court may order that  
Court may be in any order which

## ORDER XX

In sub-rule (2) of rule 11 in Order XX for the words 'and with the consent of the decree holder' the words 'and after notice to the decree-holder' shall be substituted.

## ORDER XXI

Rule 1—(a) In subrule (1) after the words "a decree" insert the words "or an order,"

(b) for clause (a) the following clause (a) shall be substituted

'(1) by deposit in, or by postal money order to the Court whose duty it is to execute the decree or order, or',

(c) in clause (c) after the word 'decree' insert the words "or order" , and

(d) to sub rule (2) insert the following proviso —

"Provided that, when the payment is made by money order the notice may be given by registered post by the judgment-debtor direct to the decree holder."

Rule 11—After sub clause (v) of clause (j) of sub-rule (2) of rule 11, add the following proviso —

"Provided that, when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application"

Rule 16—In rule 16, after the words "which passed it" insert the words "or to any Court to which it has been sent for execution"

Rule 17—In sub rule (1) of rule 17, for the words "and, if they have not been returned to the Court" insert the words "and, if they have not been returned to the Court, then and in any case, the decree holder may apply for execution"

Rule 22—In rule 22 for the words 'one year' whenever they occur, substitute the words 'three years'

To sub rule (2) of rule 22 add the following proviso —

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under the rule, unless the judgment-debtor has sustained substantial injury by reason of such omission"

Rule 24—In sub rule (3) of rule 24, for the word "executed" substitute the words 'returned to the Court'

Rule 26—In sub-rule (3) of rule 26 substitute the words 'shall unless good cause to the contrary is shown' for the word 'may'

Rule 31—In sub rules (2) and (3) of rule 31 for the words 'six months' wherever they occur substitute the words 'three months or such further time as the Court may in any special case, for good cause shown, direct'

Court house

(b) For sub-rules (4) and (5) the following sub rules shall be substituted —

"(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the Court house to the Civil prison and from the Civil prison, on his release to his usual place of residence together with the first of the payments in advance under sub rule (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the Civil prison, and the subsequent payments (if any) shall be paid to the officer in charge of the Civil prison

(5) Sums disbursed under this rule by the decree holder for the subsistence and the cost of the conveyance (if any) of the judgment debtor shall be deemed to be costs in the suit"

Rule 53—In clause (b) of sub rule (1) and in sub-rule (4) of rule 53, after the words "to such other Court" insert the words "and to any other Court to which the decree has been transferred for execution" In sub-clause (a) of clause (b) of sub rule (1) of rule 53, after the word "judgment debtor" insert the words "with the consent of the said decree holder expressed in writing or with the permission of the attaching Court," and (b) for the words 'its own' substi-



Rule 57—For rule 57 substitute the following rule —

n of a decree, and  
on application, the  
If the Court omits  
ve ceased to exist "

Rule 58—In sub rule (2) of rule 58, after the word 'objection' where it occurs for the second time, insert the following words —

'Or, where the property to be sold is immoveable property, the Court may, in its discretion, direct that the sale be held, but shall not become absolute until the claim or objection is decided "

Rule 65—In rule 65 of Order XXI the following sentence shall be added, namely —

'Such officer or person shall be competent to declare the highest bidder as purchaser at the sale provided that, where the sale is made in, or with the precincts of the Court house, no such declaration shall be made without the leave of the Court "

Rule 66—In clause (e) of sub rule (2) of rule 66 after the word "property" insert the words —"including the decree-holders estimate of the approximate market price "

Rule 69—In sub rule (2) of rule 69, for the words "seven days" substitute the words "fifteen days "

Rule 75—In sub-rule (2) of rule 75 after the words ' being stored ' insert the words or, where it appears to the Court that the crop can be sold to greater advantage in an unripe state "

Rule 85—In rule 85 of order XXI, the following explanation shall be added, namely — '*Explanation* When an amount is tendered on any day after 1 p m, but paid into Court on the next working day between 11 a m and 1 p m the payment shall be deemed to have been made on the day on which the tender is made "

Rule 89—In sub rule (1) of rule 89 for the words 'any person either owning such property or holding an interest therein by virtue of a title acquired before such sale' substitute the words 'any person claiming any interest in the property sold at the time of the sale or at the time of the petition, or acting for or in the interest of, such person "

Rule 90—After the proviso to sub rule (1) of rule 90, insert the following further proviso —

shall be  
by the

Rule 92—In sub rule (1) of rule 92 after the word "make" insert the words subject to the provisions of rule 58(2) "

Rule 94—In rule 94, add a comma after the word 'sold' and insert the words "the amount of the purchase money" between the word 'sold' and the word 'and '

Rule 98—In rule 98 (a) after word 'instigation in ' both places when it occurs, insert the words 'or on his behalf' and (b) after the words "thirty days" insert the words :—

it holds responsible for such  
, in addition to costs, reasonable  
r, as the case may be, for the  
sion The order made thereon

shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were decree '

Rule 99—In rule 99, for the word 'judgment debtor' where it occurs in brackets substitute the words "persons mentioned in rule 95 or 98,"

#### ORDER XXV

Rule 1—In rule 1(1) insert the words 'or that any plaintiff is being financed by a person not a party to the suit' between the words "other than the property in suit" add 'the Court may "

Rule 3—After rule 2 add the following new rule —

'3 (1) Where any plaintiff has for the purpose of being financed in the suit transferred or agreed to transfer any share or interest in the property in suit to a person who  
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In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in the property in suit is concerned or declaring that he shall be debarred from claiming any right to, or interest in, the property in suit

(2) If such person declines to be made a plaintiff the Court may implead him as a defendant and may order him within a time to be fixed by it, to give security for the  
by any other defendant  
time fixed the court may  
claiming any right to, or

(3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub rules (2) and (3) of rule 2 shall apply, *mutatis mutandis* to such application"

#### ORDER XXXII

Rules 3 and 4—For rules 3 and 4 substitute the following —

3 Where the defendant is a minor the court, on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit of such minor

4 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or is his guardian for the suit

Provided that the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant or in the case of a guardian for the suit a plaintiff

(2) Where a minor has a guardian appointed or declared by competent authority no person other than such guard an shall act as the next friend of the minor or as his guardian for the suit unless the court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act in either capacity

14 A (1) No person except the guardian appointed or declared by competent authority shall without his consent be appointed guardian for the suit

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff

(3) Unless the Court is otherwise satisfied of the fact that the proposed guardian has no interest adverse to that of the minor in the matters in controversy in the suit and that he is a fit person to be so appointed, it shall require such application to be supported by an affidavit verifying the fact

(4) No order shall be made on any application for the appointment as guardian for the suit of any person other than a guardian of the minor appointed or declared by competent authority except upon notice to the proposed guardian for the suit and to any guardian of the minor appointed or declared by competent authority, or, where there is no such guardian the person in whose care the minor is, and after hearing any objection that may be urged on a day to be specified in the notice. The Court may, in any case if it thinks fit, issue notice to the minor also

(5) Where, on or before the specified day such proposed guardian fails to appear and express his consent to act as guardian for the suit, or, where he is considered unfit or disqualified under sub rule (3) the Court may, in the absence of any other person fit and willing to act, appoint any of its officers or a pleader to be guardian for the suit.

(b) In any  
sufficient sum sh-  
of the minor  
in accordance with the final order passed in the suit in respect of costs

## ORDER XXXIX

Rule 1—In Rule 1 (a) in clause (a) omit the words 'or wrongfully sold in execution of a decree', (b) omit the word 'sale', and (c) after the words 'further

the property in suit is in danger, the court may also by order grant a temporary injunction restraining the court executing the decree from confirming the sale held in execution of the decree until the disposal of the suit or until further orders"

## ORDER XLI

Rule 14—To rule 14 the following sub rule shall be added — (3) The appellate Court may, in its discretion dispense with notice to any respondent against whom the suit was heard *exparte*"

Rule 21—In rule 21, of order XLI (a) the existing rule shall be re numbered as sub rule (1) and (b) after sub rule (1) so re numbered the following shall be inserted as rule (2) namely —

'(2) The provisions of section 5 of the Indian Limitation Act IX of 1908 shall apply to application under sub rule (1)"

## ORDER XLV

Rule 3—For sub rule (2) of rule 3 of order XLV, the following sub rules shall be substituted namely —

(2) Upon receipt of such petition the Court after sending for the record and and hearing him accord

sub rule (2) it shall direct notice to be served on the opposite party to show cause by the said certificate should not be granted"

Rule 7A—After rule 7 insert the following new rule 7A —

7A No security as is mentioned in rule 7 (1) clause (a) shall be required from the Secretary of State for India or where the Local Government has undertaken the defence of the suit from any public officer sued in respect of an act alleged to be done by him in his official capacity"

## ORDER XLVIII

Rule 1—To sub rule (2) of rule 1 of order XLVIII prefix the words 'except as provided in order IV rule 1 (2)' and substitute the word 'the' for 'The'

## APPENDIX E

## Form No 38

In form No 38 insert the words 'for Rs' between the words 'the purchaser' and 'at the sale'

## APPENDIX H (Miscellaneous)

## Form No 11

For form No 11 substitute the following —

Notice to Minor Defendant and guardian

(Order 32, rule 4A)

Title

To

Minor Defendant  
Legally appointed Guardian  
Actual Guardian

Proposed

WHEREAS an application has been presented on the part of the plaintiff on behalf of the minor defendant as the guardian of the (you the said minor \*)  
for the appointment of you  
suit of the minor defendant  
you  
has legally appointed actual guardian and you

the proposed guardian for the suit are hereby  
required to taken notice that unless you, the proposed guardian appear before

\* The portion in brackets should be scored out if no notice is to issue to the minor defendant

this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to your appointment or unless an application is made to this court for the appointment of some other person to act as guardian of the minor for the suit, the Court will proceed to appoint an officer of the Court or a pleader or some other person to act as a guardian to the minor for the purposes of the said suit which summons in the ordinary form is herewith appended

GIVEN under my hand and the seal of the Court this day of

19  
Judge

## APPENDIX X.

Rules made by the Court of the Judicial Commissioner of Sind, under section 125 of the Code of Civil Procedure 1908

### ORDER III

Rules 6—Add the following as sub rule (3) to rule 6 of order III —

(3) The Court may at any stage of a suit, or of its own motion, direct any part residing within the jurisdiction of the Court, an agent within the jurisdiction of the Court to accept service of process on his behalf To every appointment made under this sub rule the provisions of sub rule (2) shall be applicable

### ORDER V

Rule 21A—Insert the following as rule 21A in order V —

21A—*Service of summons by prepaid post wherever the defendant may be residing if plaintiff so desires —*

Where the plaintiff so desires the Court may notwithstanding anything in the foregoing rules and whether the defendant resides within the jurisdiction of the Court or not, cause the summons to be addressed to the

acknowledgment purporting to be signed by the defendant shall be deemed by the Court issuing the summons to be *prima facie* proof of service In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may in its opinion be necessary

Rule 31—Add the following as rule 31 in order V —

31 If a summons issued to a defendant residing in British India is returned unserved, the Court may while issuing a fresh summons for personal service or ordering substituted service of the summons also order that a copy of the summons be addressed to the defendant at the place where he is residing and be sent to him by registered post if there is postal communication between such place and the place where the Court is situate

### ORDER VII

Rule 9—Substitute the following for sub-rule (1) of rule 9 in Order VII —

9 (1) The plaintiff shall endorse on the plaint or annex thereto, a list of the documents (if any) which he has produced along with it, and shall present along with the plaint as many copies of it on plain paper as there are defendants, on application made, the Court may, by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason accept instead a like number of concise statements of the nature of the claim made or of the relief claimed in the suit presented along with the plaint

Rules 19 to 26—Add the following as rules 19 to 26 in Order VII —

19 Address to be filed with plaint or original petition—Every plaint or original petition shall be accompanied by a memorandum in writing giving an

address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a memorandum in writing of this nature

20 *Nature of address to*

21 *Consequences of failure to file address*—Where a plaintiff or a petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu*, or any party may apply for an order to that effect and the Court may make such order as it thinks just

22 *Procedure when party not found at the place of address*—Where a party is not found at the address given by him, or by a member of his family on whom a notice or process shall be affixed, such party is not present—summons or other process shall be sent to the registered address by registered post prepaid for acknowledgment, and such service shall be deemed to be as effectual as if the notice or process had been personally served

23 *Service of notice on pleaders*—Where a party engages a pleader notice or process on him shall be served in the manner prescribed by order III, rule 5, unless the Court directs service at the address for service given by the party

24 *Change of address*—A party who desires to change the address for service given by him aforesaid shall file a fresh memorandum in writing to this effect and the Court may direct the amendment of the record accordingly. Notice of such memorandum shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be served either upon the pleaders for such parties or to be sent to them by registered post as the Court thinks fit

25 *Rules not binding on Court*—Nothing in these rules shall prevent the Court from directing the service of a notice or process in any other manner if for any reasons, it thinks fit to do so

26 *Applicability to notice under Order XXI rules 22*—Nothing in these rules shall apply to notice prescribed by Order XXI, rule 22

Order VIII

Rules 11 and 12—Add the following as rules 11 and 12 in Order VIII —

11 *Parties to file address*—Every party whether original added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing file in Court address for service, and if he fails to do so ~~any struck out and be to placed in the same~~ in this respect the Court may act *suo motu* or on order to such effect, and the Court may

ply to a defendant who has filed a written statement, but who is examined by the Court under section 7 of the Dekhan Agriculturists Relief Act, 1879, or otherwise, or in any case where the Court permits the address for service to be given by a party on a date later than that specified in this rule

12 *Applicability of rules 20 and 22—26 of Order VII to Address for service*—Rules 20, 22, 23, 24, 25 and 26 of Order VII shall apply so far as may be to addresses for service filed under the last preceding rule

ORDER IX

Rule 13—Add the following further proviso to rule 13 in Order X —

‘Provided also that a decree passed *ex parte* shall not in the absence of good cause be set aside on the ground merely of irregularity in the service of the summons unless upon the facts proved the court is satisfied that the defendant did not have notice of the date of hearing in sufficient time to appear and answer the plaintiff’s claim’

## ORDER XVI

Rule 1A—Insert the following as rule 1 A after rule 1 in order XVI —

' 1A The Court may, on the application of any part for a summons for the attendance of any person as a witness permit that service of such summons shall be effected by such party "

## ORDER XXI

Rule 24—Insert the following as proviso to sub rule (2) of rule 24 of Order XVI —

Provided that a First Class Subordinate Judge may, in his special jurisdiction, send a process to another subordinate court in the same district for execution by the proper officer in that court "

## ORDER XLI

Rule 14—Insert the following as sub rule (2) to rule 14 in order XLI —

tion, dispense with the  
herein, on a respondent

14 :  
ing any  
deemed  
of any deceased opposite party or deceased respondent where such opposite party or respondent did not appear, either at the hearing in the Court whose decree is complained of or at any proceeding subsequent to the decree of that Court "

Rule 38 —Insert the following as rule 38 in order XLI —

good during appellate proceedings—  
der VII rule 19 or Order VIII, rule 11,  
4 or Order VIII, rule 12, shall hold  
ing out of the original suit or petition,

(2 Every memorandum of appeal shall state addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

(3 Rules 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings

## Order XLVI

Rule 8 —Insert the following as rule 8 in Order XLVI —

8 *Applicability of rule 38 of Order XLI*—Rule 38 of Order XL shall apply so far as may be to proceedings under this order

## Order XLVII

Rule 10 —*Applicability of rule 38 of Order XLI*—Rule 38 of Order XLI shall apply so far as may be, to proceedings under this order

## Order LII

Rule 1 —Add the following as Order LII —

Insert the following as order LII —

1 *Applicability of rule 38 of order XLI to proceedings under section 125*—Rule 38 of order XLI shall apply, so far as may be, to proceedings under section 125 of the Code

## APPENDIX B

Insert the following note in red ink in Forms Nos. 1, 2, 3, 5 and 6 of Appendix B to Schedule I —

"Also take notice that in default of your filing an address for service on or before the date mentioned you are liable to have your defence struck out "

## APPENDIX XI.

Rules made by the Court of the Judicial Commissioner, North West Frontier Provinces under S 125 of the C P Code

## ORDER III

Rule 5—And “Provided that the pleader is acting and not merely pleading for the party”

## ORDER V

Rule 15—For the words “where in any suit the defendant cannot be found” substitute “where the defendant is absent from his usual place of residence”

Rule 17—Add The signature of a headman of the village shall be obtained on the summons and proclamation shall be made by beat of drum in the neighbourhood of the said house”

## ORDER VII

Rule 14 (2)—Add “And shall also produce such documents as are in his possession or power”

be liable to have his suit dismissed or his petition rejected by the Court *sup motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks fit

22 A party who desires to said shall file a verified petition record accordingly Notice of the suit as the Court may deem upon the pleaders for such party thinks fit”

## ORDER VIII

Rule 1—Add a sub clause (2) — “The defendant at the time of presenting a written statement shall, where he relies on any documents (whether in his possession or power or not) enter such documents in a list and produce those documents which are in his possession or power”

Rules 11 and 12—After rule 10 add the following rules —

“11. Every party, whether original added or substituted who intends to appear and defend any suit or original petition shall, on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service and if he fails to do so, he shall be liable to have his defence, if any struck out and to be placed in the same position as if he had not defended In this respect the Court may act *sup motu* or on the application of any party for an order to such effect, and the Court may make such order as it thinks fit

12 Rules 20 and 22 of order VII shall apply, so far as may be to addresses for service, filed under the preceding rule”

## ORDER IX

R 13 Add “Provided further that no decree passed *ex parte* shall be set aside merely on the ground of an irregularity in the service of summons, if the court is satisfied for reasons to be recorded that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim”

## ORDER XIII

R 1 The following rule is substituted —

“All documentary evidence shall be produced by the parties or their pleaders in the method and at the time prescribed in order 7 and 8, provided that after the

settlement of issues the court may fix a date not being more than 30 days after such settlement, within which the parties may present supplementary lists of documents on which they rely."

## ORDER XVI.

For O. 16, R. 1. *Substitute the following :—*

..... 30 days after the  
 ..... nesses whom they  
 ..... than those contained in  
 ..... after showing good cause  
 ..... Court granting such per-  
 mission shall record reasons for so doing.

(3) On application to the Court or such officer as it appoints in this behalf, the parties may obtain summonses for persons whose attendance is required in Court."

O 16, R 8 *Add* "Provided that such summons shall ordinarily be made over for service to the party calling the witnesses, and his affidavit shall be considered sufficient proof of service; provided further that he shall, for sufficient reason, be entitled to apply to the Court to have the summonses served through its agency."

## ORDER XXI

O 21, R. 6. *Read R 6 as R. 6 (1) and add the following sub-rule 6 (2) :—*

(2) Such copies and certificates may, at the request of the decree holder, be handed over to him or to such person as he appoints in a sealed cover to be taken to the Court to which they are to be sent"

O 21 R 16 *For the first proviso to R. 16 substitute the following proviso :*

"Provided that where the decree or such interest as aforesaid has been transferred application shall be given to the transferee ;  
 ..... nsferer admitting the transfer is presented with  
 ..... not be executed, until the Court has heard his

O 21, R 22 *For the words "one year" wherever they occur in R. 22 read "two years"*

O 21, R 28 *In sub-rule (3) of R. 26 for the words "the Court may" substitute the words "the Court shall, unless good cause to the contrary is shown"*

O 21, R 31 *In sub rules (2) and (3) of R. 31 for the words "six months" substitute the words "three months" and add as sub-rule (4),—*

"(4) The court may on application extend the period of three months mentioned in sub rules (2) and (3) to such period not exceeding six months in all as it may think fit."

O 21, R 32 *In sub rule (3) of R 32 for the words "for one year" substitute the words "for three months or such further period not exceeding one year in the whole as may be fixed by the Court"*

O 21, R 39 *For the sub-rule (4) of R 39 substitute the following —*

(4) All payments shall be made to the officer in charge of the civil prison".  
*In sub-rule (5) omit the words "in the civil prison"*

O. 21, R 43. *Add the following further proviso to R 43.*

"Provided further that when the attached property consists of the live stock or articles which cannot conveniently be not act under the first proviso to this rule, where it has been attached in the ch. respectable person as will undertake to of the Court, if such person enters into a

Any person who has so undertaken to keep attached property may be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him."

in sub-rule (4) in  
 "or" or to any other



In sub rule (1) (b) (ii) for the words 'its own decree' *substitute the words in the attached decree*"

In sub rule (6) for the words 'after receipt of notice thereof' read "after receipt of notice or with the knowledge thereof"

O 21, R 54. *Add the following sub rule to R 54 —*

'54(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property and against all other transferees from the judgment debtor from date on which such order is made"

O 21, R. 57 *Cancel the concluding sentence of R 57*

'Upon the dismissal shall cease' "and *substitute the following* — 'In dismissing such application the Court shall direct whether the attachment shall continue or cease. In the absence of any such direction the attachment shall be deemed to cease'

O 21 R 66 *Add the following words to clause (c) of sub rule (2) of R 66*

'Provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties'

O 21 R 68 *In R 68 for the word 'thirty' read 'fifteen' and for the word 'fifteen' read "seven"*

O 21 R 69 *In sub rule (2) of R 69 for the word 'seven' substitute the word 'thirty' and add the following proviso —*

"Provided that the Court may dispense with the consent of any judgment debtor who has failed to attend in answer to a notice issued under R 66

O 21 R 72 *For sub rule (1) of R 72 substitute the following —*

'72 (1) the holder of a decree in execution of which property is sold, shall be competent to bid for or purchase the property without express permission of the Court provided that the Court may on application of the judgment debtor and for sufficient cause debar him from so bidding or purchasing'

*In sub rule (2) for the words "with such permission" substitute the words 'the property*

*Cancel sub-rule (3)*

O 21 R 75 *In sub-rule (2) of R 75 after the words 'being stored' add the words 'or can be sold to greater advantage in an unripe state'*

O 21 R 89 *In sub rule (1) of R 89 for the words 'either owning . . before such sale' substitute the following words*

either claiming any interest in such property at the time of sale or at the time of application, or acting for or in the interest of such person"

(1) ' . . . , ' *her proviso to sub-rule (1) of R 90 —*  
be set aside on any ground which the sale was conducted"

O 21 R 98 *In R 98 after the words 'at his instigation' wherever they occur add the words 'or on his behalf' and after the words 'in the civil prison' add the words 'at the expense of the crown'*

O 21 R 99 *In R 99 for the words '(other than judgment debtor)' substitute the words '(other than the persons mentioned in rules 95 and 98)'*

## RULE XXXII

Rule 1 —the following paragraph shall be added —

"Such person may be ordered to pay any costs in the suit as if he were the plaintiff"

## ORDER XLI

Rule 14 —Add the following proviso to sub-rule (1) —

'Provided that with the permission of the Court no notice need be served upon a respondent who was a proforma defendant in a suit which was decided *ex parte* against him'

Rule 38 —Add the following rules :—

'38 (1) An address for service filed under O 7 R 19 or O 8 R 11, or subsequently altered under O 7 R 21 or O 8 R. 12, shall hold good during all appellate proceedings arising out of the original suit or petition

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

(3) Rules 21 and 22 of O 7 shall apply, so far as may be, to appellate proceedings

## APPENDIX XII.

# BENGAL, AGRA\* AND ASSAM CIVIL COURTS ACT.

## ACT NO XII OF 1887.

RECEIVED THE G.-G.'S ASSENT ON 11TH MARCH, 1887.

*An Act to consolidate and amend the Law relating to Civil Courts in Bengal, the North Western Provinces and Assam*

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North Western Provinces and Assam, It is hereby enacted as follows —

## CHAPTER I

### PRELIMINARY.

Title, extent, and commencement

1 (1) This Act may be called the Bengal, "Agra \* and Assam Civil Courts Act, 1887.

(2) It extends to the territories for the time being respectively administered by the Lieutenant Governor of Bengal, the Lieutenant Governor of the North Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Court and

( ) It shall come into force on the first day of July, 1887

2 (1) [*Repealed by Act XII of 1891*]

(2)† All Courts constituted appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published shall be deemed to have been respectively constituted, made, conferred and published under this Act, and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act, or to the corresponding portion thereof

## CHAPTER II

### CONSTITUTION OF CIVIL COURTS

Classes of Courts 3. There shall be the following classes of Civil Courts under this Act, namely —

(1) the Court of the District Judge,

(2) the Court of the Additional Judge,

\* The words within quotations have been substituted by Act 16 of 1911

† Here the words "and except the Jhanshi Division" have been repealed by the North Western Provinces and Oudh Act (XX) of 1890 s 9

‡ Here the word "But" repealed by Act XII of 1891 has been omitted

- (3) the Court of the Subordinate Judge ; and  
 (4) the Court of the Munsif.

Number of District Judges  
 and Subordinate Judges and  
 Munsifs

4 "The Local Government may, alter the number of District Judges, Subordinate Judges and Munsifs now fixed"\*

5. [Number of Munsifs] *Repealed by Act IV of 1914*

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever "an increase in the number of District or Subordinate Judges has been made under the provisions of section 4"† the Local Government may fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing a District Judge or Subordinate Judge to discharge for such period as it thinks fit, in addition to the functions devolving on him as such District Judge, or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be

7. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly

(2) The Local Government may, after consultation with the High Court, and "subject to the control"† of the Governor General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif

(3) When rules have been made under subsection (2), a person shall not be nominated under subsection (1) unless he possesses the qualifications required by the rules

8. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may upon the recommendation of the High Court† appoint such Additional Judges as may be requisite

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge

9 Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts, under this act within the local limits of his jurisdiction

10. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties or his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without

relinquishing his ordinary duties, assume charge of the office of the District Judge and shall continue in charge thereof until the office is resumed by the District Judge, or assumed by an officer appointed thereto

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge

11 (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them

(1) Proceedings transferred under sub section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred

(3) Provided that the District Judge may re transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court

(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub section (1) and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court

12 (1) A District Judge on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 7, or his appointment is cancelled by the District Judge

(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment

13 (1) The Local Government may by notification in the Official Gazette fix and alter the local limits of the jurisdiction of any Civil Court under this Act

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges, or to two or more Munsifs the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be as subject to any general or special orders of the High Court he thinks fit

(3) When civil business arising in any local area is assigned by the District Judge under sub section (2) to one of two or more Subordinate Judges or to one of two or more Munsifs a decree or order passed by the Subordinate Judge or Munsif shall be invalid by reason only of the fact that the case in which it was passed was wholly or in part in a place beyond the local limits fixed by the Local Government under sub section (1)

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif as the case may be

shall be deemed to have been fixed under this section

14 The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Place of sitting of Courts Civil Court under this Act is to be held.

(2) All the places at which any such Courts are now held shall be deemed to have been fixed under this section.

15. (1) Subject to such orders as may be made by the Governor General in Council, "in the case of the High Court at Calcutta and by the Local Government in other cases,"\* the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts

(2) The list shall be published in the local Official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day

16 Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the Local Government.

17. (1) Where any Civil Court under this Act has from any any cause ceased to have jurisdiction with respect to any case any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure, or in any other enactment for the time being in force

### CHAPTER III

#### ORDINARY JURISDICTION.

13. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to all original suits for the time being cognisable by Civil Courts.

Extent of jurisdiction of Munsif

value does not exceed one thousand rupees.

(2) The Local Government may, on the recommendation of the High Court, direct by notification in the official Gazette, with respect to any Munsif named therein, that this jurisdiction shall extend to all like suits of such value not exceeding two (four)† thousand rupees as may be specified in the

may, by notification in the local powers under this section"‡

20 (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

\* The words within quotations have been added by Act 31 of 1920.

† The words within brackets have been substituted by B & O Act 4 of 1922

‡ Added by Act 4 of 1914 and U P Act V of 1925

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Appeals from subordinate Judges and Munsifs 21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie :—

(a) to the District Judge where the value of the original suit in which or any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where an appeal lies to the District Judge under the provisions of this section, it shall be heard by an Additional Judge.

(4) The High Court may, with the previous sanction of the Government, direct, by notification in the official Gazette, that any appeal from a decree or order of a District Judge under sub section (2) from all or any Munsifs shall be preferred to the Court of Session. Such notification may be mentioned in the notification, and the appeal shall thereupon be preferred accordingly.

## CHAPTER IV.

### SPECIAL JURISDICTION.

Power to transfer to Subordinate Judges appeals from Munsifs

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself, or transfer it to a Court under his administrative control competent to dispose of it

(3) Appeals transferred under this section shall be disposed of subject to rules applicable to like appeals when disposed of by the District Judge

23 (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order

(2) The proceedings referred to in sub section (1) are the following namely—

(a) proceeding under Bengal Regulation V, 1799 (to limit the Interference of the Zillah and City Courts of Dewans Adalat in the Execution of Wills and Administration to the Estates of persons dying intestate)

(b) ... of 1890.]

(c) ... 1889)]

(d) ... 5, and the Probate is to be disposed of by

District Delegates; and

(e) references by Collectors under section 322 C of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

24. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge.

Provided that an appeal from an order of a Munsif in any such proceedings shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

25 The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of a Small Causes under the Provincial Small Causes Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or "two hundred and fifty" \* rupees in the case of a Munsif, at it thinks fit, and may withdraw any jurisdiction so conferred

"Provided that the Local Government may, by notification in the Local official Gazette delegate to the High Court its powers under this section" †

## CHAPTER V

### MISCELLANEOUS

Suspension or removal of Judge by Local Government  
Local Government

26 Any District Judge, Additional Judge, Subordinate Judge, or Munsif may, for any misconduct, be suspended or removed by the

Suspension of Subordinate Judges by High Court.

27. (1) The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge.

(2) Whenever the High Court suspends a Subordinate Judge under subsection (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

Suspension or removal of Munsif by High Court

28 (1) The High Court may appoint a commission for enquiring into alleged misconduct of a Munsif.

(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

(3) The provision of Act No. XXXVII. of 1850 (*for regulating Inquiries into the behaviour of public servants*) shall apply to inquiries under this section the powers conferred by that Act on the Government being exercised by the High Court.

\* The words within quotations have been substituted by Act 16 of 1911.

† Added by Act 4 of 1914.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court

Appeals from subordinate Judges and Munsifs 21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie :—

(a) to the District Judge where the value of the original suit in which or any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge

(3) Where the function of receiving any appeals which lie to the District Judge under sub section (1) or sub section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, direct, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeal shall thereupon be preferred accordingly

## CHAPTER IV.

### SPECIAL JURISDICTION

Power to transfer to Subordinate Judges appeals from Munsifs

22 (1) A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it

(3) Appeals transferred under this section shall be disposed of subject to rules applicable to like appeals when disposed of by the District Judge

23 (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order

(2) The proceedings referred to in sub section (1) are the following namely —

(a) proceeding under Bengal Regulation V, 1799 (to limit the Interference of the Zillah and City Courts of Dewani Adalat in the Execution of Wills and Administration to the Estates of persons dying intestate)

(b) [Repealed by the Guardians and Wards Act (VIII of 1890)]

(c) [Repealed by the Succession Certificate Act (VII of 1889)]

(d) proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates, and

(e) references by Collectors under section 322 C of the Code of Civil Procedure



ay withdraw any such proceedings taken to, Subordinate Judge or Munsif, and may transfer them to a Court under his administrative control competent to dispose of them.

24 (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge.

Provided that an appeal from an order of a Munsif in any such proceedings shall lie to the District Judge

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

25 The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of a Small Causes under the Provincial Small Causes Courts Act, 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge or "two hundred and fifty" \* rupees in the case of a Munsif, at it thinks fit, and may withdraw any jurisdiction so conferred

"Provided that the Local Government may, by notification in the Local official Gazette delegate to the High Court its powers under this section"†

## CHAPTER V.

### MISCELLANEOUS.

Suspension or removal of Judge by Local Government  
Local Government

26 Any District Judge, Additional Judge, Subordinate Judge, or Munsif may, for any misconduct, be suspended or removed by the

Suspension of Subordinate Judges by High Court

27. (1) The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge.

(2) Whenever the High Court suspends a Subordinate Judge under subsection (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

Suspension or removal of Munsif by High Court

28 (1) The High Court may appoint a commission for enquiring into alleged misconduct of a Munsif

(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

(3) The provision of Act No. XXXVII. of 1850 (for regulating Inquiries into the behaviour of public servants) shall apply to inquiries under this section the powers conferred by that Act on the Government being exercised by the High Court.

\* The words within quotations have been substituted by Act. 16 of 1911.

† Added by Act 4 of 1914.

(4) The High Court may, before appointing the commission, suspend the Munsif pending the result of the inquiry.

(5) The High Court may, without appointing a commission, remove or suspend a Munsif.

*Suspension of Munsif by District Judge* 29. (1) A District Judge may, whenever he sees urgent necessity for so doing, suspend a Munsif under his administrative control.

(2) Whenever a District Judge suspends a Munsif under sub section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

## CHAPTER VI.

### MINISTERIAL OFFICERS.

30 District Judges shall appoint the ministerial officers of their Courts, and, subject only to the control of the local Government, may remove or suspend those officers or fine them in an amount not exceeding one month's salary.

*Appointment and removal of ministerial officers of District Court*

31. (1) The ministerial officers of the Civil Courts subject to the administrative control of the District Judge shall be appointed—

*Appointment and removal of ministerial officers of other Courts*

(a) in the case of an appointment not likely to last, and not lasting longer than two months, by those Courts and

(b) in any other case, by the District Judge

(2) An Additional Judge, or subordinate Judge or Munsif may, by order, remove or suspend, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of misconduct or neglect in the performance of the duties of his office

32 The provisions of the two last foregoing sections shall be subject to the following modifications in their application to ministerial officers employed by more Civil Courts than one, namely,—

*Appointment and removal of ministerial officers on joint establishments*

(a) appointments not likely to last, and not lasting longer than two months shall be made by the Court of the highest class among those Courts, or, where there is no difference in class among those Courts, by the senior among the presiding Judges thereof, and

(b) such ministerial officers may not be removed or suspended by any Court except the Court which under clause (a) of this section, is for the time being charged with the duty of making appointments to fill temporary vacancies

33. The District Judge, subject only to the control of the Local Government may, by order, suspend or remove any ministerial officer to whom section 31 or section 32 applies, or, in any other case, otherwise, Court

*General powers of District*

34 (1) The Local Government may, at the instance of the High Court or of a District Judge, transfer a ministerial officer from any Civil Court under this Act to any other such Court

Transfer of ministerial officers  
 "Provided that the Local Government may, by notification in the local official Gazette delegate to the High Court its powers under this section"

(2) The District Judge may transfer a ministerial officer from any such Court within the local limits of his jurisdiction to any other such Court within those limits.

35 Any fine imposed under this Chapter may be recovered by deduction from the salary  
 Recovery of fines of the person fined.

## CHAPTER VII

### SUPPLEMENTAL PROVISIONS

36 (1) The Local Government may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—  
 Power to confer of Civil Courts on officers

(a) any officer in the Chutia Nagpore, Sambalpoore, Julpur, or Darjeeling District, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Silhat, or,

(b) after consultation with the High Court any officer serving in any other part of the territories to which this Act extends, and belonging to a class defined in this behalf by the Local Government†

(2) Nothing in sections 4 to 8 (both inclusive) or sections 10 to 12 (both inclusive) or sections 27 to 35 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of subsection (1) the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction

37 (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession to native law  
 Certain decisions to be according to native law

law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished

(2) In cases not provided for by sub-section (1), or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience

\* Added by Act IV of 1914

† Certain words after this have been omitted by Act 35 of 1900

Judges not to try suits in which they are interested 38. (1) This presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity

(3) When any such suit, proceeding, or appeal as is referred to in sub-section (1) or sub-section (2), comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25 of the Code of Civil Procedure

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

39 For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge

Application of Act to Provincial Courts of Small Causes 40. (1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts

### APPENDIX XIII.

## BOMBAY CIVIL COURTS ACT 1869 \*

### ACT XIV OF 1869

RECEIVED THE G G'S ASSENT ON THE 19TH MARCH, 1869

*An Act to consolidate and amend the law relating to the District and Subordinate to Civil Courts in the Presidency of Bombay*

WHEREAS it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay; It is hereby enacted

Preamble

as follows —

### PART I.

#### PRELIMINARY

1. This Act may be called "The Bombay Civil Court's Act, 1869," and extends only to the territories (other than Sindh)\* under the government of the Governor of Bombay in Council in which the Code of

Short title  
Extent

Civil Procedure is now in force.

But the Governor of Bombay in Council may, by notification in the Government Gazette, extend this Act to any other of the territories under such Government in which the said Code is not in force, or to Sindh.\*

2. [Repealed by Act XIV of 1870]

\* Sections 3, 4, 12 to 20, 23, 32, 35 to 37, 40 and 43 have since been extended to the Province of Sindh by notifications under the Scheduled Districts Act (XIV. of 1874)

## PART II

## DISTRICT AND SADAR STATION.

3\* The Governor of Bombay in Council may, from time to time, by  
 Alteration and creation of districts Gazette, alter  
 shall hereafter  
 ew district for  
 the purposes of this Act

4 The Governor of Bombay in Council may also, from time to time, by  
 Position of sadar station notification in the Government Gazette, alter  
 the position of the sadar station in any district,  
 and fix the position of the sadar station in any new district

## PART III.

## DISTRICT COURTS

5 There shall be in each district a District Court presided over by a  
 District Judges Judge to be called the District Judge He shall  
 be appointed by the Governor of Bombay in  
 Council by whose authority only he shall be liable to be suspended or re-  
 moved from his appointment.

6 The District Judge shall ordinarily hold the District Court at the sadar  
 Situation of District Court station in his district, but may with the pre-  
 vious sanction of the High Court, hold it else-  
 where within the district

7 The District Court shall be the principal  
 Court of original civil jurisdiction in the dis-  
 trict, within the meaning of the Code of Civil  
 Procedure

8 Except as provided in sections 16, 17, and 26, the District Court shall  
 His appellate jurisdiction be the Court of Appeal from all decrees and  
 orders passed by the subordinate Courts from  
 which an appeal lies under any law for the time being in force.

## NOTES

Vide 13 Bom L R. 158, 12 B 675

9 The District Judge shall have general control over all the Civil courts  
 Control and inspection of Courts and their establishment within the district, and  
*it shall be his duty to inspect or to cause one*  
*of his assistants to inspect the proceedings*  
 of all the Courts subordinate to him, and to give such directions with  
 respect to matters not provided for by law as he may think necessary

The District Judge shall also refer to the High Court all such matters  
 as appear to him to require that a rule of that Court should be made  
 thereon

10 The District Judge shall obey all writs, orders, or processes issued  
 Writs and orders to him by the High Court, and shall make such  
 returns or reports thereto under his signature  
 and the seal of the Court as the exigencies of the case require

He shall further furnish such reports, and returns and copies of proceed-  
 Reports and returns ings as may be called for by the High Court or  
 the Governor of Bombay in Council

\* Sections 3, 4, 12 to 20, 23, 32, 35 to 37, 40, and 43 have since been extended to  
 the Province of Sindh by notifications under the Scheduled Districts Act (XIV,  
 of 1874)

11 The District Judge shall use a circular seal, two inches in diameter which shall bear thereon the Royal Arms with the following inscription in English and the principal language of the district—"District Court of"

#### PART IV.

##### JOINT JUDGES.

12 The Governor of Bombay in Council may,\* appoint in any district a Joint Judge, who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits, and shall transact such civil business only as he may receive from the District Judge or as may have been referred to the Joint Judge by order of the High Court.\*

13. All Regulations and Acts now or hereafter in force, and applying to a District Judge, shall be deemed to apply also to the Joint Judge, and the seal of the Joint Judge shall be the same as is used by the District Judge

#### PART V.

##### ASSISTANT JUDGES.

14 The Governor of Bombay in Council, under the general control of the Governor General of India in Council, may appoint one or more assistants to be District Judges, and may suspend or remove from his appointment any assistant so appointed

15 An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the District, whenever the District Judge shall, with the previous sanction of the High Court direct him so to do

16 The District Judge may refer to any Assistant Judge Subordinate to him original suits of which the subject matter does not amount to 10,000 rupees in amount or value, and miscellaneous applications not being

such suits and to

cases are appeal  
to the Court according  
to or exceeds 5,000

rupees †

The Assistant Judge shall when directed by the District Judge so to do, also take evidence on application for certificates under Act No XX of 1864 (for making better provision for the care of the person and property of minors in the Presidency of Bombay), and shall forward it with his opinion thereon for the final orders of the District Judge

\* Here certain words repealed by Bom Act I of 1910 have been omitted

† In s 16, the last paragraph, as originally enacted has been omitted, a portion of it having been repealed by Act VII of 1889, and the remaining portion by Act VIII of 1890.

Notes—Vide 16 B 277 33 B 371, 32 B 634

17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the Subordinate Courts as would lie to the District Judge, and as may be referred by him to the Assistant Judge

Decrees and orders passed under this section by an Assistant Judge shall have the same force, and shall be subject to the same rules, as regards procedure and appeals, as decrees and orders passed by the District Judge

### NOTE

15 B 107

18 A person filling the office of Assistant Judge, on whom the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge, without reference to the district in which he may be employed, provided that the Governor of Bombay in Council may by notification in the Government Gazette, at any time withdraw such power.

19. The Governor of Bombay in Council may by notification in the Government Gazette invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district and may, by like notification from time to time determine and alter the limits of such part

The jurisdiction of an assistant Judge so invested shall *protanto*, exclude the jurisdiction of the District Judge from within the said limits

Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits

20 Every Assistant Judge shall use the seal of the District Judge to whom he is assistant

## PART VI

### SUBORDINATE JUDGES

21. There shall be in each district so many Civil Courts subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor General of India in Council, shall, from time to time, direct

22 The Judges of such subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

No person shall be appointed a Subordinate Judge unless he be a subject of the Queen who has practised "three" years as an advocate of a High Court in India or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such

\* The word within quotations has been inserted by Bom Act V of 1912

test as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of laws in the University of Bombay

The tests so prescribed by the High Court shall be notified in the Government Gazette.

NOTE—8 Bom. L. R. 576.

22A. \* The Governor-General in Council may, by notification in the official Gazette, fix, and by a like notification, from time to time alter the local limits of the ordinary jurisdiction of the Subordinate Judges.

23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may, from time to time, appoint within the local limits of their respective jurisdictions

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall sit in each Court.

The District Judge shall sit in each Court; and in the case of one subordinate Court; the control of the High Court, which the Subordinate Judge shall sit in each Court.

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file.

#### NOTE

Vide—1 B 548 12 B. 155, 13 Bom L R 251, 11 Bom L R. 1352

Classes of Subordinate Judges 24 The Subordinate Judges shall be of two classes

Jurisdiction of subordinate Judge of first class The jurisdiction of a subordinate Judge of the first class extends to all original suit and proceedings of a civil nature

Jurisdiction of Subordinate Judge of second class The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value, five thousand rupees

25. A subordinate Judge of the first Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject matter exceeds five thousand rupees in amount or value as may arise within the local jurisdictions of the Courts in the district prescribed over by Subordinate Judges of the second class.

hav  
Court, shall exercise the local limits within which his said special jurisdiction is to be exercised.



## NOTE

8B 31

26 In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original jurisdiction, of which the amount or value of the subject matter exceeds 5 000 rupees, the appeal from his decision shall be direct to the High Court

## NOTE

22B 963, 20B 265

27, The Governor of Bombay in Council may invest any Subordinate Judge of the first class with power to hear appeals from such decrees and orders of subordinate Courts as may be referred to him by the Judge of the district

Decrees and orders so passed in appeal by a subordinate Judge of the first class shall have the same force as if passed by a District Judge

The Governor of Bombay in Council may whenever he thinks fit with draw such jurisdiction from any Subordinate Judge so invested

28 The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognisable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees

The Governor of Bombay in Council may, whenever he thinks fit, with draw such jurisdiction from any Subordinate Judge so invested

## NOTE

12 B 486, 14 B 371

28A\* (1) The High Court may by general or special order invest any Subordinate Judge within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908

(2) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under sub section (1) shall be subject to appeal to the High Court or the District Court according as the amount or value or the subject matter exceeds or does not exceed five thousand rupees

(3) Every order of the District Judge passed on appeal under sub section (2) from the order of a Subordinate Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees

29 Each Subordinate Judge shall use a seal one inch and a half in diameter, bearing the Royal Crown with the following inscription in English and the principal language of the District— Subordinate Judge of "

30 31 [First Subordinate Judge, pending proceedings [Repealed by Act XII of 1876]

\* Section 28A has been added by Bom. Act 5 of 1912

test as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of laws in the University of Bombay

The tests so prescribed by the High Court shall be notified in the Government Gazette.

NOTE—8 Bom. L. R. 576

**22A \*** The Governor General in Council may, by notification in the official Gazettee, fix, and by a like notification, from time to time alter the local limits of the ordinary jurisdiction of the Subordinate Judges.\*

**23** The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may, from time to time, appoint within the local limits of their respective jurisdictions

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause days to be duly notified throughout the local limits of his jurisdiction

The same person may be the Judge of more than one subordinate Court, and in such cases the District Judge shall subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file

NOTE

V le—I B 538 12B 155 13 Bom L R 251 11 Bom L R. 1352

**24** The Subordinate Judges shall be of two classes

The Jurisdiction of a subordinate Judge of the first class extends to all original suit and proceedings of a civil nature

The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value, five thousand rupees

**25** A subordinate Judge of the first Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject matter exceeds five thousand rupees in amount or value as may arise within the local jurisdictions of the Courts in the district prescribed over by Subordinate Judges of the second class.

In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised

## NOTE.

8B 31

26 In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original Appeals from his decision jurisdiction, of which the amount or value of the subject matter exceeds 5,000 rupees, the appeal from his decision shall be direct to the High Court

## NOTE.

22B 963, 20B. 265

27, The Governor of Bombay in Council may invest any Subordinate Judge of the first class with power to hear Appellate jurisdiction of Subordinate Judge of first class appeals from such decrees and orders of subordinate Courts as may be referred to him by the Judge of the district

Decrees and orders so passed in appeal by a subordinate Judge of the first class shall have the same force as if passed by a District Judge.

The Governor of Bombay in Council may, whenever he thinks fit, with draw such jurisdiction from any Subordinate Judge so invested

28 The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint, any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes, for the trial of suits cognisable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees

The Governor of Bombay in Council may, whenever he thinks fit, with draw such jurisdiction from any Subordinate Judge so invested

## NOTE

12 B 486, 14 B. 371

28A\* (1) The High Court may by general or special order invest any Subordinate Judge within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908

(2) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under sub section (1) shall be subject to appeal to the High Court or the District Court according as the amount or value or the subject matter exceeds or does not exceed five thousand rupees

(3) Every order of the District Judge passed on appeal under sub-section (2) from the order of a Subordinate Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees

29 Each Subordinate Judge shall use a seal one inch and a half in diameter, bearing the Royal Crown with the following inscription in English and the principal language of the District—"Subordinate Judge of"

30, 31 [First Subordinate Judge, pending proceedings [Repealed by Act XII of 1876.

\* Section 28 A has been added by Bom Act 5 of 1912

**32** No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but, in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted.\*

Proviso because— † "Provided that nothing in this section shall be deemed to apply to any suit merely

'(a) a municipal corporation constituted under Bombay Act No VI. of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or

"(b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph,† is, in virtue of such appointment,† a party to such suit."

"or

§(c) an officer of Government—

(i) who has been declared or appointed to be the sole member or one of a Board constituting a Court of Wards, or

(ii) to whom all or any of the powers of a Court of Wards have been delegated, or

(iii) through whom all or any of the powers of a Court of Wards are exercised, or

(iv) who has been appointed a manager of the property of a Government Ward, or

(v) who has been appointed a guardian of the person of a Government Ward or

(vi) who has been appointed a guardian of the person or property, or both of a minor, under section 3, sub section (1) of section 19, sub section (2) of section 19, section 20, sub section (1) of section 22, or sub-section (1) of section 41, respectively, of the Bombay Court of Wards Act, 1905 is in virtue of such declaration, appointment delegation or exercise of powers a party to such suit †§

#### *Removal or Suspension.*

**33** Whenever the High Court is of opinion that there are good grounds for making a formal and public enquiry into the truth of any imputation or misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an enquiry, and, on the receipt of his or their report, may order that the Subordinate Judge be removed or suspended from office or reduced to a lower class

The provisions of Act No XXXVII of 1840 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court

\* This section, substituted by Act X of 1876, s 15, is printed here

† This proviso has been added to this section by Act XV of 1880 s 3

‡ In s 37 proviso cl (b), certain words, repealed by Act XII of 1891, have here been omitted

§ The words within quotations have been added by Bom Act 5 of 1914

Suspension of Subordinate Judges by High Court or by District Judge

34 The High Court may suspend any Subordinate Judge from office pending the result of an enquiry into his behaviour under this section

Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But, whenever the District Judge suspends any such Subordinate Judge, he shall forthwith report the case for the orders of the High Court

Saving of power of Government to suspend or dismiss

Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend, or remove from office, any Subordinate Judge at their discretion

## PART VII

### TEMPORARY VACANCIES

35 In the event of the death of the District Judge, or of his being prevented from performing his duties by illness or other casualty or of his absence from his district on leave, the first in rank of the Assistant Judges in the district or, in the absence from the district of an Assistant Judge, the first in rank of the Subordinate Judges shall assume charge of the District Court without interruption to his ordinary jurisdiction and while so in charge shall perform the duties of a District Judge with respect to the filing of suits and appeals, receiving pleadings execution of processes, return of writs and the like and shall be designated Assistant Judge or Subordinate Judge as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto

36 Any District Judge leaving the Sadar station, and proceeding on duty to any place within his district, may delegate to an Assistant judge, or, in the absence of an Assistant Judge, to a Subordinate Judge at the sadar station, the power of performing such of the duties enumerated in section 35 as may be emergent and such officer shall be designated Assistant or Subordinate Judge as the case may be, in charge of the sadar station

37 In the event of the death, suspension or temporary absence of any Subordinate Judge, the District Judge may empower the Judge, of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court, or of his own Court, but in every such case the registers and records of the two Courts shall be kept distinct

## PART VII

### MINISTERIAL OFFICERS

38 All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended, or dismissed, by the District Judge subject to such rules as the High Court may from time to time prescribe

Provided that the Judge of every subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do

not exceed rupees ten per mensem, and may by order fine, suspend, or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office

Every such order shall be subject to appeal to the District Judge, and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being

39 The duties of the said ministerial officers shall be regulated by such rules as the High Court may, from time to time, prescribe

40 The Governor of Bombay in Council may, under the general control of the Governor General of India in Council, appoint to any Civil Court under this Act a Clerk of the Court who, in addition to such duties as may, from time to time be prescribed by the High Court may receive and register plaints and shall refer such as he may consider should be refused for the orders of the Judge of the Court and may sign all processes, and authenticate copies of papers

## PART IX

### MISCELLANEOUS

41 The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may from time to time prescribe The High Court shall also lay down rules under which copies of papers may be granted

42 The High Court shall from time to time with the sanction of the Governor of Bombay in Council, prescribe and regulate the fees to be taken for any process issued by any Court the constitution of which is declared by this Act, or by any officer of such Court

Tables of fees so prescribed shall be published in the Government Gazette

43 The District and subordinate Courts shall sit from day to day, except on Sundays New Years Day Good Friday Christmas Day, and Her Majestys Birth Day, and such other days as may be sanctioned for each or every district by the High Court

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding in the whole six weeks in each year

## SCHEDULE

[Repealed by Act 16 of 1870]

# APPENDIX XIV.

## THE MADRAS CIVIL COURTS ACT, 1873

### ACT NO III OF 1873.\*

[RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE  
21ST JANUARY, 1873]

*An Act to consolidate and amend the law relating to the Civil Courts  
of the Madras Presidency Subordinate to the High Court*

WHEREAS it is expedient to consolidate and amend the law relating to  
the Civil Courts of the Madras Presidency  
subordinate to the High Court, It is hereby  
enacted as follows. —

#### PART I

##### PRELIMINARY.

Short title

1 This Act may be called the Madras  
Civil Courts Act, 1873.

It extends to all the territories for the time being under the Government  
of the Governor of Fort St George in Council,

Local extent

except the tracts respectively under the juris-  
diction of the Agents for Ganjam and Vizagapatam,

Commencement

and it shall come into force on the first  
day of March, 1873

2 [Repeal of certain enactments] Repealed by the Repealing Act, 1873  
(XII of 1873).

#### PART II.

##### ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS

3 The number of District (heretofore de-  
Number of District Courts signated Zila) Courts to be established or con-  
tinued under this Act, shall be fixed, and may from time to time be altered,  
by the Local Government :

† [ \* \* \* \* \* ]

† [3 A. When in the opinion of the

Appointing of Additional (hereinaf  
District Judges quires, the  
or more Additional District Judges to  
deem necessary.

The Additional District Judges so appointed shall discharge all or any of  
the functions of the District Judge under this Act or any other law for the  
time being in force which the District Judge may assign to them, and, in the

\* For Statement of Objects and Reasons, see *Gazette of India*, 1873 Pt. V. p. 173 ;  
for report of the Select Committee, see *ibid.*, 1872, Pt. V. p. 695, for Proceedings in  
Council relating to the Bill, see *ibid.*, Supplement, 1870 p. 900, and 1873, pp. 3,  
16 and 153

† mad in C all be eneral t. l. (ment)  
Act (Madras Act II of 1931)

discharge of those functions, they shall exercise the same powers as the District Judge]

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each District, shall be fixed, and may from time to time be altered, by the Local Government

\* { \* \* \* \* }

† The Local Government may, after consultation with the High Court, fix and from time to time vary by notification the number of Subordinate Judges to be appointed for a Subordinate Judge's Court or the number of District Munsifs to be appointed for a District Munsif's Court]

‡ [4-A. When more than one Subordinate Judge is appointed to a Subordinate Judge's Court or more than one District Munsif to a District Munsif's Court, one of the Subordinate Judges or the District Munsifs shall be appointed the Principal Subordinate Judge or Principal District Munsif and the others Additional Subordinate Judges or Additional District Munsifs as the case may be

Each of the Judges appointed to a Subordinate Judge's Court or a District Munsif's Court may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force

Subject to the general or special orders of the District Judge, the principal Subordinate Judge or the Principal District Munsif may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof]

5 The place at which any Court under this Act shall be held may be fixed, and may from time to time be altered,

in the case of a District Court or a Subordinate Judge's Court, by the Local Government,

in the case of a District Munsif's Court, by the High Court

§ [The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court]

6 Whenever the office of [a District Judge] or of a Subordinate Judge under this Act is vacant,

Appointment to vacancy in office of District Judge or Subordinate Judge

¶ { \* \* \* \* }

the Local Government shall appoint to the office such duly qualified person as it thinks proper

such officers shall be the Governor General in

† This paragraph was added by section 2 of the Madras Civil Courts (Amendment) Act 1925 (Madras Act III of 1925)

‡ Section 4 A was inserted by section 3 ibid



7. Whenever the office of District Appointment to vacancy in office of District Munsif Munsif under this Act is vacant.

\* [ \* \* \* \* \*

the High Court shall appoint to the office of such person as it thinks fit.

Provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

Every appointment made under this section shall be published Publication of appointments in the same manner as appointment made by the Local Government

The Local Government may, for good and sufficient reason, annul Annulment of appointment any appointment made under this Section.

8 The present Zila Courts, Principal Sadar Amins, and District District Courts, Subordinate Courts, shall be respectively the first "District Judges, and District Munsifs Courts," "Subordinate Judges," and "District Munsifs" under this Act

9. Every Court under this Act shall use a seal of such form and Seal of Court dimensions as are, for the time being, prescribed by the Local Government

### PART III

#### JURISDICTION

10 The Local Government shall fix, Local limits of jurisdiction of District Court or Subordinate Judge and may from time to time vary, the local limits of the jurisdiction of any [District Court or Subordinate Judge's Court] under this Act

† [ \* \* \* \* \*

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act

11. The High Court shall fix, and may Local jurisdiction of District Munsifs from time to time modify, the local jurisdiction of District Munsifs

§ [ \* \* \* \* \*

12 The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature Jurisdiction of District Judge or Subordinate Judge in original suits

\* The orders, whenever the Government General in Council has sanctioned an under the provisions of section 4 were

ords District Judge or Subordinate Courts (Amendment) Act, 1925 (Madras Act III of 1925)

† The proviso to section 10 was omitted by section 4 (b) ibid

§ The second paragraph of section 11 which was added by section 3 of the Madras Civil Courts Act, 1885 (XVI of 1885) was omitted by section 5 ibid

|| XIV of 1882

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed \* [three

Jurisdiction of District Munsif

thousand] rupees.

13 Regular or special appeals, † [ . . . ] shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from decrees of District Courts.

Appeals from the decrees and orders of Subordinate Judges and District

Appellate jurisdiction of District Court

suit exceeds rupees five thousand in which case the appeal shall lie to the High Court ]

Provided that, whenever a Subordinate Judge's Court is established in any District at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter .

Provided also, that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the District

‡ [14 When the subject matter of the appeal is a house or other immovable property, the valuation shall be fixed in manner provided by the Court Fees Act, 1870, Section 7, Clause v ]

Valuation of suits for immovable property

15 Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force

Power to require witness or party to make oath or affirmation

16. Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution

Law administered by Courts to Natives

- (a) the Muhammadan law in cases where the parties are Muhammadans and the Hindu law in cases where the parties are Hindus, or,
  - (b) any custom (if such there be) having the force of law and governing the parties or property concerned,
- shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished

\* These words were substituted for the words "two thousand five hundred" by section 2 of the Madras Civil Courts (Amendment) Act, 1916 (Madras Act III of 1916)

(c) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience

**17** No District Judge, Subordinate Judge or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit

Judges not to try suits in which they are interested  
nor to try appeals from decrees passed by them in other capacities

No District Judge or Subordinate Judge, shall try any appeal against a decree or order passed by himself in another capacity

When any such suit, proceeding or appeal comes before any such officer he shall report the circumstances to the Court, to which he is immediately subordinate.

Mode of disposing of such suits and appeals

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, Section 6 \*

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court

#### PART IV

##### MISCONDUCT OF JUDGES

**18** Any District Judge, Subordinate Judge, or District Munsif may, for any misconduct, be suspended or removed by the Local Government

Suspension of Judge by Local Government

**19** The High Court may, whenever it sees urgent necessity for so doing suspend a Subordinate Judge pending the orders of the Local Government

Suspension of Subordinate Judge by High Court

The High Court shall immediately report the circumstances of such suspension, and the Local Government shall make such order thereon as it thinks fit.

**20** The High Court may suspend any District Munsif who is alleged to have misconducted himself, or may appoint a Commission for inquiring into his alleged misconduct.

Suspension of District Munsif by High Court Commission of Inquiry

The provisions of Act No XXXVII of 1850

Exercise by High Court of powers conferred on Government by Act XXXVII of 1850

Act on the Government being exercised by the High Court.

the result of any such inquiry, the High Court may remove the Munsif from office, or suspend him or

**21** The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

Suspension of District Munsif by District Judge

\* See now section 24 of the Code of Civil Procedure 1908 (Act V of 1908)  
† The Act has since been amended by the Public Servants (Inquiries) Act, (1850) Amendment Act, 1897 (1 of 1897)

Report to High Court

Whenever \* [the District Judge] exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

## PART V.

### MINISTERIAL OFFICERS

Appointment suspension or removal of Ministerial Officers of District Courts

control of the High Court] be final

22 The Ministerial Officers of † [a District Court] shall be appointed, and may be suspended or removed, by ‡ [the District Judge], whose orders in such matters shall § [subject to the

order in such matter shall, subject to the control of the District Judge and the High Court, be final]

24 Every appointment under this Part shall be made subject to such rules as the Local Government from time to time prescribes on this behalf.

Duties of Ministerial Officers

officer of the Court to which he belongs

Present Ministerial Officers appointed under this Part

Transfer of Ministerial Officers

any other such Court

(2) The District Judge may transfer all or any of the Ministerial Officers of any Civil Court under his control to any other such Court]

## PART VI

### MISCELLANEOUS

Temporary discharge of duties of District Judge

25 In the event of the death of the District Judge,

\* The words 'the District Judge' were substituted for the words 'a District Judge' by section 4 of the Madras Civil Courts (Amendment) Act (Madras Act II

words 'the District

words 'the Judges of

of Courts Act 1885

6 of the Madras

the Decentraliza

or of his being incapacitated by illness or otherwise for the performance of his duties.

or of his absence from the station in which his Court is held,

\*[the Senior Additional District Judge or the Additional District Judge as the case may be or if there is no Additional District Judge] the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's Office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto

26 The District Judge, on the occurrence within his district of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office,

and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any district is vested in the District Judge

Investiture of Subordinate Judge with Small Cause jurisdiction 28 The [High Court] may, by notification in the official Gazette, invest within such local limits as it shall from time to time appoint

any [District or] Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees \$ [one thousand]

Investiture of District Munsif with similar jurisdiction and any District Munsif with the same jurisdiction up to the amount of || [ . ] rupees ¶ [three hundred],

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the ‡ [District or] Subordinate Judge or Munsif so invested

Exercise by subordinate Judge of jurisdiction of District Judge in certain proceedings † [29 (1) The High Court may, by general or special order, authorize any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control, any proceedings

Madras Civil Courts (Amendment)

the words "Local Government"

Pt I

Madras Civil Courts Act, 1885

section 2 of the  
|| The words

words "two hundred" by  
19.6 (XIII of 1961)  
of Courts (Amendment-1)

Act, 19.6 (XIV of 1961)

under the Indian Succession Act, 1925,\* which cannot be disposed of by District Delegates

(2) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them

(3) Notwithstanding anything contained in section 13 proceedings taken cognizance of by, or transferred to, a Subordinate judge under the provision of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge]

Vacation

30 The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.

## SCHEDULE

### ENACTMENTS REPEALED

*[Repealed by the Repealing Act, 1878 (XII of 1873).]*

## THE INDIAN COMPANIES ACT, 1913

### ACT NO VII OF 1913

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# THE INDIAN COMPANIES ACT, 1913.

## ACT NO VII OF 1913.

(RECEIVED THE G-G'S ASSENT ON THE 27TH MARCH, 1913.)

*An Act to consolidate and amend the law relating to Trading Companies and other Associations.*

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other associations; It is hereby enacted as follows:—

of the English Act *Vide Thodapuzha v. Registrar*, 42 Ind. Cas. 674=41 M. 307; see also 10 B. 211; 54 P. R. 1915; 7 B. 494; 18 Ind. Cas. 997. The Companies Act is an Act merely legislating for or regulating certain rights recognized under the common law in England. 111 Ind. Cas. 225=A. I R 1928 Mad 571=1928 M. W. N. 442. Where a company duly incorporated under the Indian Companies Act, the presumption is that it is a separate entity for any individual although that individual may practically hold all the

partnership; incorporated by special Act, (4) Co operative Societies, (5) Provident Societies, (6) Trade Unions and (7) limited partnerships—*Vide Palmer's Company Law* p 1.

**Partnership**—"The word partnership would apply to a body of persons, which cannot change its members or introduce new members without the consent of all the partners. "As between the partners and the outside world, whatever may be the partners' private arrangements between themselves, each partner is the unlimited agent of every other in every matter connected with the partnership business, or which he represents as partnership business, at the scope of the partnership. A partner who may take moneys or assets of the partnership to partnership by contracts to any amount, and may give as security acceptances for any amount and may, even, as has been shown in many painful instances in this Court, involve his innocent partners in unlimited amounts for fraud which he has craftily concealed from them. *Per Lord Justice James, in Bairds' Case*, 5 Ch. 725.

**Origin of Companies Act**—The Statute 7 & 8 Vict. c. 110, 1844 was the first Statute under which companies could be incorporated. As regards that Act, *Lord Cranworth* said in *Oakes v Turquand*, L. R. 2 H L at p 358. "When it became the habit and interest of persons engaged in commerce to unite in great numbers for carrying on any particular trade, it soon became evident that the ordinary provisions of the laws of this country were ill adapted to the business of such bodies. It is a general principle of mercantile law, that when two or more persons are associated in partnership for carrying on a trade, every partner can bind his co partners in all contracts made in the ordinary course

re engaged in any particular body, that principle become as a principle for our Courts the partners must either as But when numerous mem- persons, were concerned as partners, this rule would, if adhered to, have made litigation practically impossible, and would often have amounted to a denial of justice."

**Consolidate**—The following rule is laid down by *Lord Herschell* in construing a Consolidating Act: "I think the proper course is, in the first instance, to examine the language of the Statute, and to ask, what is its natural meaning uninfluenced by

any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute intended to embody in a Code a particular branch of the law is to be treated in this fashion it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a Statute surely was that on any points specifically dealt with by it, the law should be ascertained by interpreting the language used instead of as before, by roaming over a vast number of authorities in order to discover what the law was—extracting it by a minute critical examination of the prior decisions dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course, far from ascertaining that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example a provision be of doubtful import such

Code of the law of negotiable

acquired a technical meaning

in relation to such instruments, the same interpretation might well be put upon them in the Code. I take these as examples merely, they, of course, do not exhaust the category. What, however, I am venturing to insist upon is that the first step taken should be to interpret the language of the Statute, and that an appeal to earlier decisions can only be justified on some special ground. *Bank of England v. Vagliano* (1891) A C 144. In *Mersey Dock Case* 11 H L C 443. *Blackburn J* said: "Where an Act of Parliament has received a judicial construction putting a certain meaning on its words and the legislature in a subsequent Act in *pari materia*, uses the same words there is a presumption that the legislature uses these words intending to express the meaning which it knew has been put upon the same words before and unless there is something to rebut that presumption the Act should be so construed even if the words were such that they might originally have been construed otherwise." See also 5 Ch 703 (1891) 3 Ch 115, 14 Ch D 571 (1904) 2 K B 859.

## PART I

### PRELIMINARY.

Short title, commencement  
and to extent

1 (1) This Act\* may be called the Indian  
Companies Act, 1913

(2) It shall come into force on the first day of April, 1914; and

(3) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

Definitions

2 In this Act, unless there is anything  
repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution including so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to Act No XIX of 1857 or in the Table A in the First Schedule annexed to the Indian Companies Act, 1882,\* or in Table A in the First Schedule annexed to this Act

(2) "company" means a company formed and registered under this Act or an existing company

(3) 'the Court' means the Court having jurisdiction under this Act.

re stock

occupying the position of a director by

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866,\* or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882.†

(8) "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses.

person occupying the position of a manager  
ther under a contract of service or not  
the memorandum of association of a company  
as originally framed or as altered in pursuance of the provisions of this Act.

(11) "officer" includes any director, manager or secretary but, save in sections 235, 236 and 237, does not include an auditor.

(12) "prescribed" means, as respects the provisions of the Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the Governor-General in Council.

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and

(ii) continues to observe such restrictions, limitations and prohibitions.

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member.

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

(15) "the registrar" means a registrar or assistant registrar performing under the Act the duty of registration of companies, and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

**Auditor**—Auditor deliberately passing over manifest illegal payment is guilty of misfeasance. A I R 1929 All 826=121 Ind Cas 693. Auditors appointed at general Meeting but not mentioned as officers in the Articles of Association were not entitled to indemnity though article dealing with the conduct of business provided for indemnity to officers because company suffered loss through neglect of the auditors. *Ibid*.

**Court**—Orders under the Act must be passed by the Court having jurisdiction under the Act, 35 C W N 299=58 C 913=133 Ind Cas 566.

**Directors**—Owing to the size of most companies, it is impracticable for the business to be carried on by the share holders and consequently the duty of delegated to a select governing body of directors. A person having the powers ver he be called be in the same position *offices* (1907) 2 Ch 418 cited in *Stedel* may be a director or the sole director of (1907) 2 Ch 458. As to who can and Cas 595.

**Manager**.—A manager is one who has of the company, not an agent who is to obey orders but a person who is entrusted

affairs of the company' *Per Blackburn J in Gibson v Barton* (1875) 10 Q B 329  
A person in charge of the business of a branch of a bank therefore, does not come within the purview of the term 'Manager' *Basant Lal v Emperor*, 43 Ind Cas 791

**Prospectus**—It is a document which invites persons to take shares in the company, and sets forth the advantages of the company *Stiebel* p 211 An advertisement is a prospectus *Pramatha v Kali* 52 C 440=29 C W N 523=88 Ind Cas 5 (2)

3 (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate

Provided that the Local Government may, by notification in the local official Gazette and subject to such restrictions and conditions as it thinks fit empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred be the Court in respect of all companies having their registered offices in the district

(2) For the purposes of jurisdiction to wind up companies the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court

**District Court.**—S 284 is wide enough to preserve the existing jurisdiction of District Courts over cases which began before the commencement of this Act *Daniel v Liquidators* 20 P R 1915=29 Ind Cas 272

app. High Courts and is  
orig. Courts having no  
orig. d be made to the  
the company may  
be situate 29 C W N 403=86 Ind Cas 833=53 C 586 Not the Allahabad  
High Court but the Chief Commissioner of Ajmere and Merwar is the High Court  
for the purposes of Companies Act for places within its jurisdiction 96 Ind Cas 753

**Clause (3)**—Clause (3) does not apply when objection to jurisdiction is taken at the very commencement and at the proper time 57 M L J 723=53 M 147=1929 M W N 879=A I R 1930 Mad 74

## PART II.

### CONSTITUTION AND INCORPORATION

4 (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or of Royal Charter or Letters Patent

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof unless it is registered as a company under this Act or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council or of Royal Charter or Letters Patent

**Company**—The words company and 'association' are synonymous *Singh v Anderson*, 15 Ch D 247 To constitute an association within the meaning of this section, it is absolutely necessary that there should be between more than twenty persons so associated a legal relation giving rise to joint and mutual rights and

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866,\* or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 †

(8) "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses

(9) "manager," includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act

(11) "officer" includes any director, manager or secretary but, save in sections 235, 236 and 237, does not include an auditor

(12) "prescribed" means, as respects the provisions of the Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the Governor General in Council

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares, and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty, and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company and

(ii) continues to observe such restrictions limitations and prohibitions

Provided that where two or more persons hold one or more shares in a company jointly they shall for the purposes of this definition, be considered as a single member

(14) "prospectus" means any prospectus notice circular advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company

(15) the registrar means a registrar or assistant registrar performing under the Act the duty of registration of companies and

(16) share means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied

**Auditor**—Auditor deliberately passing over manifest illegal payment is guilty of misfeasance A I R 1929 All 826—121 Ind Cas 693 Auditors appointed at general Meeting but not mentioned as officers in the Articles of Association were not entitled to indemnity though article dealing with the conduct of business provided for indemnity to officers because company suffered loss through neglect of the auditors *Ibid*

**Court**—Orders under the Act must be passed by the Court having jurisdiction under the Act 35 C W N 299=58 C 913=133 Ind Cas 566

**Directors**—Owing to the size of most companies it is impracticable for the business to be carried on by the shareholders and consequently the duty of managing the affairs of the company is delegated to a select governing body consisting of persons usually called directors. A person having the powers ordinarily conferred on a director will whatever he be called be in the same position as a director *Bullways Market and Offices* (1907) 2 Ch 458 cited in *Stiebel Company Law* p 333. A limited company may be a director or the sole director of another company if it has the requisite power (1907) 2 Ch 458. As to who can challenge appointment of director vide 31 Ind Cas 595

**Manager**—A manager is one who has the management of the whole affairs of the company, not an agent who is to do a particular thing or a servant who is to obey orders but a person who is entrusted with power to transact the whole of the

\* Act X of 1866

† Act VI 1882



affairs of the company \* *Per Blackburn J in Gibson v Byron* (1875) 10 Q B 329  
A person in charge of the business of a branch of a bank, therefore, does not come  
within the purview of the term "Manager" *Basant Lal v Emperor*, 43 Ind  
Cas 791

Prospectus — It is a document which invites persons to take shares in the com-  
pany, and sets forth the advantages of the company *Stiebel* p 211 An advertise-  
ment is a prospectus *Pramatha v Kuli*, 53 C 440 = 29 C W N 523 = 88 Ind  
Cas 5 (2)

3 (1) The Court having jurisdiction under this Act shall be the High Court  
having jurisdiction in the place at which the  
Jurisdiction of the Courts registered office of the company is situate

Provided that the Local Government may, by notification in the local  
official Gazette and subject to such restrictions and conditions as it thinks fit,  
empower any District Court to exercise all or any of the jurisdiction by this  
Act conferred upon the Court, and in that case such District Court shall, as  
regards the jurisdiction so conferred be the Court in respect of all companies  
having their registered offices in the district

(2) For the purposes of jurisdiction to wind up companies, the expression  
"registered office" means the place which has longest been the registered  
office of the company during the six months immediately preceding the pre-  
sentation of the petition for winding up

(3) Nothing in this section shall invalidate a proceeding by reason of its  
being taken in a wrong Court

District Court — S 284 is wide enough to preserve the existing jurisdiction of  
District Courts over cases which began before the commencement of this Act  
*Daniel v Liquidators* 20 P R 1915 = 29 Ind Cas 27

High Court — is intended to include all the sates of the High Courts and is  
applicable to High Courts having original side as well as to High Courts having no  
original side 29 C W N 403 In Bengal an application should be made to the  
original side of the office of the company may  
be situate 29 C 586 Not the Allahabad  
High Court but Merwar is the High Court  
for the purposes of Companies Act for places within its jurisdiction 96 Ind Cas 753

Clause (3) — Clause (3) does not apply when objection to jurisdiction is taken  
at the very commencement and at the proper time 57 M L J 723 = 53 M 147 =  
1929 M W N 879 = A I R 1930 Mad 74

## PART II

### CONSTITUTION AND INCORPORATION

4 (1) No company, association or partnership consisting of more than  
ten persons shall be formed for the purpose of  
Prohibition of partnerships carrying on the business of banking unless it is  
exceeding certain number registered as a company under this Act, or is  
formed in pursuance of an Act of Parliament or some other Act of the Governor  
General in Council, or of Royal Charter or Letters Patent

(2) No company, association or partnership consisting of more than twenty  
persons shall be formed for the purpose of carrying on any other business that  
has for its object the acquisition of gain by the company, association or partner-  
ship, or by the individual members thereof unless it is registered as a company  
under this Act, or is formed in pursuance of an Act of Parliament or some  
other Act of the Governor General in Council or of Royal Charter or Letters  
Patent

are synonymous *Smith*  
within the meaning of  
this more than twenty  
persons so associated a legal relation giving rise to joint rights and



from being made liable, to income tax on its profits even if it has not been registered in accordance with the Companies Act 32 P L R 335 = 1 I R 1931 Lah 376

**Person**—'Person' does not mean unregistered firm 1927 Mad 123 = 99 Ind Cas 640 The word 'person' may comprise a number of individuals such as a Hindu joint family 3 Bom L R 389 = 126 Ind Cas 392

**Exception**—This section contains an exception in favour of companies formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council or of Royal Charter or Letters Patent *Vide Peat v Fowler* 55 L J Q B 271, *Marrs v Thompson*, 86 L T 759 Foreign companies come within this exception *Rateman v Service*, (1881) 6 A C 386

#### Memorandum of Association

5 Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) a company having the liability of its members limited by the memorandum to the amount if any unpaid on the shares respectively held by them (in this Act termed a company limited by shares), or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee) or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company)

**Notes**—Where the proprietors of a zemindari having grown too numerous formed themselves into a limited liability company and the company was duly registered, it was held that such a company was not a company limited by shares but a company limited by guarantee as nothing in the Act required the company to be limited by shares 16 C W N 297

**Memorandum of company limited by shares** 6 In the case of a company limited by shares—

- (1) the memorandum shall state—
  - (i) the name of the company, with 'limited' as the last word in its name,
  - (ii) the province in which the registered office of the company is to be situate,
  - (iii) the objects of the company
  - (iv) that the liability of the members is limited,
  - (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount,
- (2) no subscriber of the memorandum shall take less than one share
- (3) each subscriber shall write opposite to his name the number of shares he takes

**Memorandum of association**—In *Ashbury Railway Carriage and Iron Company, (Limited) v Riche* L R 7 H L 633 Lord Chancellor Cairns observed, 'With regard to the Memorandum of Association your Lordship will find, as has often already been pointed out although it appears some how to have been overlooked in the present case that this is as it were, the charter, and defines the limitation of powers of a company

to be established under the Act. With regard to the Articles of Association, those Articles play a part subsidiary to the Memorandum of Association. They accept the Memorandum of Association as the charter of incorporation of the company, and so, accepting it, the Articles, proceed to define the duties, the rights, and the powers of the company and the company at large and the internal regulations of the company may from time to time be made. With regard, therefore, to the Memorandum of Association, if you find anything which goes beyond that memorandum, or is not warranted by it, the question will arise, whether that is anything more than an act *ultra vires* the directors but *ultra vires* the company. Cited at 16 B pp 240, 341. "The memorandum is as it were, the area beyond which the action of the company cannot go, inside that area the share holders may make such regulation for their own government as they think fit." *Per Lord Cairns in Ashbury Railway* *Manchester v. Ashbury*, 12 App Cas 499, 342, *Welton v. Soffery*, (1897) *Manchester v. Watson*, 30 Ch D 376; *Darrington v. Sharpington*, A Memorandum of Association interpreted reasonably. There is no specially rigid canon of construction. The intention is to be gathered from the language used. Antecedent transactions and surrounding circumstances cannot be taken into account. Cas 333 P C. Powers are not defined in the memorandum. In the case of a company, the trade and not specify the power of the company to do in carrying on the trade. *Ibid*.

on the part of the legislature is that the legislature, whilst making the company itself continue to deal with it the fact that it was

limited — *Palmer* p 248

**Registered Office** — Every company under the Act is bound to have a registered office to which all communications and notices may be addressed. *Ibid* p 243

**Objects of the company** — The third requirement is that the company must state the objects of the proposed company. The object must not include anything in contravention of the Act. *Vide Oregum Co v Koper*, (1892) A C 125. The objects stated must not include anything in contravention of the general law. The object clause limits the power of the company. *British South Africa Co v De Beers Consolidated Mines* (1910) 1 Ch 354. Any act done beyond what is stated in the object is *ultra vires* and the assent of every single shareholder will not make it good. *Ayers v South Australian Banking Co* (1871) L R 3 P C 548, *Batson v London School Board*, (1903) 2 L S R 196, *National Telephone Co v St Peters Port* (1900) A C 317, *Great Eastern Railway v Turner* (1872) 8 Ch 149.

An alteration in the memorandum can only be made by a special resolution. 33 M 36

**Memorandum of company** 7. In the case of a company limited by limited by guarantee guarantee—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name,

(ii) the province in which the registered office of the the company is to be situated,

(iii) the objects of the company;

(iv) that the liability of the members is limited.

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount,

(ii) no subscriber of the memorandum shall take less than one share,

(iii) each subscriber shall write opposite to his name the number of shares he takes

not having a share  
1899) 2 Ch 593 In  
share capital every  
not undertaken to be  
its being wound up,  
held by him *Stiebel*

*Company Law* P 1153

Memorandum of unlimited  
company

8 In the case of an unlimited company—

(1) the memorandum shall state—

(i) the name of the company,

(ii) the province in which the registered office of the company is to be situated

(iii) the objects of the company,

(2) if the company has a share capital—

(i) no subscriber of the memorandum shall take less than one share,

(ii) each subscriber shall write opposite to his name the number of shares he takes

Notes—Companies with unlimited liability are rarely formed and while limited companies have been increasing by leaps and bounds unlimited companies have dwindled nearly to zero. An unlimited company requires a memorandum and articles of association and may have a joint stock capital divided into shares or no such capital. Its name will not include the word Limited. If the company is wound up the liability of its members to contribute to the payment of debts and cost of winding up will be unlimited. *Palmer's Company Law* P 375

9 The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature

Signature—Any one may sign the memorandum. A subscriber may be a married woman, a bankrupt or an alien. *Priestley v Bos* L R 3 H L 176. It is doubtful whether an infant can be a subscriber. *Re Laxon & Co.* (1892) 3 Ch 555. A subscription may be by one's agent. *Re Whiteley Partners* 32 Ch D 447. As regards the witnesses to the signatures of the subscribers, one witness for all signatures will suffice, and, in that case the words "witness to the above signatures" will be used, but some times the same witness can not attest all the signatures and in that case the attestation clause must be altered. *Palmer's Company Law* p 36. After registration a subscription cannot be repudiated on the ground of misrepresentation. *Metal Constituents Ltd* (1902) 1 Ch 707



D 638, *Tassaud v Tassaud*, 44 Ch D 678, *North Cheshire Brewery v Manchester Brewery*, (1899) A C 83, see also (1898) 17 Ch 179 (1899) A C 610, (1901) 2 Ch 513, (1902) 2 Ch 319, (1907) 2 Ch 312, 87 L T 259, 97 L T 196, 25 F. L. R. 420, (1917) 2 Ch 1

The certificate of incorporation of a Company is conclusive that all previous requisition had been complied with and precludes any enquiry as to the regularity of proceeding *Mossa v Ebrahim*, 16 C W N 937 P C

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently, or
- (b) to attain its main purpose by new or improved means, or
- (c) to enlarge or change the local area of its operations, or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition

(3) Before confirming the alteration, the Court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interest will, in the opinion of the Court, be affected by the alteration,
- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section

**Scope**—This section empowers a company by special resolution to add to or alter its articles Such alterations and to the conditions contained in the articles may be altered and the memorandum *Walker v London & Co* (1894) 1 Ch 20 *Insurance* *Gold*, (1900) 1 Ch 656 *Allen v* *Landley* *Allen v Gold* to alter the regulations is limited only by the provisions contained in the Statute and the conditions contained in the company's Memorandum of Association It must be exercised for the benefit of the company as a whole, and it must not be exceeded These conditions are always implied and are seldom if ever expressed But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it See also *Pepe v City*, (1873) 2 Ch 311, (1906) A C 35 But in making the alterations no statutory principles of law must be violated (1893) 1 Ch, 121, (1900) 1 Ch 303; (1908) 1 Ch 84 For purposes of jurisdiction for an application under this section of the Companies Act to confirm the resolutions proposing the transfer of the place of business, the Court must have ordinary jurisdiction in the place at which the registered office of the company is situated 96 Ind Cas 753 (2)=24 A. L. J 768

13 The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as

Power of Court when confirming alteration it thinks fit, and may make such order as to costs as it thinks proper

Notes —The Court has no jurisdiction to rectify articles of association on the ground of mistake for they have statutory operation: *Peunt v Chipman* 86 L. T. 381

14 The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, <sup>1</sup> <sub>2</sub>

tors, and may, if it thinks  
ment may be made to the  
of dissentient members, a  
may think expedient for f

Provided that no part of such purchase

Notes —The Court can sanction alteration which substituted a complete new set of objects in modern form for the old concise and imperfect objects: *Plamer's Company Law* P 79

15 A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces and each of such registrars shall register the same and shall certify under his hand the registration thereof and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper

16 No such alteration shall have any effect if it has been duly registered within three months of its being effected with

the order of the Court confirming the alteration or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void

Provided that the Court may on sufficient cause shown, revise the order on application made within a further period of one month

### Articles of Association

17. (1) There may, in the case of a company limited by shares and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule



(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration

**Notes**—The Memorandum of Association, when taken in for registration may be accompanied by articles of association containing regulations for the management of affairs of the company *Palmer's Company Law* p 37

18 In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles

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adopt any of the provi  
registered the articles  
o apply to the company

*Palmer's Company Law* p 37 It must be taken that Table A has been incorporated in the Articles of Association of the Company in the absence of any proof to the contrary *Al R 1931 Pat 44=130 Ind Cas 534*

Form and signature of Articles

19 Articles shall—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

**Notes**—The articles, if any must be printed and must be signed by the subscribers to the Memorandum of Association Each subscriber must sign in the presence of a witness who must attest the signature As in the case of the memorandum the signature may be under the signatory's own hand or that of his duly authorised agent One of the subscribers cannot attest the signature of another, *Palmer's Company Law* p 37 Articles have been held to be binding on a company, though not signed, after they have been acted on *Ho Tung v Man On Insurance Co* (1902) A C 239

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No XIX of 1857 and Act No VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend, to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum

**Notes**—This section gives to a company under this Act power by special resolution but subject to the provisions of this Act and to the conditions contained in the memorandum of association, to alter or add to its articles and it expressly provides that "any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like

**Notes**—The Court has no jurisdiction to rectify articles of association on the ground of mistake, for they have statutory operation *Evans v Chapman*, 86 L. T. 381.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company.

Exercise of discretion by Court  
torts, and may, if it thinks fit  
ment may be made to the satisfaction  
of dissentient members; and  
may think expedient for fact

Provided that no part of the capital  
such purchase.

**Notes**—The Court can sanction alteration which substituted a complete new set of objects in modern form for the old concise and imperfect objects *Plamer's Company Law*, P. 79

15. A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one place to another, the order confirming such change shall be made in each of such provinces, and the registrar shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

16. No such alteration shall

Effect of failure to register  
within three months

the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void.

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

### Articles of Association.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the registrar, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration

**Notes**—The Memorandum of Association, when taken in for registration may may be accompanied by articles of association containing regulations for the management of affairs of the company *Palmer's Company Law* p 37

18 In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles

**Notes**—Articles of Association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act The articles are to be expressed in separate paragraphs adopt any of the provisions contained in Table A registered the articles contained in Table A apply to the company *Palmer's Company Law* p 37 It must be taken that Table A has been incorporated in the Articles of Association of the Company in the absence of any proof to the contrary A I R 1931 Fat 44=130 Ind Cas 534

Form and signature of Articles 19 Articles shall—

- (a) be printed,
- (b) be
- (c) be

n in

**Notes**—The articles, if any must be printed and must be signed by the subscribers to the Memorandum of Association Each subscriber must sign in the presence of a witness who must attest the signature As in the case of the memorandum, the signature may be under the signatory's own hand or that of his duly authorised agent One of the subscribers cannot attest the signature of another, *Palmer's Company Law* p 37 Articles have been held to be binding on a company, though not signed, after they have been acted on *Ho Tung v Man On Insurance Co* (1902) A C 239

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No XIX of 1857 and Act No VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend, to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum

**Notes**—This section gives to a company under this Act power by special resolution but subject to the provisions of this Act and to the conditions contained in the memorandum of association, to alter or add to its articles and it expressly provides that "any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like

manner to alteration by special resolution. Nothing could be wider than the terms of this section. It does not say that the articles for the management or administration of the business may be altered, or that the articles, other than those which form part of the constitution of the company, may be altered; there is no limitation except that the power is to be subject to the Act and the memorandum. All or any of the articles  
 articles exempt  
*Company Law* 2 Ch D 705,  
*Wallison v Na* *Reefs of West*  
*Africa* (1900) 1 *The power*  
 thus conferred only by the  
 provisions contained in the company's  
 memorandum of association. It must be exercised for the benefit of the company as a whole and it must not be exceeded. Those conditions are always implied and are seldom ever expressed. But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it. *Per Lindley M R in Allen v Gold Reefs of West Africa* (1900) 1 Ch 659, see also *Pepe v City of Suburban Permanent Building Society* (1893) 2 Ch 341, see also *British Equitable Assurance Co v Baile*, (1906) A C 35, *Posenbury v Northumberland Building Society*, 22 Q B D 373, *Re Barrow Hemate* 29 Ch D 582, *Donans Case*, 3 Ch D 21, *Re Argus Co* 39 Ch D 571.

**Limits to alterations**—Any alterations made with the object of defrauding the minority of shareholders or to violate any provision or principle of law is invalid. *Periel Gold Mines* (1898) 1 Ch 122, *Pryne v Cork Co* (1900) 1 Ch 398, *Miner v Hooper's Telegraph Co* L R 9 Ch 350, *Gry v Lewis*, L R 8 Ch 1051, *Atwood v Merryweather* 5 Eq 464 (n), *Mason v Harris* 11 Ch D 97, *Macdonnell v Garliner* 1 Cl D 13, *Co* (1908) 1 Ch 84.  
 is thus laid down by L.

The memorandum is  
 cannot go outside the area the shareholders may make such regulations for their

Ind Cas 66. A resolution passed by an ordinary general meeting of the company providing for the different qualifications cannot alter the qualification for its directors. It can alter the same only by a special resolution as required by s 20. A I R 1927 Bom 609=105 Ind Cas.  
 claims of particular class of shareholders cannot  
 modification of the Memorandum of Association

Ind Cas  
 exercised  
 purpose  
 I R 1927

Ind Cas 697

### General Provisions

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member, and contained a covenant on the part of each member, his heirs and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

**Notes**—The true interpretation of this section is that though articles of association can neither constitute a contract between a company and an outsider nor give any individual member special contractual rights beyond those of the members

generally they do not in fact constitute a contract between a company and its members in respect of their ordinary rights as members *Prichard's Case* (1873) 8 Ch App 956, *Melhado v Porto* L R 9 C P 503 (1876) 1 Ex D 20, (1887) 37 Ch D 1, *Re Imperial Hydropathic Hotel Co.*, (1882) 23 Ch D 1, 13, 5 Ch D 687 12 App Cas 29, 42 Ch D 636, (1909) 1 Ch 311 (1897) A C 299, (1908) 1 Ch 743, (1915) 1 Ch 881, 52 B 477=A I R 1928 B 252

Articles of association can be read for the purpose of explaining the memorandum in respect of a matter which need not appear in the latter—for example the borrowing of money by a railway company—but not for the purpose of showing that borrowing means the granting of perpetual annuities for that is not borrowing nor is it a purpose subsidiary to the general objects of such a company (1905) 2 Ch 78. A provision in the Articles of Association of a registered company which makes a shareholder's debt to the company a charge on his shares applies to the case of debtors who afterwards become shareholders *Chandooru v Venugopala*, 43 Ind Cas 508=1918 M W N 51

..

necessary for purpose 90 Ind Cas 580=26 Bom L R 987

**22** The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate and he shall retain and register them

*Notes*—A foreign corporation cannot be registered under this Act *Bulkeley v Schutt* L R 3 C P 764, *Bateman v Service* (1881) A C 386. A partnership consisting of seven or more members is not a company so as to be capable of registration under this section *Reg v Registrar* (1891) 2 Q B 598, *Cussons Ltd* (1904) 73 L J Ch 196. Person dealing with the company must take the articles to be such as appear at the office of the Registrar of Companies to be in force 100 Ind Cas 875=45 C L J 96=A I R 1927 Cal 299

**23** (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and, in the case of a limited company that the company is limited

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable and having the part of its being

wound up as is mentioned in this Act

*Notes*—When once the memorandum is registered and the company is held out to the world as a company undertaking business, willing to receive shareholders and ready to contract engagements then it would be of the most dangerous consequences if, after all that has been done, any person was allowed to go back and enter into an examination of the circumstances attending the original registration and the regularity of the execution of the document. *Per Lord Cairns in Peel's Case* (1867) 2 Ch 674. Similarly in *Clemonsford* said "I think that the matters essential to registration are:—(1) a memorandum of association by some persons and that it is conclusive that all previous requisitions have been complied with." See also (1897) A C 22. The effect of incorporating a number of persons into a body corporate is to make that body corporate a separate legal entity or "person". If a man trusts a corporation he trusts that legal person and must look to its assets for payment. 134 Ind Cas 421=12 Pat L T 619=A I R 1931 Pat 321 (F B), 33 Bom L R 111=A I R 1931 Bom 178

24 (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act

(2) A declaration by an advocate, attorney or pleader entitled to appear in the High Court who is engaged in the formation of a company or by the

registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

It is to be noted that the Registrar's certificate is conclusive

of association had not been at the provisions of the Act. Cairns assented. But 'the prima facie answer but a conclusive answer to such objection. When once a certificate of incorporation

regularity of the prior proceedings 25 Lord Chelmsford observed to prior matters essential to memorandum of association by that all previous requisites have N 937 P C=40 C 1=23 M

L J 215 see also (1891) 2 Ch 505, 2 Ch D 010, (1900) 1 Q B 376, 26 A L J 347=108 Ind Cas 451

25 (1) Every company shall send to every member, at his request, and on payment as the memorandum as the memorandum

(2) If a company makes default in complying with the requirements of this section it shall be liable for each offence to a fine, not exceeding ten rupees

### *Associations not for Profit*

26 (1) Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, religion, charity, or any other useful object and applies or intends to apply its profits (if any) or other income in promoting its objects and to prohibit the payment of any dividend to its members the Local Government may, by license under the hand of one of its Secretaries direct that the association be registered as a company with limited liability without the addition of the word 'Limited' to its name, and the association may be registered accordingly

(2) A license by the local Government under this section may be granted on such conditions and subject to such regulations as the Local Government thinks fit, and those conditions and regulations shall be binding on the association and shall,

if the Local Government so directs, be inserted in the memorandum and articles or in one of those documents

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(4) A license under this section may at any time be revoked by the Local Government, and upon revocation the registrar shall enter the word "Limited" at the end of the names of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section.

Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation

Notes—Where an association is about to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and the founders are willing to promote its objects, the Local Government may, if it thinks fit, license the association to be called a company, and to be governed by the provisions of the Companies Act, 1900, subject to such modifications as the Local Government may think fit to make. The association shall be deemed to be a company for all purposes of the law relating to companies, and shall be entitled to all the privileges and exemptions conferred by the Companies Act, 1900, on companies limited by guarantee, and shall be subject to all the obligations and liabilities imposed by the Companies Act, 1900, on such companies.

perpetual succession. It can adopt in lieu of company a more suitable name, such as chamber club college guild association. It can have a common seal, it can hold property in its own name without the intervention of trustees, it can contract and take and defend legal proceedings in its own name, its affairs can be conducted much more efficiently and finally its officers and members are freed from personal liability. Under clause (4) the Local Government has power to revoke its license after due notice, and thenceforth the word 'limited' must be used. *Palmer's Company Law* pp 250-252. With the consent of the Local Government and the sanction of the Court, such an association can alter its objects. *St Hilda's College*, (1901) 1 Ch 556. A company thus registered can pay a pension to an outgoing secretary. *Cyclist's Journey Club v Hopkinson*, (1910) 1 Ch 179.

### *Companies limited by Guarantee.*

27. (1) In the case of a company limited by guarantee and not having share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum of articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Notes—Prior to the English Companies Act, 1900, it was permissible to form a company limited by guarantee, with articles dividing the undertaking into shares of nominal amount—a most convenient form of association, but section 27 of the Act of 1900 prohibited this and section 21 of the English Companies Act of 1908 which corresponds to this section has continued the prohibition. Vide *Palmer's Company Law* 1 373.

## PART III

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND  
UNLIMITED LIABILITY OF DIRECTORS.*Distribution of Share Capital.*

Nature of shares 28. (1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

(2) Each share in a company having a share capital shall be distinguished

his shares and the transfer is complete as soon as the parties sign the deed of transfer 71 Ind Cas 814=1924 Lah 173; 30 Bom. L R 1319=A. I R 1928 P C. 291. A share cannot be transferred without the sanction of the company A I R. 1927 Lah 797=101. Ind Cas 568 A sale by Court of shares held by a member, transfers the shares to the purchaser unless  
were established  
asily transferred"  
L R 3 Q B 595  
share-holder has  
A transfer even to  
Case, W. N. (1900)  
e right to transfer  
the deed of  
transfer 71 Ind Cas 814=1924 Lah 173; 30 Bom. L R 1319=A. I R  
1928 P C. 291. A share cannot be transferred without the sanction of the  
company A I R. 1927 Lah 797=101. Ind Cas 568 A sale by Court of  
shares held by a member, transfers the shares to the purchaser unless  
225 To say  
tract between  
sale can take

of the company were meant to safeguard the interests of the company and could not affect the rights of a share holder to transfer his shares or determine the rights and liabilities of a share holder and his transfer *inter se* 74 Ind Cas 814, see also *Bahadur Sing v Syam Sundar Tag*, 23 Ind Cas 900=36A 365=12 A L J. 629 The discretion vested in the Directors of a company to recognise execution of decrees as well as Bom L R 982 The Act also 3 76=18 remain the holder of the share company's register 70 Ind Cas ed in the the law prescribes a mode of Where necessary before property can pass so as Ind Cas 659=45 M, 537=42 M L J 449, *Larlington v Magee*, (1902) 2 K, B 427 In *Mc Evan v West London Whirves and Warehouse Co* (1871) 6 Ch App 655, where there was a transfer of shares but not in manner required by Act of Parliament, it was held that the transfer of those shares in any other form would at least amount to an equitable contract and that even if the company act upon the transfer and receive payments from the person who entered into that equitable contract and issue documents and treat him as a share holder, it would not have the effect of making him a real share-holder In *Moore v North Western Bank*, (1891) 2 Ch 599, where the competition was between two persons claiming title to shares registered in the name of a third person in a company, *Romer J* observed "As 3 shares in a company like this, which are arty priority of title prevails, unless the claimant, as between himself and the company, before



"a present absolute unconditional right to have the transfer registered before the company was informed of the existence of a better title" See also (1885) 11 App Cas 20, 38 Ch D 485, *Sethna v National Bank of India* 12 Ind Cas 581=36 B 334, 28 Ind Cas 930=42 C 801, 43 Ind Cas, 138=40 M 1134, 34 Ind Cas 921=39 M 509=20 C W N 1054 P C, but see 29 Ind Cas 707 and 55 Ind Cas 154 So a transfer is incomplete until registered 81 App Cas 28, 7 H L Cas 496, 38 Ch D 485, (1893) 2 Ch 555 Before registration a transferee cannot be sued for calls *Ural Gold v Pappa*, 15 T L R 330

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the

the common seal of  
or stock held by any  
the member to the  
share or shares or stock therein specified (1878) 3 A C 1904 It is not a negotiable instrument *Longman v Bath Electric Tramways* (1905) 1 Ch 646 665, (1893) 1 Ch 618, (1875) 7 H L Cas 496 The certificate must correspond with the company's register in showing what the interest of the member is (1902) 1 Ch 467 Where an instrument purporting to transfer fully paid up shares, is, certified by the secretary as above the company is, by the certification estopped from saying that they are not paid up (1896) 2 Ch 756 see also (1896) 1 Ch 100, 3 A C 1004 (1897) A C 150, L R 3 Q B 585 But such estoppel does not arise where the secretary is not authorised to certify *George White Church & Co* (1901) A C 117, see also (1906) A C 439 Share certificates are moveable property 46 B 489

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

of the Memorandum  
who agree to become  
No allotment in  
no entry is required  
Ch 63 "It is plain"  
"that the original  
taken the shares set  
rest with confidence  
the company" See  
the other members  
entry on the register.  
B 689, 13 B 1,  
Association becomes

it does not follow that the subscribers to the memorandum are not to be deemed to have agreed to become members The first portion of the first paragraph of this section lays down a rule of substantive law and the second portion lays down a rule of procedure The subsequent portion does not govern the earlier portion 48 A 480=24 A L J 691=95 Ind Cas 192

**31** (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars—

- (i) the names and addresses, and the occupations if any, of the members, and in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member,
- (ii) the date at which each person was entered in the register as a member,
- (iii) the date at which any person ceased to be a member

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

**Register of members**—A mere list of members is not a register (1894) 2 Ch 392 But a register may be kept in any form provided the requirements of the Act is satisfied (1879) 4 A C 547 Such a register must be properly kept 47 C 401 The name of a firm as a member can 653 but see (1910) W N 187 Where effected by a change in the register the according to law determines the locality of 1930 P C 10, *Att Gen v Higgins* 2 H C 371

**32** (1) Every company having a share capital shall once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided
- (b) the number of shares taken from the commencement of the company up to the date of the return
- (c) the amount called up on each share,
- (d) the total amount of calls received,
- (e) the total amount of calls unpaid
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures since the date of the last return,
- (g) the total number of shares forfeited,
- (h) the total amount of shares or stock for which share warrants are outstanding at the date of the return,
- (i) the total amount of share-warrants issued and surrendered respectively since the date of the last return,
- (k) the number of shares or amount of stock comprised in each share warrant,

- (l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company , and
- (m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid

(4) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

Clause (4) —The offence is a continuing one and six years is the time for recovering the penalties *Reg v Catholic Life Institution* 48 L T 675 An offence under this section is a criminal offence *Park v Lawton*, (1911) 1 K B 588 The fact that the directors have committed an offence by not summoning a meeting—so that they cannot make a list of members so as to comply with the section—will not be an answer, and can be convicted for both offences *Park v Lawton* (1911) 1 K B 588 "Knowingly and wilfully connote intentional default The default is merely inadvertent and not intentional where evidence on record does not prove that the directors knowingly or wilfully authorized or permitted the company to make a default in filing with the Registrar of Joint Stock Companies a copy of the list of the share holders and of the summary described in s 32 and the accused should

336 On a  
ough it is  
J P 774,  
690, *Reg*

who at any time  
nd as Director  
that some or  
or Managers or  
that they did not in fact become Directors or Managers until after the date when the penalty accrued *Tol: Ram v Emperor*, 34 Ind Cas 961, *Gibson v Barton*, 10 Q B 329. A clerk duly authorised by the Registrar, Joint Stock Companies,

Cas 508

Trusts not to be entered on register.

33 No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar

Notes — 'It follows that if a person gives notice to the company that he claims an equitable interest in the shares registered in the name of another person, the company is not bound to take notice of such trust, and may not enter notice of it in its register, and the company will not be liable for allowing the registered holder to deal with his shares without regard to such equitable interest unless at the time of registering a transfer the directors registering the same actually know that the transfer is a wrongful one Vide *Societe Generale v Walker*, (1886) 11 A C 23. *Simpson v Molson's Bank*, (1895) A. C 270, but the section does not allow a company to advance money to a share holder after notice of the interest of another

person and then by virtue of the doctrine of tacking or otherwise, to claim priority over such other interest."—*Stiebel* p 192 citing *Bradford Bank v Briggs* (1881) 12 A C 29 *Rimford v Keith*, (1905) 2 Ch 147; see also 33 Bom. L. R. 250=A. I R 193; Bom 269=133 Ind Cas 241, 33 Bom L. R. 184

In *Re Parkins* 1 A C 101 Tolson, C. J. said "It seems to me no doubt on the principle that companies have no real estate between trustees and their cestuaries que trust, the shares of the company. If a trustee is on the company's register as a holder of shares the relations which he may have with some other person in respect of shares are matters with which the company have nothing whatever to do. They can only look to the man whose name is on the register. It seems to me that if it throws any light on their business by showing those companies in a position which is beneficial to the business but bene-

34 On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notes—The duty of a transferor of shares and the name of transferor obviously lies upon some body, the share holder after he has signed his name upon the register of share-holders, possibly exposing him to unforeseen liabilities and therefore the Act has gone out of its way to give the transferor a statutory right to apply for rectification if the transferee and the company neglect the obvious duty in the matter. *Union Indian Sugar Mills v Jai Deo*, 65 Ind Cas 291=44 A 151 see also 71 Ind Cas 814 Where the Directors refuse to consent to the assignment by a share holder of his share to a transferee, in order to vitiate the exercise of their powers and to justify interference by Court, it must distinctly be made out that the directors have been acting from some improper motive or arbitrarily and capriciously 33 Bom L. R. 184

35 A transfer of the share or other interest of a deceased member of a company made by his legal representative shall although the legal representative is not himself a member be as valid as if he had been a member at the time of the execution of the instrument of transfer

Notes—Where shares are registered in the joint names of several executors (*Barton v North Staffordshire Railway* 38 Ch D 458) they must all be parties to a transfer even where the register contains a note that they are executors *Barton v London and North Western Railway* (1890) 24 Q B D 77—*Stiebel* p 298 Where a member of a company dies, his shares as personal estate vest in his executors or administrators, and the estate is liable (*Baird's Case*, 5 Ch 723), but the executors or administrators do not *ipso facto* become members of the company, nor is the company entitled without their consent, to register them as members. Such registration (as members) may involve them in a personal liability, and to justify it there must be some distinct and intelligent request on their part. *Buthart's Case*, 9 App Cas 588 Where registered as members, there should be a clean registration without any reference to their representative capacity. They may choose the order in which their names are to stand *Re Saunders & Co* (1901) 1 Ch 415 This section enables the legal representatives of a deceased member, without himself becoming a member, to transfer the shares of the deceased—*Palmer's Company Law*, p 139

36 (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the

company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee or such less sum as the company may prescribe, for each inspection

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty and the Court may by order compel an immediate inspection of the register

commencing from the date of the registration kept at the registered office of the company open for inspection by members gratis, and

for inspection by any other person on payment of one rupee or such less sum as the inspection The right of inspection does not *Balighat Co* (1901) 2 K B 665 But the right h register or any part thereof on certain terms up *Re Kent Coalfields Syndicate* (1898) 1 Q

B 754

Clause (3) —Refusal means distinct and definite refusal *Pex v Wills* 3 Ad & El 447, 8 Ad & El 901 A member has the right to have it inspected by his solicitor *Bevan v Webb* (1901) 2 Ch 59 75 The Court will compel production irrespective of motive *Davies v Gaslight & Coke Co* (1909) 1 Ch 248 cited in *Palmer's Company Law* p 125

Power to close register 37 A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate close to the register of members for any time or times not exceeding in the whole thirty days in each year.

Notes—A company is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the company are closed and after a public notification in accordance with the provision of this section, *vide Mothoo Mohun v The Bank of Bengal* 3 C 392=1 C L R 507

Power of Court to rectify register 38 (1) If—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved or any member of the company, or the company, may apply to the Court for rectification of the register

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his

Provided that the Court may direct an issue to be tried in which any question of law may be raised, and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in section 100 of that Code.

the circumstances of each case  
770, 55 Ind Cas 751. An order  
passed in an  
1928 P C 29  
a serious que  
65 Ind Cas  
case where an  
section, but

exercise jurisdiction under this section even after  
In, . . . . . vested in  
imite . . . . . Ind Cas.  
47 C . . . . . cannot be

19 A L J 937-65 Ind Cas 291, but see 41 B 76=37 Ind Cas 646=18 Bom L R 982

A company was in made up of fourteen those shares were not directors were present be sold to three direc tion to their holdings in the share capital of the company In accordance with a resolution the shares were allotted to the three directors The Articles of association of the Company required a quorum of at least three for a director's meeting The company was present at the hundred share allotment was section 91 B to pass an or of 3 directors in respect of 200 shares purchased by them on repayment to them of the purchase money Held that the allotment was invalid 64 Ind Cas 933=23 Bom L R 1104

See also 28 Ind Cas 983=40 B 134 29 Ind Cas 770 49 Ind. Cas. 288, 18 Ind Cas 481, 17 Ind Cas 640,

39. In the

Notice to registr  
fication of registre

a list of its mem  
urt, when making an  
- - - - - registrar, shall, by its

filed with the registrar

order, direct notice of the rectification to be

Notes—If the Court makes an order for rectifying the register, the name of the person, whose name is to be struck off, should be run through with a pen in the register, and a statement should be appended as follows 'By an order of the High Court, dated, etc, this name was erased *Stebel citing Iron Shipbuilding Co (1865) 34 B 597, see also Ex parte Webb (1863) 8 L T N S 478*

40. The register of members shall be *prima facie* evidence of any mat

Register to be evidence ters by this Act directed or authorised to be inserted therein

Notes—The register is to be *prima facie* evidence and is not conclusive *Rees Rivie & Co v Smith, L R 4 H L 80, 39 Ch D 61* The register of members is *prima facie* evidence of membership and the burden of proving allegations as to conditions and failure to send notice of allotment is on the person alleging *Waryam Singh v The Official Liquidator, 8 L L J 240=95 Ind Cas 252=A 1 R 1916 Lab 414*

Power for company to keep branch register in the United Kingdom

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register)

(2) The Company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

N B—The section corresponds to section 34 of the English Act

Regulations as to British register

42 (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register)

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before the closing the register shall be inserted in some news paper circulating in the locality wherein the British register is kept

(3) The company shall transmit to its registered office in India a copy of every entry in the British register as soon as may be after the entry is entered in the British register, and the duplicate shall be deemed to be part of the principal register

(4) Subject to the provision of this section with respect to the duplicate register, a company may keep a duplicate register in any other place, and such duplicate register shall be registered in any other register

(5) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register

(6) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British register.

N B—This section corresponds to section 35 of the English Act

43 A company limited by shares, if so authorised by its articles, may, with respect to any fully paid up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant

44. A share warrant shall entitle the bearer thereof to the shares or a stock therein specified, and the shares or stock may be transferred by delivery of the warrant

Notes.—A stock or share warrant is by mercantile usage a negotiable instrument *Webb, Hile & Co v Alexander*, (1903) 93 L T 359 The bearer of a stock or share warrant must produce the share warrant before he is entitled to exercise any of the rights of a member *Wedgwood Coal and Iron Co* 6 Ch D 627

45 The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation to have his name entered as a member in the register of members, and the company shall be responsible for

any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled

#### 46 The bearer of a share

Position of bearer of share warrant

except that he shall be deemed to be a member of the company in relation to the articles, the warrant for bearer of a share warrant is subject to the provisions of such a qualification is required by the articles

#### 47 (1) On the issue of a share warrant, the company shall strike out of its

Entries in register when share warrant issued  
 register of members the name of the member then stock  
 member, and shall enter in the register the name of the member then stock

- (i) the fact of the issue of the warrant,
- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number, and
- (iii) the date of the issue of the warrant

the requirements of this  
 applies for every day during  
 company who knowingly  
 liable to the like penalty

Notes—When a share warrant is issued the name of the prior holder of the share is struck out of the register of members. Hence whilst the share warrant is outstanding there will be no registered holder *Palmer's Company Law* P 141

#### 48 Until the warrant is surrendered the above particulars shall be deemed

Surrender of share warrant to be the particulars required by this Act to be entered in the register of members and, on the surrender the date of the surrender shall be entered as if it were the date at which a person ceased to be a member

Under his share and company cannot accept the surrender except as forfeiture. A shareholder when his shares are forfeited ceases to be a member but a shareholder who surrenders his share does not cease to be a member 107 *Ind Cas* 594 = A 1 R 1928 Lah 240. To hold that a company can by resolution of its Directors accept surrender of shares would be to allow a company to reduce its capital at its pleasure *Ibid* see also *Bellerby v Powland* (1902) 2 Ch 14

Power of company to arrange for different amounts being paid on shares

49 A company if so authorised by its articles may do any one or more of the following things namely—

- (1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares,
- (2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up
- (3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others

Notes—A company will not have powers under this section unless they are conferred by its articles



Power of company limited by shares to alter its share capital

50 (1) A company limited by shares, if so authorised by its articles may alter the conditions of its memorandum as follows, (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient,
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares
- (c) convert all or any of its paid up shares into stock and reconvert that stock into paid up shares of any denomination
- (d) sub divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived,
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled

(2) The powers conferred by this section with respect to sub division of shares must be exercised by special resolution

(3) Where any alteration has been made under this section in the memorandum of a company every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration

and in complying with the requirements of sub fine not exceeding ten rupees for each copy in

and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act

Clause (b)—The doubt raised in *Wakefield Rolling Stock* (1892) 3 Ch 165 is set at rest by this clause There is no reason why the articles should not entrust the

so as to take any such power and to exercise the power so taken Vide *Campbell's Case*, (1879) 9 Ch 1, *Sewell's Case* (1868) 3 Ch 131

51 (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares, into stock or reconverted stock into shares, it shall within fifteen days of the consolidation and division conversion or reconversion file notice with the registrar of the same, specifying the share consolidated and divided, or converted or the stock reconverted

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

52 Where, company having a share capital has converted any of its shares into stock

of the share capital is converted into stock, and the register of members of

any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled

**46.** The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles

**47.** (1) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars namely —

- (i) the fact of the issue of the warrant,
- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number, and
- (iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to pay a fine of fifty rupees for every day during which the default continues, and the company who knowingly contravenes this section shall be liable to the like penalty.

**Notes**—When a share warrant is issued, the name of the prior holder of the share is struck out of the register of members. Hence, whilst the share warrant is outstanding there will be no registered holder. *Palmer's Company Law* P 141

**48** Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member

**Notes**—It would seem that the bearer of a stock or share warrant must, before he is entitled to exercise any of the rights of a member in respect of the stock or shares comprised in his warrant, produce such warrant to the company. Cf *Wedgwood Coal and Iron Co* (1877) Ch D 627—Cited in *Stiebel* p 311. A member cannot surrender his share and company cannot accept the surrender except as forfeiture. A shareholder when his shares are forfeited ceases to be a member but a shareholder who surrenders his share does not cease to be a member. 107 Ind Cas 394=A. I R 1923 Lah 240. To hold that a company can by resolution of its Directors accept surrender of shares would be to allow a company to reduce its capital at its pleasure. *Ibid*, see also *Bellerby v Rowland*, (1902) 2 Ch 14

**49.** A company, if so authorised by its articles may do any one or more of the following things, namely —

- (1) make arrangements on the issue of shares for a difference between the share-holders in the amounts and times of payment of calls on their shares,
- (2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up
- (3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others

**Notes**—A company will not have powers under this section unless they are conferred by its articles.

Power of company limited by shares to alter its share capital

50 (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows, (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient,
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares
- (c) convert all or any of its paid up shares into stock and reconvert that stock into paid up shares of any denomination
- (d) sub divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived,
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled

(2) The powers conferred by this section with respect to sub division of shares must be exercised by special resolution

(3) Where any alteration has been made under this section in the memorandum of a company every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration

(4) If a company makes default in complying with the requirements of sub section (3) it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act

Clause (b)—The doubt raised in *Wakefield Rolling Stock* (1892) 3 Ch 165 is

so as to take any such power and to exercise the power so taken Vide *Campbells Case*, (1879) 9 Ch 1, *Sewell's Case*, (1868) 3 Ch 131

51 (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares, into stock or reconverted stock into shares, it shall within fifteen days of the consolidation and division conversion or reconversion file notice with the registrar of the same, specifying the share consolidated and divided, or converted or the stock reconverted

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

52 Where, company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock, and the register of members of

the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act

Notes—Where any shares have been converted into stock the register must show the amount of stock held by each member in lieu of the particulars relating to shares  
 through the  
 is *ultra vires*  
 members (1912) 1 Ch. 72

53 (1) Where a company having a share capital, whether its shares have or

Notice of increase of share capital of members  
 have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar in the case of an increase of share capital, within fifteen days after the passing or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes a default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

Notes,—Where the articles empowers the directors to increase the capital with sanction of a general meeting and such a meeting authorises the directors to increase the capital to a specified amount, duty is forthwith payable in such amount  
*Att Gen v Anglo Argentine Tramways* (1900) 1 K B 676

54 (1) A company limited by shares may, by special resolution confirmed

Reorganization of share capital  
 by an order of the Court modify the conditions contained in its memorandum so as to recognise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of share holders of that class holding three fourths of the share capital of that class and confirmed at a meeting of share holders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all share holders of the class

(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar within twenty one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed

Notes—'The proviso in the section is very badly drafted, but it will be observed that it does not speak of the majority in number of the share-holders but of a majority in number of share holders, at a meeting and it is thought that if a meeting of the share holders be called the majority at that meeting will be sufficient, if they are present in person or by proxy and voting in favour of the scheme share holders representing three fourths of the capital of the class. At the confirmatory meeting a bare majority of the members of the class present in person or by proxy will be enough. The application to the Court it is thought, should be by petition'—

to abolish existing classes of shares and to section does not contemplate such a mode of only to two modes of reorganizing share shares of different classes into shares of one class, into shares of different classes 30

*Reduction of Share Capital*

**55** (1) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

Subject to confirmation by the Court, a company limited by shares, is so authorised by its articles may by special resolution reduce its share capital, in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up, or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets, or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly

(3) A special resolution under this section is in this Act called a resolution for reducing share capital

**Notes**—The reduction of capital without the assent of the court is opposed to this section 52 M 915—A I R 1929 Mad 773—120 Ind Cas 71 Reduction of capital should be made under statutory authority or by forfeiture in strict accordance with procedure if any laid down in that behalf in the articles of association 125 Ind Cas 419=54 B 178=A I R 1930 B 267, see also 128 Ind Cas 641=A I R 1930 P C 302=1930 A L J 1345, 110 Ind Cas 471, 83 Ind Cas 94

**Clause (2)**—In order to reduce capital, the company must be authorised by its articles Power in the memorandum will not do 88 L T 791, (1893) W N 82 Where the articles do not contain any such powers, they are to be altered by special resolution 31 Ch D 166, 9 Ch D 11, *Oregon Mortgage Co* (1910) S C 964, Court of Session Stock may be reduced under these powers *Household Property and Investment Co* (1912) W N 110

**56** Where a company has passed and confirmed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction

Application to Court for confirming order

**Notes**—An application is then made by petition to the Court for an order confirming the reduction The Court means the Court having jurisdiction to wind up the company *Vide Rugby Gas Co* (1899) W N 127, (1908) W N 203, (1911) W N, 235

**57** On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any share holder of any paid up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall until that date, be deemed to be part of the name of the company

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or the payment to any share holder of any paid up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced"



61 (1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute

(3) Notice of the registration shall be published in such manner as the Court may direct.

**Notes**—The minute, together with a copy of the order, has to be filed with the Registrar who gives a certificate. This certificate is conclusive evidence of reduction. *Re Walker and Smith Ltd* 72 L J Ch 57, see also (1900) 2 Q B 376 (1903) W N 82 (Eng).

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(ii) if the company is wound up, the Court, on the application of any person, may, if it is satisfied that the company is so liable to contribute, order that the contribution be paid out of the assets of the company available for the payment of its creditors in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act

#### *Registration of Unlimited Company as Limited.*

67. (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts liabilities obligations or contracts incurred or entered into by or on behalf of the company before the registration, and those debts, liabilities obligations and contracts may be enforced in manner provided by Part VIII, of this Act in the case of a company registered in pursuance of that Part

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely —

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up,
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up



*Reserve Liability of Limited Company*

69 A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid

Notes—There is nothing to prevent a limited company providing by its Memorandum of Association that part of its capital shall only be capable of being called up in the event and for the purposes of a winding up and such a provision would be unalterable *Ashbury v Watson* 30 Ch C 376 Where there is no provisions in the Memorandum of Association such a provision may also be made under this section by special resolution It is well settled that a power to charge uncalled capital conferred by the Memorandum or Articles of Association of a company is good *Fyle Works*, (1890) 44 Ch D 534 *Neuton v Anglo Australian Investment Co* (1895) A C 244.

*Unlimited Liability of Directors*

70 (1) In a limited company the liability of the directors or of any director, may, if so provided by the memorandum, be unlimited

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited

(3) If any director or proposer makes a default in adding such a statement or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71 (1) A limited company, if so authorised by this articles may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution

(3) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty

## PART IV.

## MANAGEMENT AND ADMINISTRATION.

*Office and Name*

72 (1) Every Company shall have a registered office to which all communications and notices may be addressed

Registered office of company

(2) Nothing in this section shall affect the rights of the contributories among themselves

64 If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year or with fine, or with both

65 In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit the causes which led to the reduction

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act

### *Registration of Unlimited Company as Limited.*

67 (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts liabilities obligations or contracts incurred or entered into by or with or on behalf of the company before the registration, and those debts liabilities obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company but save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act

68 An unlimited company having a share capital may by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely —

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares but subject to the condition that capital is so increased shall be the event and for the purposes

(b) its uncalled share capital shall not in the event and for the purposes

*Reserve Liability of Limited Company*

**69** A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid

**Notes**—There is nothing to prevent a limited company providing by its Memorandum of Association that part of its capital shall only be capable of being called up in the event and for the purposes of a winding up and such a provision would be unalterable *Ashbury v Watson* 30 Ch C 376 Where there is no provisions in the Memorandum of Association such a provision may also be made under this section by special resolution It is well settled that a power to charge uncalled capital conferred by the Memorandum or Articles of Association of a company is good *Fyle Works*, (1890) 44 Ch D 534 *Newton v Anglo Australian Investment Co* (1895) A C 244

*Unlimited Liability of Directors*

**70** (1) In a limited company the liability of the directors or of any director, may, if so provided by the memorandum, be unlimited

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters and officers of the company, or one of them shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited

(3) If any director or proposer makes a default in adding such a statement or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default

**71** (1) A limited company, if so authorised by this articles may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution

(3) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty

**PART IV.****MANAGEMENT AND ADMINISTRATION.***Office and Name*

**72** (1) Every Company shall have a registered office to which all communications and notices may be addressed

Registered office of company

(2) Notice in writing of the situation of the registered office, and of any change therein, shall be filed with the registrar who shall record the same

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business

**Notes**—Change of registered office becomes effective only on notification of the same to Registrar. Mere resolution to change is not enough. A I R, 1931 Cal 692=58 C 716=133 Ind Cas 321.

Publication of name by a limited company **73. Every limited company—**

(a) shall print or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters and also, if the registered office be situated in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place,

(b) shall have its name engraven in legible characters on its seal,

(c) shall have its name mentioned in legible English characters, in all bill heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company

**Notes**—The Legislature whilst allowing limited liability desires by this means to make the company itself continually bring to the notice of those who deal or may deal with it the fact that it is limited—*Palmer's Company Law* p 248. Abbreviations such as Co and Ltd may be used (1912) 106 L T 544. If any company omits to comply with the provisions of this section that will not preclude it from enforcing any rights it has (1902) 2 Ch 354 (1901) 18 Rep Pat C15 185—*cited in Stiebel* p 32. But where the pronote is on a sheet of paper printed with the name of the company the requirements are fulfilled. 67 Ind Cas 941=24 Bom. L R 355

**74** (1) If a limited company does not paint or affix, and keep painted or affixed its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

(2) If any officer of a limited company or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill head, letter, paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi promissory note, endorsement cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company

**Notes**—This section provides that if any officer signs or authorises to be signed on behalf of the company any bill of exchange, promissory note etc., wherein the

name of the company is not mentioned in the manner specified he shall be personally liable to the holder of any such bill of exchange etc for the amount thereof unless the same is duly paid by the company 61 L T 23 21 T I R 510—cited in *Palmer's Company Law* p 248, see also *Penrose v Marjor*, E B & E 499, 70 L T 376

75 (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice advertisement or other official publication shall also contain a statement in an equally prominent position and equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees

*Meetings and Proceedings*

76 (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting and, if not so held, the company and every officer of the company, who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section the Court may on the application of any member of the company, call or direct the calling of a general meeting of the company

the words calendar year are used for the word Act A calendar year commences on the 1st of January 1911 Q B 329, *Parke v Lawton* (1911) 1 K B 588 neral meeting 72 Ind Cas 349, but see 54 Ind Cas 494 Every officer who is party to the default is liable 38 Ind Cas 437=21 C W N 840, see also 35 Ind 482 A chairman is not bound to adjourn the meeting 47 B 915

77 (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months, from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

- (a) the number of shares allotted as fully paid up, and stating in the case of shares which have not been fully paid up, the amount which has been paid up, and the amount which has been allotted, and the amount which has been called for and paid up, and the amount which has been allotted but not called for, and the amount which has been called for but not paid up, and the amount which has been allotted but not called for and not paid up;
- (b) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid;
- (c) an abstract of the receipt of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made

thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company.

(d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company.

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particular of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub section (2) or sub section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles either before or subsequently to the former meeting may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

**Notes**—The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company—what shares have been taken up, what monies received, what contracts entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars, the shareholders are to have an opportunity of meeting and discussing the whole situation—the management method and prospects of the company. If the shareholders fail to do so, they have only themselves to blame. *Palmer's Company Law*, 9th Ed p 162. The notice of the statutory meeting must mention that the meeting is the statutory meeting (1912) 1 Ch 700. A private company need not file a statutory report. But a statutory meeting must be held. *Gurtner v Credit*, (1912) W N 93 cited in *Stuebel* p 380. An offence is not punishable after the Act is repealed. 41 Ind Cas 1008=31 P. R. (1917), Cr.

78 (1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at any registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists or a majority of them in value, may themselves call the meeting

(5) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors

Notes—The directors shall call an extraordinary general meeting on requisition signed by a specified proportion of members *Macdonnell v Gardiner* (1875) L R 10 Ch 606 The mere fact that some of the resolution referred to in the requisition could not be put to the meeting does not relieve the directors from an obligation to call the meeting 25 Ch D 320 cited in *Palmer's Company Law* p. 165 In the case of shares held by joint holders, all must sign the requisition (1906) W N 164 Persons requisitioning a meeting under this section can not validly call a meeting till the time mentioned in the requisition expires (1901) 2 Ch 431

Provisions as to meetings and votes 79. In default of, and subject to, any regulations in the articles,—

(i) a meeting of a company may be called by fourteen days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule,

(ii) five members may call a meeting,

(iii) any person elected by the members present at a meeting may be Chairman thereof and,

(iv) every member shall have one vote

Notes—In default of, and subject to any regulations in the articles any five members of a company may summon a meeting The Regulations are applicable where there are no directors to call a meeting (1878) W N 140, see also (1901) 2 Ch 431

its memorandum such votes were good  
 08 Ind Cas. 465 As regards votes  
 by proxies vide *ibid* An omission to mention any secret arrangement would  
 constitute a serious defect 90 Ind Cas 580=26 Bom L R 987=A I R 1925  
 Bom 49

thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company.

(d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particular of the modification or proposed modification

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account be certified as correct by the auditors (if any) of the company

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub section (2) or sub section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not but no resolution of which notice has not been given in accordance with the articles may be passed

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting may be passed, and the adjourned meeting shall have the same powers as an original meeting

(10) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company

**Notes**—The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company—what shares have been taken up what monies received, what contracts entered into what sums spent on preliminary expenses, etc. Furnished with these particulars the shareholders are to have, an opportunity of meeting and discussing the whole situation—the management method and prospects of the company. If the shareholders fail to do so, they have only themselves to blame. *Palmer's Company Law*, 9th Ed p 162. The notice of the statutory meeting must mention that the meeting is the statutory meeting (1912) 1 Ch 700. A private company need not file a statutory report. But a statutory meeting must be held. *Girner v Iredale*, (1912) W N 93 cited in *Stiebel* p 380. An offence is not punishable after the Act is repealed 41 Ind Cas 1003=31 P R (1917) Cr



78 (1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company

Calling of extraordinary general meeting on requisition

(2) The requisition must state the objects of the meeting and must be signed by any registered office of the company in like form, each signed by one or

(3) If the directors do not proceed within twenty one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists or a majority of them in value may themselves call the meeting

(5) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors

an extraordinary general meeting on requisition of members *Macdonnell v Gardiner*, (1875) that some of the resolution referred to in the meeting does not relieve the directors from an *Id* D 320 cited in *Palmer's Company Law* p. 165

In the case of shares held by joint holders, all must sign the requisition (1906) W N 164 Persons requisitioning a meeting under this section can not validly call a meeting till the time mentioned in the requisition expires (1901) 2 Ch 431

Provisions as to meetings and votes

79 In default of, and subject to, any regulations in the articles,—

(i) a meeting of a company may be called by fourteen days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule,

(ii) five members may call a meeting,

(iii) any person elected by the members present at a meeting may be Chairman thereof and,

(iv) every member shall have one vote

Notes—In default of, and subject to any regulations in the articles any five members of a company may summon a meeting The Regulations are applicable where there are no directors to call a meeting (1878) W N 140, see also (1901)

as to be transacted at a C W N 1038 P C = 110 recorded on amendment are recorded by proxies in *Id* such votes were good

30 Bom L R 197 = A I R 1928 Bom 80 = 108 Ind Cas 465 Any regards votes by proxies vide *Id* An omission to mention any secret arrangement would constitute a serious defect 90 Ind Cas 580 = 26 Bom L R 987 = A I R 1925 Bom 49

**80** A company which is a member of another company may, by resolution of the directors, authorise, any of its officials or any other person to act as its representative at any meeting of that other company and the persons so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company

**Notes**—A vote given by the representative of a company under a resolution passed pursuant to this section can be properly admitted by the chairman on the evidence afforded by a copy of such resolution *Colonial Gold Reef v Free State* (1903) 1 C 100. Section 81 to be taken into account at a meeting. V N 274

**81** (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given

(2) A resolution shall be a special resolution when it has been—

(a) passed in manner required for the passing of an extraordinary resolution, and

(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote unless the articles of the company require a demand by such number of such persons not in any case exceeding five, as may be specified in the articles

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles

**Notes**—To pass an extraordinary resolution requires, only one meeting but the notice convening the meeting must specify the intention to propose the resolution as an extraordinary resolution. A special resolution requires two meetings at an interval of not less than fourteen days and not more than one month. If the articles so provide two meetings may be called by the same notice (1905) 2 Ch 15 (C A).—*Palmer's Company Ltd* p 238. Amendment can be allowed by chairman 90 Ind Cas 580

Where special resolutions are necessary—Vide Section 11 (4) 12, 20, 50, (2) 55 69, 71 142, 162 (1), 203 (2), and 213

**Members**—A member is one who is on the company's register as a member and who has agreed to become a member *Pentler v Lushington* 6 Ch D 70 An executor of a deceased person may vote (1895) 1 Ch 456, (1894) 1 Q B 622, (1900) 1 Ch 656

**Proxy**—No member is entitled to vote by proxy unless the articles of association authorise such voting *Harven v Philips* 23 Ch D 14, see also 1 C L J 150=29 B 126 P C A proxy can be given to a member (1902) 18 T L R 503, (1881) W N 120 Membership at the date when the proxy is to be used is all that is necessary (1903) A C 213 A member using the proxy need not state who has given him proxy (1902) 18 T L R 495 As regards rules regarding proxy vide 108 Ind Cts 465

**Clause (3)**—Unless a poll is demanded the declaration of the chairman is conclusive 11 Ch D 719, (1900) 2 Ch 419, (1901) 1 Ch 518 But where the chairman states the number for and against, and then wrongly makes the declaration it is not conclusive (1902) 2 Ch 498 The chairman is only to count the number of hands held up He cannot take any count either of the number of votes each person may be entitled to or of the proxies he may hold 11 Ch D 109, (1897) 1 Ch 1

At a meeting for extraordinary resolution or for a special resolution a declaration of the chairman on a show of hands that the resolution is carried is conclusive evidence in the minutes of the meeting and is admissible in evidence to show that the declaration of the chairman is unvaried 110 Ind Cts 649=30 Bom L R 598=A I R 1929 Bom 38

Registration and copies of special and extraordinary resolution 82 (1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed or typewritten and filed with the registrar who shall record the same

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution

(3) Where articles have not been registered, a copy of a every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default

**Notes**—A copy of every special and extraordinary resolution has to be printed and forwarded to the Registrar and a copy to be annexed to or embodied in the articles

Minutes of proceedings of general meetings and directors 83 (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, of the meeting at which it the chairman the chairman of the next succeeding meeting, - - -

(3) Until the contrary is proved every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid

**Signed by the Chairman**—Such signature may be put at any time *Royney's Case*, 4 De G J. & S 426. After the signature of the Chairman the minutes of the meeting should not be altered 42 Ch D 209

**Clause (3)**—The Court, notwithstanding the minutes are made conclusive by the articles, may look and consider the regularity of the notice *Bell's & Co v Macnaghten* (1910) 1 Ch 420 cited in *Palmer's Company Law* p 244

### *Directors.*

**83A\* (1)** Every company registered after

. Directors obligatory

the commencement of this Act shall have at least two directors

(2) This section shall not apply to a private company.

**Notes**—A person having the powers ordinarily conferred on a director will, whatever he be called, be in the same position as a director *Bulaway Market and Office*, (1907) 2 Ch 458. Directors are not trustees of individual shareholders *Pe*, 111 Ch 471. They are not trustees of creditors as 518, 9 Ch 322, 62 L J 70. A director is a trustee for a he is not trustee of debts 15 C D 247 at pp 275 and by *James L J*. A trustee with it as principal owner an account to some person to *cestuis que trust*. The same a trustee having property, The office of director is that enters into contract for himself not for the company and for whom he is acting. He can not sue on such contracts nor be sued on them unless he exceeds his authority. If it is duty of the Director to disclose his knowledge of the company, then that knowledge may be attributed to the company though in general the knowledge of the Directors is not necessarily the knowledge of the company 33 Bom L R 184

**83B\*** In default of and subject to any regulations in the articles of a company other than a private company—  
Appointment of directors

- (i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed,
- (ii) the directors of the company shall be appointed by the members in general meeting, and
- (iii) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

**Casual vacancy**—A casual vacancy means a vacancy occurring by death resignation, or bankruptcy and not by efflux of time 34 L W 746=61 M. L J 724

**84 (1)** A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the  
Restrictions on appointment or advertisement of director.

company or in relation to any intended company or in any statements in lieu of prospectus filed by or on behalf of a company, unless before the expiration of the period specified in the prospectus, or the case may be, he has, by

... of the prospectus, or the case may be, he has, by

- (i) signed and filed with the registrar a consent in writing to act as such director, and
- (ii) save in the case of a company limited by guarantee and not having a share capital either signed the memorandum for a number of shares not less than his qualification (if any) or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any)

(2) On the application for registration of the memorandum and articles of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company and, if this list contains a person who has not complied with the requirements of the section, he shall be liable

... nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business

**Notes**—The word 'articles' in this section refers to the articles in force, whether in their original form or as altered by special resolution. Where an agent signs the consent he must produce his authority. An intended director who subscribes the memorandum for his qualification becomes bound on incorporation to take the shares even though the company never commences business.—*Palmer's Company Law* p 187

85 (1) Without prejudice to the restrictions imposed by section 84,

Qualification of director it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles

(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification, and a person vacating office under this section shall be incapable of being reappointed director of the company until he

... time, any unqualified

... to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is provided that he acted as a director.

**Object.**—The qualification is fixed in order to give the director personal interest in the success of the company. It gives the director a personal stake in the company. (1910) 1 Ch 444. Failure on office (1902) 2 N D 509, see also 23 Ind Cas 748. ... vacate his

86. The acts of a director shall be valid notwithstanding any defect that

Validity of acts of directors may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

**Notes**—A director must be a person, who has been duly appointed. *Jenner's Case* 7 Ch D, 132. But the effect of this section is where a person is allowed to

act as a director even where he has no right to do so, persons dealing with such directors will not be bound to inquire into their authority to act and the company will be as much bound as though they were validly appointed directors

*County Life Assurance* (1870) 5 K B 314—Vide *Stiebel* p 364  
such directors (1898) 1 Ch 6,  
the company also is entitled to  
rules 8 Q B D 685, 61 L  
acts done after all the parties

knew of the defect 75 L T 483, 66 L T 414, (1867) 2 Ch 191, 63 L T 413  
The civil and criminal liabilities of *de facto* and *de jure* directors are the same  
*Gibson v Barton* L R 10 Q B 322, *Rex v Lawson*, (1905) 11 K B 541, *Coventry and Dixon's Case* (1886) 14 Ch D 660, *New Par Consols* (1898) 1 Q B 573,  
see also A I R 1931 Rang 54, A I R 1931, Rang 139

Vide also 36 A 412, 10 Ind Cas 748, 29 Ind Cas 567, 10 Ind Cas 515, 125  
Ind Cas 419, 130 Ind Cas 843, 116 Ind Cas 734, 109 Ind Cas 662, 101 Ind  
Cas 568

87 (1) Every company shall keep at its registered office a register contain-  
ing the names and addresses and the occupations  
List of directors to be sent to registrar of its directors, and file with the registrar a copy  
thereof, and from time to time file with the  
registrar notice of any change among its directors or managers

(2) If default is made in complying with this section, the company shall be  
liable to a fine not exceeding fifty rupees for every day during which the default  
continues, and every officer of the company, who knowingly and wilfully  
authorises or permits the default, shall be liable to the like penalty

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as required by this section Notwithstanding the provisions of this section the  
appointment of a director's age of the  
company and it would hardly directors were com-  
pelled to search the register person who was  
permitted to act as a *de jure* or person who was  
director *de jure* *Pulimjee v N H Woods* 27 Bom L R 1218=91 Ind Cas 334  
Company does not commit offence by not filing notice of changes among directors  
within 30 days No period has been prescribed within which such notice must  
be given 131 Ind Cas 592=35 C W N 227

### Contracts

#### Form of contracts

88. (1) Contracts on behalf of a company may  
be made as follows (that is to say) —

(i) any contract which, if made between private persons, would be by  
law required to be in writing, signed by the parties to be charged  
therewith, may be made on behalf of the company by any person  
signing the contract in writing  
and the contract shall be as valid as if made by the company

(ii) any contract which, if made between private persons, would be by law  
be valid although made by parol only, and not reduced into writing  
may be made by parol on behalf of the company by any person  
acting under its authority express or implied, and may in the same  
manner be varied or discharged

(3) All contracts made according to this section shall be effectual in law,  
and shall bind the company and its successors and all other parties thereto,  
their heirs, or legal representatives, as the case may be

Notes—A contract entered into by the promoters of a company prior to its incorporation is not binding on the company, nor can a company ratify or adopt such a contract, it may enter into a new contract embodying the terms of

the person with whom that contract was entered into 68<sup>u</sup> Ind Cas 787 *Ganesh R* 1905 implied still less his own ) Once axed by a er those  
 1 Ch 656 28 Ind Cas 847 Where an agent the company but the same was ratified *Held*, that any defect in the convening of the its ratification invalid 1981 A L J 1038=

134 Ind Cas 244

89. A bill of exchange hundi or promissory note shall be deemed Bills of exchange and promi ssory notes to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by on behalf or on account of the company by any person acting under its authority express or implied

Not said 6th Ed one of c it really purport it so t the bill or note may not instrument the bill or liable on it and not the individuals whose names are on it unless the bill or note is the bill or note of both On the other hand if on the true construction of the bill or note it is not the bill or note of the company, the persons whose names are upon it will be liable upon it, whether they intended to be so or not ' Therefore it is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand *Per Lord Buckmaster in Firm of Sadasuk Janki Das v Kishan Pershed* 46 l A 33-46 C 663=23 C W N 937=50 Ind Cas 216 (P C) It is not sufficient that the principal's name should be in some way disclosed it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bill 89 Ind Cas 328 When a person is not specifically authorized either as a managing agent or other wise to execute or make a promissory note in his own name so as to bind the company the company will not be liable A I R 1930 All 778 The ignorance of the Manager of the Bank of the terms of the Articles of Association does not affect this power to make a transfer of negotiable instrument 80 Ind Cas 741=A I R 1924 (Lah) 462

90 A company may, by , empower any Execution of deeds abroad -spect of any execute deeds on its behalf in any place not situate in British India, and every deed signed by such attorney, on behalf of the company, and under his seal where sealing is required, shall bind the company, and have the same effect as if it were under its common seal

Notes—Under this section the company can authorise any person, as the attorney of the company, to execute, under his seal, deeds out of British India.—*Vide Palmer's Company Law* p 259.

91. (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used

(2) A company having such an official seal, authorise any person appointed for district or place not situate in British India or other document to which the company is party in that territory, district or place

(3) The author of the instrument in which the seal is used, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company

Notes—Besides its common seal a company may under this section, obtain power to have an official seal for use abroad—*Palmer's Company Law* p 259,

"91A" (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement in which the company is concerned, shall disclose of interest by or on behalf of the company the nature of his interest

at which the contract or arrangement is entered into or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement;

Provide that a general notice that a director is a member of any specified firm or company and is to be regarded as interested in any subsequent transaction with such firm or company shall as regards any such transaction be sufficient disclosure within the meaning of this subsection, and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or company

(2) Every director who contravenes the provisions of sub section (1) shall be liable to a fine not exceeding one thousand rupees

Notes—The general principle is that no one who has a duty to perform shall place himself in a situation in which his interest conflicts with his duty, and he must not make profit by his trust *Lewin on Trust* page 310 So a director cannot enter into a contract with the company for profit for himself The directors of a company are agents of a company and trustees for the shareholders of the powers committed to them *Buckley, 9th Ed* p 929 The articles of an association provided that the company shall only be bound if two of the directors exercise authority consider the nature of the transaction

whenever the company is bound by the articles of an association provided that the company shall only be bound if two of the directors exercise authority consider the nature of the transaction as much as there was, in law and in fact only one director acting on behalf of the company, the other being incapacitated by his interest from acting in the particular matters that were discussed *V Rama Swami Iyer v The Madras Times*, 32 Ind. Cas 350=33 M 931 A director's sub partnership with other party to contract is interest in contract which should be disclosed A 1 R 1929 Mad 353=



that of husband and  
that it may reasona

91B.\* (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested; and if he does so vote, his vote shall not be counted.

Provided that the directors or any of them may vote on any contract of any kind in which they or any of them may be directly or indirectly concerned or interested, if they or any of them are not interested in the contract as directors.

shall be liable to a fine not exceeding one thousand rupees

"(3) This section shall not apply to a private company" †

Notes—There is almost invariably a more or less stringent clause as to the office of a director being vacated if he is concerned in or participates in profits of contracts with the company, though such a clause has a saving to the effect that it shall not apply if he discloses his interest, meaning the exact nature of the interest (*Imperial Mercantile Credit v Coleman*, L R 6 H L 189) to his co-directors or if he is only interested as a member of another company, in which latter case he will have only to disclose the fact of his membership [*Costa v Forwood*, (1901) 1 Ch 746]. The provision usually adds that he must not vote. *Stiebel's Company Law* p 359. Under sub section (2) any director who contravenes with the provisions of sub section (1) shall be liable to a fine but non-observance will not forfeit his office as director.

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662, see  
not prevail

of the company (1887) 12 A C 589, 40 Ch D 135

Provision—Usually a director is expressly allowed to vote on question of security to be given to him in respect of debts of the company for which he is liable—*Stiebel* p 359

91C\* Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member, and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub section (1), it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

91D\* (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the term of the contract, and specify therein the person with whom it has been made.

Contracts by agent of company in which company is undisclosed principal

\* Vide foot note under section 91 A

† Sub section (3) has been inserted by Act 42 of 1920

91. (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place

(3) The authority of the company and any person dealing with (if any) mentioned in the instrument conf there mentioned, then until notice of the revocation or determination of the agent's authority has been given to

(4) The person seal shall, by writing under his hand, on the seal, certify the date and place of affixing the same

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company

Notes—Besides its common seal a company may under this section obtain power to have an official seal for use abroad—*Pilmer's Company Ltd* p 259

'91A\* (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by the company, the disclosure of interest by the director

tors at which the contract or exists or in any other case at the first meeting of the company after the acquisition of his interest or the making of the contract or arrangement

Provided that a general notice that a director is a member of any specified firm or company and is to be regarded as interested in any subsequent transaction with such firm or company shall as regards any such transaction be sufficient disclosure within the meaning of this subsection, and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or company

(2) Every director who contravenes the provisions of sub section (1) shall be liable to a fine not exceeding one thousand rupees

Notes—The general principle is that no one who has a duty to perform shall place himself in a situation in which his interest conflicts with his duty and he must not make profit by his trust *Lewis on Trust* page 310 So a director cannot enter into a contract with the company for profit for himself. The directors of a company are agents of a company and trustees for the shareholders of the powers committed to them *Buckley 9th Ed* p 939 The articles of an association provided that the company shall only be bound if two of the directors exercise authority, consider its interests and act on its behalf At a meeting in which only two directors were present one of the directors present was appointed as Managing Director and co-editor of the company the appointment was not made in as much as there was, in law of the company the other being in particular matters that were discussed

32 Ind Cas 350=33 M 991 A director's sub partnership with other party to contract is interest in contract which should be disclosed A I R 1929 Mad 353=

11, Ind Cas 486 Even mere relationship of the director as that of husband and wife or father and son, is interest if the circumstances are such that it may reasonably be regarded as affecting the director's mind *Ibid*

**91B\* (1)** No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested, and if he does so vote, his vote shall not be counted

Prohibition of voting by interested director  
Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company

(2) Every director who contravenes the provision of sub-section (1) shall be liable to a fine not exceeding one thousand rupees

‘(3) This section shall not apply to a private company’ †

**Notes**—There is almost invariably a more or less stringent clause as to the office of a director being vacated if he is concerned in or participates in profits of contracts with the company, though such a clause has a saving to the effect that it shall not apply if he discloses his interest, meaning the exact nature of the interest (*Imperial Mercantile Credit v Coleman*, L R 6 H L 189) to his co-directors or if he is only interested as a member of another company in which latter case he will have only to disclose the fact of his membership [*Costa v Forwood* (1901) 1 Ch 746] The provision usually adds that he must not vote *Stiebel's Company* Law p 359 Under sub-section (2) any director who contravenes with the provisions of sub-section (1) shall be liable to director Cf *Imperial* case his vote will not be

662 see also 37 Ind Cas 403, 47 Ind Cas 41, 50 Ind Cas 31, 51 Ind Cas 31  
not prevent a director from exercising his vote on such matters at a general meeting of the company (1887) 12 A C 589 40 Ch D 135

**Provision**—Usually a director is expressly allowed to vote on question of security to be given to him in respect of debts of the company for which he is liable—*Stiebel* p 359

**91C\*** Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member, and the contract shall be open to the inspection of any member at the registered office of the company

(2) If a company makes default in complying with the requirements of sub-section (1) it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

**91D\*** (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the term of the contract, and specify therein the person with whom it has been made

\* Vide foot note under section 91 A

† Sub section (3) has been inserted by Act 42 of 1920

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company and such memorandum shall be filed in the office of the company, and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

(a) the contract shall, at the option of the company be void as against the company; and

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees."

## Prospectus

92 (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus

(2) A copy of every such prospectus, signed by every person who is named herein as a director or proposed director of the company, or by his agent in connection with the registration or prospectus shall be issued until

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(c) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Notes.—The object of this section would appear to be two fold. It ties a director to knowledge of the fact that the prospectus has been issued on a particular date, so that he cannot say he never heard of the prospectus or that certain misstatement in the prospectus never came to his knowledge until after the issue of the prospectus. It provides that a copy of the prospectus shall always be available to persons interested and it gives publicity to the affairs of the company.—Stielbel p 215 Non filing of a copy of prospectus is an offence 29 C W N 523=88 Ind Cas 5

Specific requirements as to particulars of prospectus

93 (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(a) "subscriptions and shares subscribed for by the directors of management to the extent of the capital of the company;

(d) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of a director;

(c) or proposed  
(d) if any), and  
proceed to  
allotment on

(d) each share, and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and either case the consideration for which those shares or debentures have been issued or agreed to be issued, and

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub purchaser, the amount so payable to each vendor. Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors, and

(g) the amount (if any) paid or payable as purchase money in cash, shares or debentures, for any such property as aforesaid, specifying the

(h) as  
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or agreeing to procure subscriptions for any shares in or debentures of the company or the rate of any such commission provided that it shall not be necessary to state the commission payable to sub-underwriters and

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(l) the dates of, and parties to, every material contract and a reasonable time and place at which any material contract or a copy thereof may be inspected. Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years two years before the date of issue of the prospectus, and

(m) the names and addresses of the auditors (if any) of the company, and

(n) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company, and

(o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes or shares respectively

(z) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them

(3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and the interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

**Sub-Clause f**—The object clearly is to strip off the mask—as *Lord Dalrymple* said—which often conceals the real vendor, and to get at the truth of who is

id what amount of profit he or the expense of the company. But is one thing, and its operation is trassed by it, the unscrupulous director can easily comply with the letter, and yet, by a multiplicity of details, baffle inquiry and throw dust in the eyes of investors.—*Palmer's Company* Ltd p 46. An outsider cannot challenge the appointment of Director or contest a Director's authority to act on behalf of the company where the company has recognised a person to be a director for a long time, without repudiating his acts on any single occasion 31 Ind Cas 593.

**Clause (3)**—A circular of which a few copies are printed or typewritten, and which is only given to the directors and few other persons for distribution among personal friends does not come within this section. *Stearns v Galt* (1904) 6 F 40. *Sherwell v Combined Industrial Utilities* (1907) 23 F L R 452, 111 L Ch 5.

**Clause 6**—No penalty is imposed for non-compliance with the section, and the inference seems to be that it is one absorbed by the neglect of the statutory duty has right of action for damages against the directors or promoters or other persons responsible for the neglect.—*Palmer's Company* Ltd p 46. *Atkinson v Newcastle & Gateshead Railway Co* (1892) A C 345. *Municipality of Gellert v City of London* (1895) A C 54. *Smith v Hoorn* (1895) 1 Q B 64. *Johnson v Consumer* (1895) A C 44.

**91** For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be required by the company in any case where—

- (a) the purchase-money is not fully paid at the date of issue of the prospectus,
- (b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus, or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

**Notes**—Very wide meaning is given to the word "vendor"—*Palmer's Company* Ltd p 346.

**95** Where any of the property to be required by the company is to be taken on lease section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

**Notes**—This corresponds to clause (3) of section 81 of the English Act.

96 Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93 or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void

97 In the event of non compliance with any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof, or

(b) the non-compliance arose from an honest mistake of fact on his part

Provided that, in the event of non compliance with the requirements contained in clause (n) of subsection (1) of section 93, no such director or other person shall incur any liability in respect of the non compliance unless it be proved that he had knowledge of the matters not disclosed

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing in the form and containing the particulars set out in the Second Schedule

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

Notes.—The Registrar will not file a statement in lieu of a prospectus unless every point in such form is dealt with either by a definite affirmative statement or by a negative statement and he is bound in this case to see the statute is complied with.—*Stiebel* p 219 A scheme was set on foot to purchase a cotton mill as a going concern at an excessive price and to promote a company greatly over capitalised, to which it was to be sold at a profit to the promoters. One of the promoters introduced the scheme to the respondent Lewis, and induced him to provide £30,000 in cash for which he was to receive £30,000 in debentures and 95,000 £1 shares, 20,000 of which were to go to the promoter who introduced the matter to him. The allotment of shares and debentures was made to the respondent on the day on which the company was registered but before the registration and at that time no prospectus, or statement in lieu of a prospectus had been filed as required by s 92 (1) (= this section) of the English Companies Act. Held that the respondent was liable as a promoter. *Jubilee Cotton Mills v Lewis*, (1924) A C 958. The statement is also open to inspection (1914) 1 Ch 390. The requirements of the section are satisfied by the mere filing of the statement (1914) 1 Ch 390.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus

99 A company shall not at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting

Notes.—A company cannot previously to its statutory meeting alter the terms of a contract referred to in a prospectus or statement in lieu of a prospectus except subject to the approval of the statutory meeting. *Stiebel* p 330

100 (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised

the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved—

- (a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be believe that the statement fairly represented the facts or was true
- (b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it
- (c) with respect to misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document ,  
or unless it is proved—
- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent , or
- (ii) his knowledge or consent and he forthwith gave a reasonable notice about his knowledge or consent ,  
or
- (iii) that, after the issue of the prospectus and before allotment thereunder he on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor

(2) Where a company existing at the commencement of this Act has issued shares or debentures and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus or has adopted or ratified it

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by



reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

(a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;

(b) the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him

Notes—A prospectus set forth that the company had been formed for the purpose of acquiring a concession to work and sell rubber in a certain district, and *inter alia*, stated, ‘L reports as follows,’ and then quoted the report L’s name had been already mentioned as a director of the company. The prospectus also stated that the statements in it were based mainly upon L’s report and further stated that no portion of the price would be paid until the directors received an independent report substantially confirming L’s report. A shareholder in the company brought an action to have his name taken off the register, averring that the statements quoted in the report were untrue and that he had subscribed in reliance on their truth. Held that the averment was relevant. *Mair v Rio Grande Rubber Estates*, (1913) A C 853. Where a company issues a prospectus inviting applications for shares on the faith of a *bona fide* statement of fact expressly based on the *bona fide* report of an expert the accuracy of those statements is *prima facie* the basis of the contract. If the company does not intend to contract on that basis, it must dissociate itself from the report in such clear and unambiguous terms as to warn intending applicants that it does not vouch for the accuracy of the report or any statement based thereon. Otherwise, if the report proves to be inaccurate any material inaccuracy in the company’s statements, though based thereon, will be a ground for rescission. In such a case, calculations of future profits based on the date of the report may amount to a material misrepresentation of fact. *In Re Pataya Rubber, and Produce*

mentioned in a prospectus required  
ment was not communicated to  
f the shares would be entitled to  
a refund of the moneys paid

#### A ment

101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with,  
Restriction as to allotment  
namely —

(a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment, or

whole amount of the

the amount so fixed  
has been paid, and

received in cash by the company.

the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved—

- (a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be believe that the statement fairly represented the facts or was true
  - (b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it
  - (c) with respect to misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document,
- or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it consent, or
  - (ii) that, at the time of his knowledge or consent and he forthwith gave a reasonable or about his knowledge or consent,
  - (iii) that, after the issue of the prospectus and before allotment thereunder, he on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor
- (2) Where a company existing at the commencement of this Act has issued shares or debentures and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus or has adopted or ratified it
- (3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by

reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;

(b) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him

Notes—A prospectus set forth that the company had been formed for the purpose of acquiring a concession to work and sell rubber in a certain district, and *inter alia*, stated, 'L reports as follow,' and then quoted the report. L's name had been already mentioned as a director of the company. The prospectus also stated that the statements in it were based mainly upon L's report and further stated that no portion of the price would be paid until the directors received an independent report substantially confirming L's report. A share holder in the company brought an

on the faith of a *bona fide* statement of fact expressly based on the *bona fide* report of an expert, the accuracy of those statements is *prima facie* the basis of the contract

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mentioned in a prospectus reured  
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the allottee of shares. Held that the allottee of the shares would be entitled to rescind the contract of allotment of shares and claim a refund of the moneys paid by him. A I R 1930 Mad 325=124 Cas 193

#### A ment

101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, Restriction as to allotment namely :—

(a) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(b) if no amount is so fixed and named then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent per annum from the expiration of the one hundred and thirtieth day. Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment, or

(b) if no amount is so fixed and named the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash

has been subscribed and an amount not less than five per cent of the nominal amount of each share payable in cash has been paid to and received by the company

(8) Subsection (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act

**Notes**—This section applies to a company's first allotment of shares offered to the public subscription. Once the company has allotted shares offered for public subscription it will not if it makes a further issue have again to comply with the section, nor does the section touch or affect in any way (except by sub section 7) an allotment of shares not offered for public subscription e.g. offered to a limited circle of friends or relations. *Palmer's Company Law* p 108. The section except sub section (3) requiring the amount payable on application to be not less than 5 per cent of the nominal amount of each share does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. *Stidell* p 223

A person who has taken shares on the strength of an offer made before incorporation of the company can not avail himself of these provisions to avoid his contract. *Sherwell v Combined Incandescent Co* (1907) 23 T L R 482. Where the company has issued two prospectuses one of which does and the other does not comply with these provisions a person who has taken shares on the strength of the

**102 (1)** An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later and shall be so voidable notwithstanding that the company is in course of being wound up

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment

**One month**—It is not necessary that the actual proceeding should be commenced within the month—it is enough if notice of intention to avoid the allotment is given within the month—and proceedings are taken as soon as it is clear that the directors of the company do not intend to remove the applicant's name  
*National Motor Mail Coach Co* (1908) 2 Ch 228

**Voidable**—After allotment the remedy under section 101 is gone and a company cannot avoid a wrongful allotment unless the allottee demands that they shall do so  
*Burton v Bevan* (1908) 2 Ch 240

**Knowingly**—Knowingly signifies knowledge of facts and not of the law knowledge after allotment is not enough  
*Burton v Bevan* (1908) 2 Ch 240

**Compensation**—The amount of such compensation will probably not be limited to the amount by which the shares applied for fall short of the minimum subscription  
*Daily Events Co, Times Newspaper and Murch*, 1911 cited in *Stiebel* p 224

**Invalid allotment**—Vide 1 Lah L J 1, 51 Ind Cas 812 Secretaries can allot shares if so empowered 26 Ind Cas 349=16 M L T 538 If there is no valid delegation of the power of allotting shares to the managing director which power was reserved to the Board of directors by the Articles of Association the shares cannot be validly allotted by him. The applicant can revoke his application for the allotment of any shares before any valid allotment or rectification by the Board of directors 1 Lah L J 1

**103 (1)** A company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription, and
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash, and
- (c) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with, and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus

(2) The registrar shall, on the filing of a duly verified declaration in accordance with the provisions of this section certify that the company is entitled to commence business and that certificate shall be conclusive evidence that the company is so entitled

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date and on that date it shall become binding

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues

by a private company, or to a company which does not issue a prospectus for its shares or, in so far as its prospectus is defective by guarantee and not having a share capital

Notes—If a statement in lieu of prospectus has been filed pursuant to section 108 of the Companies Act and the registrar has given a certificate under subsection (2) the company can proceed to allotment notwithstanding that the statement contains mis-statements and omissions *In re Blair Open Hearth Furnace Co Ltd* (1914) 1 Ch 390

104 (1) Whenever a company having a share capital makes any allotment of its shares the company shall, within one month thereafter—

(a) file with the registrar a return of the allotments stating the number and nominal amount of the shares comprised in the allotment the names addresses and descriptions of the allottees and the amount (if any) paid or due and payable on each share and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or for services or other consideration in respect of which that allotment was made such contracts being duly stamped and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted the extent to which they are to be treated as paid up and the consideration for which they have been allotted

(2) Where such a contract as above mentioned is not reduced to writing the company shall within one month after the allotment file with the registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act 1899 and the registrar may as a condition of filing the particulars require that the duty payable thereon be adjudicated under section 31 of that Act

(3) If default is made in complying with the requirements of this section every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues

Provided that in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section the company, or any person liable for the default may apply to the Court for relief, and the Court if satisfied that the omission to file the documents was

accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper

**Notes**—In *British Farmer's Pure Linseed Cake Co* (1878) 7 Ch D 533 *Jessel MR* said 'You are prohibited from contracting that shares shall be paid for otherwise than in cash except by a registered contract'. The condition that the defendant need not pay unless the company makes a profit and dividend is paid is in direct violation of section 28 of the Companies Act of 1882. *Motilal v Thakurlal* 16 Ind Cas 696=36 B 557 An arrangement that a registered company's purchased shares are not to be paid for in cash but are to be issued to the purchaser as fully paid up shares as part of an advance which the company has under taken to make is illegal if it is not made in writing and filed with the Registrar of the Joint Stock Companies as laid down in section 28 of Act VI of 1882—*Lachman v Liquidators* 25 Ind Cas 672=201 P L R 1914 The setting off of a debt due from the company against future calls on shares can only be considered a payment in cash within the meaning of section 28 of Act if the debt be due *in presentis*. *Ibid* An allotment by the company under the deed of a fully paid up share to a debenture holder in exchange for his debenture was an allotment of a share as fully paid up otherwise than in cash within the meaning of section 104 (1) (b) of the Companies Act 42 Ind Cas 674=41 Mad 307 The owner of a private business transferred all his stock to a new company and it was agreed that the transferor will be allotted certain shares in the new company without paying anything for it. No agreement was filed with the Registrar under this section. The company went into liquidation. *Held* that the transferor was not liable as a contributory for the unpaid shares as the agreement was not invalidated due to its not being filed under this section. *Prem v S B Ballimoria*, 48 A 503=9, Ind Cas 570 The Directors and Manager of a company must furnish the return of allotment of shares required by s 101 of the Companies Act. Ignorance of law is no excuse. 20 Cr L J 725=52 Ind Cas 88.

**Clause (b)**—The ratification of a previous contract by the board of directors of a company cannot be described as contract in writing constituting the title of the allottee. *Rama Swami v Chungulrja*, 94 Ind Cas 892=(196) M W N 6

**Sub-sections (2) and (3)**—Where the Registrar called for particulars under sub section (2) and the same was not furnished and consequently the company was prosecuted under sub section (4) *held* that the prosecution was right 94 Ind Cas 892

### Commissions and Discounts

**105 (1)** It shall be lawful for a company to pay a commission to any

Power to pay certain commissions and prohibition of payment of all other commissions discounts etc

person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares by the articles the amount or commission paid

or agreed to be paid is—

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus, or,

(b) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure subscriptions whether absolute or conditional for any shares in the company whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or other wise

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section

for under writing agreement An of the shares specified in the or event otherwise subscribed is services he is given certain

commission 42 Ch D 1, 13 T L R 569, (1897) 1 Ch 575 Before the passing of this Act it was doubtful whether such commission could be paid Vide *Lord Davy in Hilder v Dexter*, (1902) A C 474 (478), *Sydney v Bird*, 33 Ch D 85 95, *Fourie Electric Accumulator Co* (1886) 40 Ch D 141

Clause (2)—When the provision is in contravention of Indian Companies Act s 105 (2) it is *ultra vires* 115 Ind Cas 748

106 Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off

Notes—This section only applies to the under writing of shares and not of debentures as there was never any legal objection to the under writing of debentures but sums paid for under writing of shares or debentures, or allowed by way of discount in respect of debentures or so much thereof as has not been written off must be stated in every balance sheet of the company, until the whole amount has been written off—*Steebel* p 185

#### *Payment of interest out of Capital*

107 Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and of the cost of construction of the work or

(1) no such payment, shall be made unless the same is authorised by the articles or by special resolution,

(2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Local Government, which sanction shall be conclusive evidence for the



purpose of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section,

- (3) before sanctioning any such payment, the Local Government may, at the expense of the company, appoint a person to inquire and report to such Local Government as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry,
- (4) the payment shall be made only for such period as may be determined by the Local Govt beyond the close of the financial year in which the works are completed or the plant provided,
- (5) the rate of interest shall in no case exceed four per cent per annum or such lower rate as the Governor General in Council may, by notification in the *Gazette of India*, prescribe,
- (6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid,
- (7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate;
- (8) nothing in this section shall affect any company to which the Indian Railways Companies Act, 1895,\* or the Indian Tramways Act, 1902† applies

*N B*—The power it will be observed is carefully hedged now with conditions designed to prevent any abuse—*Pitner's Company Law* p 22

#### *Certificates of Shares, etc.*

- 108.** (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, by or for delivery of all debenture stock or shares, debentures
- Limitation of time for issue of certificates

the company, and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

**Notes**—‘The certificates in companies of this kind, are the proper, and indeed the only documentary evidence of title in the possession of a share holder’ *Per Lord Shelborne in Societe Generale de Paris v Walker* 11 App Cas 20 29 see also 3 Q B 595, 7 H L Cas at p 509, 3 App Cas. 1004

#### *In formation as to Mortgages, Charges, etc.*

**109** Every mortgage or charge created after the commencement of this Act by a company and being either—

Certain mortgages and charges to be void if not registered

- (a) a mortgage or charge for the purpose of securing any issue of debentures, or
- (b) a mortgage or charge on uncalled share capital of the company, or
- (c) a mortgage or charge on any immoveable property wherever situate, or any interest therein, or

\* Act X of 1895

† Act IV of 1902

- (d) a mortgage or charge on any book debts of the company, or  
 (e) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is there by conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable

Provided that—

- (i) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence have been received in British India shall be substituted for twenty one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar, and

(ii) where the mortgage or charge is created in British India but comprises property outside British India, instrument creating or purporting to create the prescribed manner  
 r proceedings may be  
 tual according to the  
 law of the country in which the property is situated, and

- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts, and  
 (iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property

**Scope of the section**—This section only limits the borrowing powers of the company or prescribes the manner in which that power is to be exercised and it does not prescribe a sale of property would be invalid where such sale falls within the ordinary business of the company *Ran Birin Singh v The Majassat Bank Ltd.* L R 6 A 29=83 Ind Cas 142=A I R (1925) All 205 (2) This section applies to a mortgage or charge created by the company by contract and not to a charge arising by operation of law 1927 Oudh 55

s of this section where  
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 repaying such money

1 Ch 103, but not where there is a  
 trustees *Bristol United Breweries v*  
 The date of creation of a charge is  
 to the debentures. *Spiral Globe*

*N Defries & Co* (1904) 1 Ch 37 A  
 deed or agreement is executed or entered  
 subsequently (1902) 2 Ch 209, (1903) 1 Ch 498, (1908) 1 Ch 621

**Clause (d)**—Book debts are debts which are entered or commonly entered in books *Shipley v. Marshall*, 14 C B N S 566, *Tailby v Official Receiver* 13 App Cas. 523, *Dawson v Isle* (1906) 1 Ch 633, *La v Car etc Corporation*, W N (1911) 9, cited in *Palmer's Company Law*, p 281

against the liquidator *Padumjee & Co v N K Moos*, 27 Bom L R 1218=91 Ind Cas 334. It is necessary to file with the Registrar the particulars of a mortgage by deposit of title deeds, whether or not it is accompanied by a memorandum of deposit. A I R 1937 Bom 167 A mortgage registered within 21 days has priority over a prior mortgage registered subsequently under an order of extension by High Court 1927 Oudh 300

A floating security is not a specific mortgage of assets, *plus* a licence to the mortgagor to dispose of them in the course of his business, but is a floating mortgage applying to every item comprised in the security, but not specifically affecting any item until some event occurs or some act on the part of the mortgagee is done which causes it to crystallize into a fixed security (1910) 2 K B 979, (1927)

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a mortgage not registered under s 109 while it is a going concern 104 Ind Cas 326=A I R 1927 Rang 288 A mortgage or charge granted by a company is not to be deemed an interest in immoveable property merely because it takes effect over debentures held by the company and that such debentures constitute a charge on immoveable property of the company issuing them 127 Ind Cas 760 The debentures charging the company's assets though not creating an interest in immoveable property create a floating charge and require registration under s 17 (1) of the Registration Act 58 C 130=53 C L J 269=131 Ind Cas 689=A I R 1931 Cal 223, but see 35 C W N 1034=A I R 1931 P C 245

110 Where a series of debentures containing, or giving by reference to

Particulars in case of series of debentures entitling holders *pari passu*

any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the

purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(a) the total amount secured by the whole series, and

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and

(c) a general description of the property charged, and

(d) the names of the trustees (if any) for the debenture holders,

together with the deed or a copy thereof verified in the prescribed manner containing the charge or if there is no such deed one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register

Provided that, where more than one issue is made of debentures in the series, they shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Debentures—I cannot find' said *Chitty J* in *Levey v Abercorns Co* (1888), 37 Ch D 264, "any precise legal definition of the term (i.e. debenture) It is not either in law or commerce a strictly technical term, or what is called a term of art. It is very wide term, but it is now generally used to signify a security for money called on the face of a debenture, and providing for the payment of a specified sum—say £100—at a fixed date, with the interest meantime half yearly. It usually gives a charge by way of security, and in most cases is expressed to be one of the series of like debentures. But the term as used in common parlance is of an extremely elastic character. *Palmer's Company's Law citing Gardiner v London* 2 Ch 201. *Levey v Abercorns Co* 37 Ch D 264; *Robson v Smiths* (1895) 2 Ch 118, *British India and Co v Commissioner*, 7 Q B D 16,

- (d) a mortgage or charge on any book debts of the company, or  
 (e) a floating charge on the undertaking or property of the company,

shall so far as any security on the company's property or undertaking is there by conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable

Provided that—

- (i) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar, and

(ii) where a mortgage or charge created out of British India comprising solely property situate outside British India, twenty one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar, and

- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts, and

- (iv) the holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property

primary business of the company *Ran Bir Singh v The Masfussal Bank Ltd.* L R 6 A 29=83 Ind Cas 142=A 1 R (1925) All 205 (2) This section applies to a mortgage or charge created by the company by contract and not to a charge arising by operation of law 1927 Oudh 55

to the debentures *Spiral Globe* *Annibus* (1908) 1 Ch 621, but see *N Defries & Co* (1904) 1 Ch 37 *Marrogate States Ltd* (1903) 1 Ch 498, deed or agreement is executed or entered into even though the advance is made subsequently (1902) 2 Ch 209, (1903) 1 Ch 498 (1908) 1 Ch 621

which are entered or commonly entered in N S 566, *Talby v Official Receiver* 13 1 Ch 633, *Law Car, etc Corporation*, Law, p 281

against the liquidator *Padumjee & Co v N K Moos*, 27 Bom L R 1218=91 Ind Cas 334. It is necessary to file with the Registrar the particulars of a mortgage by deposit of title deeds, whether or not it is accompanied by a memorandum of deposit. A I R 1937 Bom 167 A mortgage registered within 21 days has priority over a prior mortgage registered subsequently under an order of extension by High

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110 Where a series of debentures containing or giving by reference to Particulars in case of series of debentures entitling holders *pari passu* any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

- (a) the total amount secured by the whole series, and
  - (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
  - (c) a general description of the property charged, and
  - (d) the names of the trustees (if any) for the debenture holders,
- together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, they shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

said *Chitty J* in *Levey v Abercorns Co*

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It usually gives a charge by way of security, and in most cases is expressed to be one of the series of like debentures. But the term as used in common parlance is of an extremely elastic character. *Palmer's Company's Law* citing *Gardiner v London* 2 Ch 201 *Levey v Abercorns Co* 37 Ch D 264, *Robson v Smiths* (1895) 2 Ch 118, *British India and Co v Commissioner*, 7 Q B D 165

**111** Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount

**Notes**—The legality of issuing a debenture at a discount is recognised by this section *Buckley* p 249

**112** (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the commencement of the Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge

(2) After making the entry required by sub section (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the

each inspection

**Clause (3)**—The right of inspection includes the right to take copies (1897) 1 Ch 130

**113** The registrar shall keep a chronological index in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act

**Notes**—This section makes provision for the keeping of a chronological index in the prescribed form and with the prescribed particulars of the mortgages or charges registered with the registrar under the Act

**114** The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with

**Notes**—The certificate is conclusive evidence that the requirements of the section as to registration have been complied with. The mistake on the part of the Registrar does not invalidate the certificate *Yolland, Husson Birkett and Co Ltd* (1908) 1 Ch 152, see also *Cunard Steam Ship Co v Hopwood*, (1908) 2 Ch 564, *Harrogate Estates Ltd* (1903) 1 Ch 498, (1924) 1 K B 431 at p 444

**115** The registrar shall, on the certificate of registration, be endorsed on every debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

116 (1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debenture of a series, requiring registration under section 109, but registration of any of such mortgage or charge may be effected on the application of any person interested therein.

Duty of company and right of interested party as regards registration.

(2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109, to be kept at the registered office of the company. Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Copy of instrument creating mortgage or charge to be kept at registered office

118 (1) If any person obtains an order for the appointment of a receiver of the property of a company or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

Registration of appointment or receiver

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

119 (2) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form, of his receipts and payments during the period to which the abstract relates and shall also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

Filing of accounts of receiver

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees

120 The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant a relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient order that the time for registration be extended, or, as the case may be, that

Rectification of register of mortgages

omission or mis statement be rectified, and may make such order as to the costs of the application as it thinks fit

Notes—An application was granted on the ground of *bona fide* belief that registration was not required *E I Beattie & Co Ltd*, (1901) W N 152 In *Bottle Cold Storage Co* (1901) W N 54 an application was granted on the ground of a misunderstanding of the act and delay of stamp authorities In *Joplin Breweries* (1902) 1 Ch 79 an application was granted on the ground that delay had been caused by the illness of a director Similar application may be granted on the ground of mis understanding of law *Menhip Press*, (1901) T L R 38, (1905) 49 Sol J 283 cited in *Stiebel* p 350

Subsequent mortgage registered earlier cannot get priority 122 Ind Cas 163= A I R 1930 P C 66=34 C W N 557 An officer of company in whose favour a charge specifically affecting the property of a company has been granted cannot avail himself of it unless it is registered under s 68 though he has ceased to be an officer at the time when the charge is sought to be enforced 56 Ind Cas 163= favour of the officers of the company for their floating charge has already crystallized and, if not registered as required by s 68 32 Ind

Cas 91

121 The registrar may on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required furnish the company with a copy thereof

Penalties

122 (1) If any company makes default in filing with the registrar for registration the particulars—

- (a) of any mortgage or charge created by the company, or
- (b) of the issues of debentures of a series

requiring registration with the registrar under the foregoing provisions of this Act then unless the registration has been effected on the application of some other person the company and every officer of the company or other person who is knowingly a party to the default shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues

(2) Subject as aforesaid if any company makes default in complying with any of the requirements of the Act as to the registration with the registrar of any mortgage or charge created by the company the company, and every officer of the company who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine

wilfully authorises or permits the delivery of share certificate stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it he shall without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees

Vide 29 M L J 110

123 (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and except (in the case of securities to bearer) the names of the mortgagees or persons entitled thereto

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in



pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees

**Notes**—Non registration does not affect the validity of a charge. In cases of wilful omission, a penalty not exceeding five hundred rupees is to be imposed. *Re General South America Co* 2 Ch D 337, *Wright v Hulton* (1887) 12 App Cas 371, 43 M 530 (P C)

**124 (1)** The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe

If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees, and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty the Court may by order compel an immediate inspection of the copies or register

**Notes**—A prospective creditor can see the company's register of mortgages but not the mortgages or charges. *National Union Bank of England v Cornaby* (1928) 44 N 315

**125 (1)** Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied

securing any issue of debenture shall be debentures at his request on payment in sum of one rupee or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied

(3) If inspection is refused or a copy is refused or not forwarded the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty the Court may by order compel an immediate inspection of the register

**Notes**—A person demanding inspection cannot himself take copies. *Balgilg Gold Mining* (1909) 2 K B 655. Debenture stock very rarely contains any charge in itself and is therefore almost always secured by a trust deed. Debentures although usually conferring a charge are not infrequently accompanied by a trust deed so that the debenture holders may have the benefit of a fixed charge on certain of the property of the company. *Stebel* p 47. A fixed charge may be made to rank after a floating charge. *Robert Stephenson and Co* (1902) 132 L T J 133

*Debentures and Floating Charges*

126 A condition contained in any debentures or in any deed for securing any debentures whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long

and there is no provision for redemption or covenant for repayment, where the debenture stock and debentures will be what is called perpetual or irredeemable, and the transaction will not be a borrowing of money or come within the provisions of a power to borrow but will be a sale of a perpetual annuity (1903) 2 Ch 78, (1879) 9 C D 337, (1890) 1 Q B 121. Formerly there was doubt as to whether a company could create perpetual debentures or debenture stock, as it was said that such stock offended the rule against clogging the equity of redemption of mortgaged property, *Jurrah Timber v. Samuel*, (1903) Ch 1 S C. (1904) A. C. 323 *Shelley* [ 471. This section was enacted to validate such perpetual annuities. (1931) 2 Ch 14 at [ 151

127 (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assignees) shall have power and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power to re-issue the debentures either by re-issuing the same debentures or by the issuing other debentures in their place and upon such re-issue the person entitled to the debentures shall have and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the commencement of this Act been transferred to a nominee of the company a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section

(3) Where a company has either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued

any of a debenture re-issued, may give the debenture without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed, or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

**Notes**—With regard to debentures with a company has redeemed or brought on the market formerly the law was that such debentures were cancelled or spent by the fact that the money secured by them was paid off, and they could not be

had not been previously issued. The question whether re issued debentures requires registration was raised in *New London and Suburban Omnibus Co*, (1908) 1 Ch 621, where *Neville J*, did not decide the question, but held in that particular case that debentures did not require registration *Stiebel* p 470

**Specific performance of contract to subscribe for debentures** 128 A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance

**Notes**—The enactment of this section *African Territorials v Willington*, (1898) A p 476 Before the enactment of this section be enforced specifically *Ibid*

129 (1) Where either a receiver is appointed on behalf of the holders of

any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company

is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be

(3) Any payments made under the section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors

**Notes**—Vide (1898) 2 Ch 378 at p 381

### *Statements, Books and Accounts*

130 Every company shall keep proper books of account in which shall be entered full, true and complete accounts of the affairs and transactions of the company

**131** (1) Every company shall, once at least in every year and at intervals of not more than fifteen months, cause the accounts of the company to be balanced and a balance sheet to be prepared

Annual balance sheet

(2) The balance-sheet shall be audited by the auditor of the company as herein after provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report and the report, shall be read before the company in general meeting and shall be open to inspection by any member of the company

(3) Every company other than a private company shall send a copy of such balance-sheet so audited to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least seven days before that meeting

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty

**Balance sheet**—“in order to ascertain the profits earned and divisible at any given time of the company  
a fair statement of the liabilities of the company on the other hand a fair or more properly a *do* balance if in favour of the company  
being profits *ro v Bank v Mahomed* (1882) 9 Retire

535 A complaint under section 74 of the Indian Companies Act VI of 1882 for wilful default in filing a balance sheet not brought by the Registrar but by a clerk of his office and countersigned by the Public Prosecutor is bad in law and not entertainable by a Criminal Court 8 Ind Cas 191=35 P W R 1910 Cr, see also 18 Ind Cas 965=35 A 173 15 Cr L J 260

**132** (1) The balance shall contain a summary of the property and assets and of the capital and liabilities of the company  
Contents of balance sheet giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at

(2) The balance sheets shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit

**Notes**—Mistakes and omissions in the classification of debts as ‘doubtful or bad’ can not in the absence of positive evidence of guilty knowledge, be taken to afford any presumption of cheating on the part of the directors of a limited company to show their debts as a separate item affords ates and omissions though by themselves part of the directors, will not make them o does not happen to be a trained accountant certifies to the existence of securities and states that the balance sheet is correct and according to law he can not be held liable criminally for failure to detect mistakes which would have revealed financial unsoundness of the company 8 Ind. Cas 326 see also 22 Ind Cas 432 (F B) If any part of a secret reserve in availed of to meet bad and doubtful book debts it must be revealed in the balance sheet and not concealed, (1927) A I R Bom 414, 134 Ind Cas 993=25 B L R 297

Authentication of balance sheet

**133** (1) Save as provided by sub-section (2) the balance-sheet shall—

- (i) in the case of a banking company be signed by the manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors,
- (ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager (if any) of the company.

(2) When the total number of directors of the company for the time being in  
are required  
directors for  
e time being  
subjoined to  
the balance sheet a statement signed by such directors or director explaining the  
reason for non-compliance with the provisions of sub section (1)

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees

Notes —The directors sign on behalf of the company and after approval by the board by a resolution

134. (1) After the balance sheet has been laid before the company at the general meeting a copy thereof signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copy thereof required to be filed with the registrar

(3) This section shall not apply to a private company

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section

clause (4) in respect of default made in sheet for a certain year, it is not open to a d that as no general meeting was called in that year and no balance sheet was laid before the company at any such general meeting, it was impossible for him or his company to comply with the requirements possess jurisdiction to try where the company is

resigns office before the expiry of the year cannot be fixed with liability under section 74 of the Companies Act, VI of 1882, for failure to file a balance sheet with the Registrar of joint stock companies *Chantir Bhan v Emperor*, 13 Ind Cas 718=15 Cr L J 380 An order directing the directors individually to pay fine imposed on the company is illegal *Dvarka v Emperor*, 6 L L J 160=1924 Lah 489 The penalty laid down under section 74 of the Indian Companies Act of 1882 is a fixed penalty and the magistrate, trying a case under that section is not competent to inflict a lesser penalty *Dino Nath v King Emperor* 11 A. L J 196=18 173, *Crown v Lala Harkishan Lal*, 37 1914, *Tota Ram v The Crown*, 18 P R. Registrar is authorised to empower a person no other person can institute complaints

will be no answer, and they can be convicted of both offences. *Pirk v Latham* (1911) 1 K B 358

135 Save as otherwise provided in this Act, any member of a company

shall be entitled to be furnished with copies of the balance sheet and the auditors report at a charge not exceeding six annas for every hundred words or fractional part thereof

Notes—The shareholders cannot be deprived of their statutory rights given under this section

*Statements to be published by Banking and certain other Companies*

136 (1) Every company being a limited banking company or an insurance

company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit

(2) A copy of the statement shall be displayed and until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas

(4) If a company makes a default in complying with this section it shall be liable to a fine which the default continues, wilfully authorises or permits the default shall be liable to the like penalty

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act 1912 as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications if the company or society complies with those provisions

Notes—Under sub section (1) every limited banking company is bound to publish a statement provided in the third schedule on the date specified in the section and the failure to comply with its provisions is punishable under sub section (4). The fact that statements could not be published in time on account of the change in the closing date of the financial year of the company is not a valid answer to the charge. *Parshu Ram v Sham Dasini In re* 48 B 305=26 Bom L R 68=82 Ind Cas 58 (2)=1924 Bom 308

*Investigation by the Registrar*

137 (1) Where the registrar, on perusal of any document which a

company is required to submit to him under the provisions of this Act is of opinion that any information or explanation is necessary in order

that such document may afford full particulars of the matter to which it purports to relate he may, by a written order call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order

(2) On the receipt of an order under sub section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him, and any additional document so annexed by the registrar shall be subject

to the like provisions as to inspection and the taking of copies by the original document is subject

(c) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the cases to the Local Government

### *Inspection and Audit*

138. The Local Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Local Government may direct—  
Investigation of affairs of company by inspectors

- (i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued,
- (ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued
- (iii) in the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members
- (iv) in the case of any company on a report by the registrar under section 137 sub-section (c)

139 An application by members of a company under section 138 shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation and the Local Government may, before appointing an inspector require the applicants to give security for payment of the costs of the inquiry  
Application for inspection to be supported by evidence

Notes—Where an application is made a statement always requires a statutory declaration that the reason for and are not actuated by malicious motives. The applicants are also required to make a statement that the investigation is likely to cost.  
Stiebel p 405

140 (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company  
Inspection of books and examination of officers

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence

141 (1) On the conclusion of the investigation, the inspectors shall report their opinion to the Local Government, and a copy of the report shall be forwarded by the Local Government to the registered office of the company and a further copy shall, at the request of the applicants for the investigation, be delivered to them  
Results of examination how dealt with

- (2) The report shall be written or printed, as the Local Government directs
- (3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the Local Government directs the same to be paid by the company, which the Local Government is hereby authorized to do

Power of company to appoint inspectors      142. (1) A Company may by a special resolution appoint inspectors to investigate its affairs

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Local Government, except that, instead of reporting to the Local Government, they shall report in such manner and to such persons as the company in general meeting may direct

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required, to be produced to inspectors so appointed, or to answer any questions, as they would have incurred if the inspectors had been appointed by the Local Government.

143 A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose Report of inspectors to be evidence      affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report

144 (1) No person shall be appointed or act as an auditor of any company other than a private company unless he holds a certificate from the "Governor-General in Council" entitling him to act as an auditor of companies

Qualifications and appointment of auditors

† Provided that a firm whereof [all the partners practising in India]† hold such certificates may be appointed by its firm name to be auditor of a company, and may act in its firm name

(2) "The Governor General in Council may, by notification in the Gazette of India and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant renewal or cancellation

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant

‡ (2A) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) a Register of Accountants entitled to

(b) therefor, enrolment on the Register and the fees

(c) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees

(d) the fee of any person may be

(e) the procedure of an Indian

principally affected or having special knowledge of accountancy in India, to advise him on all matters of administration relating to accountancy and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the Register, and

\* Substituted by Act XIX of 1930

† Substituted by Act I of 1932

‡ Added by Act XIX of 1930



'(f) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the Governor General in Council may select, to advise him and the Indian Accountancy Board

be entitled  
in India'

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting

(4) If an appointment of an auditor is not made at an annual general meeting the Local Government may, on the application of any member of the company, appoint an auditor of the company for the current year and fix the remuneration to be paid to him by the company for his services

(5) The following person, that is to say,

(i) a director or officer of the company,

(ii) a partner of such director or officer, and

(iii) in the case of a company, other than a private company, any person in the employment of such director or officer,

shall not be appointed auditors of the company

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting

(7) The first auditors of the company may be appointed by the directors before the statutory meeting and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy, may be fixed by the directors

Notes—In a general meeting the shareholders of a company appointed certain persons as auditors who acted as auditors, signed the balance-sheet as auditors and were shown as auditors on the front page of the Directors' report issued to the shareholders. But it was subsequently discovered that their appointment was irregular in as much as the general meeting in which they were appointed was without proper quorum. *Hell*, in a proceeding against the auditors under section 214 for misfeasance as auditors, that they were not only *de facto* auditors and also *de jure* auditors and that no irregularity in their appointment could avail them. *Stuart Smith v. Official Liquidator*, 21 Ind. Cas. 431, see also *In re Western Counties Steam Barges* (1897) 1 Ch. D. 617. Where three of the Directors who

could appoint to a casual vacancy voted as shareholders in the general meeting which appointed the auditors, they could be said to have made the appointment as Directors. 24 Ind Cas, 431

145 (1) Every auditor of a company shall have right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors

(2) The auditor shall make a report to the members of the company on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required, and
- (b) whether, in their opinion, the balance sheet referred to in the report is drawn up in conformity with the law, and
- (c) whether such balance sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

Sub section (1) — This sub section gives the auditors right of access to the books of the company, and to make enquiries for his report — *vide Stiebel* p. 408

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is not an insurer he does not position of the company's affairs, he does not even guarantee that his balance sheet is accurate according to the books of the company If he did he would be responsible for an error on his part, even if he were himself deceived without any want of reasonable care on his part—say, by the fraudulent concealment of a book from him

What a reasonable care in any particular case must depend upon the circumstances of that case Where there is nothing to excite suspicion, very little enquiry will be reasonably sufficient and, in practice, I believe, business men select a few cases at haphazard see that they are right, and assume that others like them are correct also Where suspicion is aroused more care is obviously necessary

**146 (1)** Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company

Rights of preference share holders etc as to receipt and inspection of reports, etc

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act

Notes—This section provided that holders of preference shares of a company shall have the same right to receive and inspect the balance sheets of a company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company

### *Carrying on business with less than the legal minimum of members*

**147.** If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joining in the suit of any other member

Notes—For the purpose of this section representatives of members e.g. executors or administrators or trustees in bankruptcy are not members *Boulton and Welch's Contract*, (1895) 1 Ch 563

### *Service and Authentication of Documents*

**148** A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company

Service of documents on company

Notes—Order XXIX, Rule 2, of the Civil Procedure Code preserves the provisions of this section as regards service of process on companies registered under

the Act *Hope Mills v Vithal Das*, 12 Bom L R 730=7 Ind Cas 982 A company registered in Scotland or Ireland can not be served in England even when it carries on business there 23 Q B D 285

Service of documents on registrar

149 A document may be served on the registrar by sending it to him by post, or delivering it to him or by leaving it for him at his office

150 A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal

Notes—A secretary if duly authorised by authenticated document under this section may sign *Stubel* p 375

### *Tables, Forms and Rules as to prescribed matters*

Application and alteration of tables and forms and power to make rules as to prescribed matters

151 (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer

(2) The Governor General in Council may alter any of the tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the registrar in the said Schedule, mentioned, and may alter or add to the forms in the Third Schedule

(3) Any such table or form, when altered, shall be published in the *Gazette of India* and on such publication shall have effect as if enacted in this Act but no alteration made by the Governor General in Council in Table A in the First Schedule shall affect any company registered before the alteration, or any portion of that table

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powers hereinbefore conferred by this section the Registrar may make rules providing for all or any matters which by this Act are to be prescribed by his authority

(4) Every such rule shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act

Notes—The model forms given in the third schedule should be generally followed (1915) A C 514 at page 522 The Governor General may alter this table but not so as to increase the amount of fees payable to the Registrar For rules under this section vide *Gazette of India* 1914 pt 1 p 805

### *Arbitration and Compromise*

152 (1) A company may by written agreement refer to arbitration, in accordance with the Indian Arbitration Act, 1899, an existing or future difference between itself and any other company or person

(2) Companies, parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body

(3) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act.

Notes.—A contract to refer to arbitration any dispute which might arise between a company and an individual is not illegal because it is not under the seal of the company *The Ganges Sugar Works v Nuri Ullah*, 28 Ind. Cas 385=37 A 273=13 A L J 312 Powers of a living company to refer to arbitration are not co-extensive with the powers of official liquidators who can not refer dispute to

private arbitration 50 A 807=110 I C 695 Court has no jurisdiction to file agreement made with company to refer to arbitration under certain conditions in as

where the subject matter in dispute could not be made the subject of an Arbitration under the Act 132 Ind Cas 399=32 P L R 444

153. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors, or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted, in such manner as the Court directs.

(2) If a majority in number representing three fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, present either in person or by proxy at the meeting agree to any compromise or arrangement the compromise or arrangement shall, if sanctioned by the Court be binding on all the creditors or the class of or on all the members or class of members as the case may be and also on the company or, in the case of a company in the course of being wound up on the liquidator and contributories of the company.

(3) In this section the expression 'company' means any company liable to be wound up under this Act.

Notes—This section enacts that if a majority in number representing three-fourths the value of the creditors agree to any compromise or arrangement, the compromise or agreement shall, if sanctioned by the Court be binding on all the creditors and also on the company. This arrangement could affect only those persons who were creditors either at the time when the sanction was accorded by the Court, or at the time when the application under this section was presented to the Court *Chhunnu Lal v Bank of Upper India Ltd*, 40 Ind Cas 904=106 P W R 1914. The compromise takes effect from the date of the sanction 41 A 566=36 M L J 526 P C, 32 Ind Cas 451. In a meeting held under the provisions of this section the written acceptance of the arrangement by those share holders and creditors who are not present either in person or by proxy, cannot be taken into consideration to make up the majority in number.

27 Bom L R 655 Under this section the Court can sanction only a *boni fide* and workable scheme 30 Ind Cas 386, (1891) 1 Ch 213

The creditors include debenture holders *Re Alabama & Co* (1891) 1 Ch (CA) 223, *Slater v Division Steel Co W N* (1887) 165 Under the scheme fully paid up shares can be given to the debenture holders *Empire Co* (1890) 44 Ch D 402 Any scheme which is fair and reasonable, and made in good faith, will be sanctioned *Re Alabama & Co* (1891) 1 Ch (CA) 213

Vote given on behalf of a deceased member by an executor must be disallowed as also in the case of a liquidator or a receiver 108 Ind Cas 465=30 Bom L R 197=A I R 1928 Bom 80 Order for preparing deed of mortgage must be set aside as share holders had not assented to new scheme A I R 1929 P, C 236=119 Ind Cas 631 The only persons interested in a scheme of arrangement under s 153 are the creditors or contributories of the company and they alone are entitled to appeal for an order under the section 33 Bom L R 1495

*Conversion of private company into public company.*

154 (1) A private company may, subject to anything contained in its memorandum or articles, by a special resolution and by filing with the registrar a copy of such resolution and also such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures together with such a duly verified declaration as the company, if a public company, would have had to file before commencing business turn itself into a public company.

(2) Upon the filing of the documents mentioned in subsection (1) the registrar shall record the change in his books relating to the company.

company but it is to be noted that there is no prohibition in the section against disregarding the articles in so far as they bring the company within the definition—  
*Palmer's Company Law* p 363

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## PART V

## WINDING UP

*Preliminary*

Mode of winding up 155 (1) The winding up of a company may be either—

- (i) by the Court or
- (ii) voluntary, or
- (iii) subject to the supervision of the Court

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears to the winding up of a company in any of these modes

Act can not be put an end to except  
*if Pears v Bos* L R 5 H L 193  
 is called compulsory liquidation  
 up and clause (3) makes mention of  
 voluntary winding up subject to supervision of Court A voluntary winding up is  
 deemed to commence at the time of the passing of the resolution authorizing  
 the winding up i.e. in the case of a special resolution at the time of the confirma-  
 tory resolution *Hordy's Case* (1868) 37 L J Ch 929 *Davy's Case* (1868) 6 Eq  
 232—Cited in *Stiebel* p 1264

A corporation does not become dissolved at the commencement of either of a  
*v Surendra* 42 Ind Cas 455  
 inal contract to take shares in a  
 but it is eventually made and  
 ue says nothing about the delay he must be taken to have consented to it, and if  
 liquidation supervenes he can not escape his liability by reason of the delay to which  
 he raised no objection 43 Ind Cas 134=40 L 45 The Court can set aside a  
 transaction if it is detrimental to the interests of the creditors and contributories of  
 the company 48 Ind Cas 919=7 P L R 1919

*Contributories*

156. (1) In the event of a company being wound up, every present and past member shall subject to provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities and the costs, charges and

Liability as contributories  
 of present and past mem-  
 bers

expenses of its winding up, and for the adjustment of the rights of the contributors among themselves, with the qualifications following (that is to say) —

- (i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up,
- (ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member,
- (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount if any, unpaid on the shares in respect to which he is liable as a present or past member;
- (v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up,
- (vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract,
- (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him

**Contributories**—The terms includes fully paid shareholders *National Savings Bank Association*, (1866), 1 Ch 547, *Anglesea Colliery Co* (1866) 1 Ch 555, *Rica But Club* 65 L A. 347, 36 Ind Cas 791, 38 Ind Cas 233, 81 Ind Cas 503 *Gold Mines* (1898) 1 Ch 122 all interest *Marlborough Refit Building Society* (1892) vide 35 Ind Cas 159=38 A. 347, 36 Ind Cas 791, 38 Ind Cas 233, 81 Ind Cas 503 An intention to forfeit not claimed into effect is no forfeiture of all 10 Pat. 299=1930 Ind Cas 534=12 Pat L T 215=A. I R 1931 Pat=44.

**Two lists of contributories**—Ordinarily there will be two lists of contributories, namely, the A list and the B list The A list comprises persons who are primarily and  
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5 H L 28, *Webb v Whiffin*, L R 5 H L 718, *Brett's Case* 6 App Cas 800, *Morris's Case*, L R 7 Ch 200 S C 8 Ch 810. The list also distinguishes between persons who are contributories in their own right and persons who are contributories as representatives of others. *Palmer's Company Law* p 396.

**157.** In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of the provisions of the Act, in addition to his liability as an ordinary member, unlimited, shall be liable to make a contribution to the commencement of the winding up of an unlimited company.

Provided that—

- (i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up,
- (ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office,
- (iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy debts and liabilities of the company, and the costs, charges and expenses of the winding up.

**158.** The term

Meaning of contributory

and in all proceedings prior to the final determination of the persons who are to be deemed contributories includes any person alleged to be a contributory.

Notes—A mere debtor of a company in liquidation is not a contributory (1926) All 101 (1866) 2 Lq 379 at p 387 (1865) 1 Ch App 555, (1867) 3 Ch App 101 at p 164 (1878) 8 Ch D 679 at p 708. It includes any person alleged to be a contributory 57 Ind Cas 22, (1919) 1 Lah 237. It includes a fully paid up shareholder 36 Ind Cas 980 see also 89 Ind Cas 994. A person who agrees to be a member of the company on some condition does not become a member if the condition is not fulfilled and cannot be placed on the list of contributories. A I R 1928 Lah 234=101 Ind Cas 192 107 Ind Cas 492.

**159** (1) The liability of a contributory shall create a debt accruing due from him at the time when his liability

Nature of liability of contributory commenced, but payable at the times when calls are made for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency towns.

Contributory commences when he agrees to take his share R 1 H L 9 *Ex parte Connell* (1864) 4 De G J 9) 12 C D 284. Once there is an application for a decree to relieve a shareholder of his liability as a contributory 75 Ind Cas 745.

**160** (1) If a contributory dies either before or after he has been placed on the list of contributories his legal representatives and

Contributors in case of death of member his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representative of a contributory is ordered to be paid by them, the company or the estate of the deceased contributory, the company or the estate of the deceased contributory shall be liable to pay the money due of compelling payment thereof of the money due.

Notes—Where the deceased shareholders dies before the winding up this section is applicable. *See Muggerni & Co* 10 Fq 433 *Tyler v Tyler* (1870) 10 Eq 477.



A nominee of the company can be appointed administrator *Tomlinson v Gilby*, 54 L J P 50. Where an executor or an administrator improperly distributes the assets he may be personally liable if his name appears in the list of contributories *Re Muggeridge*, (1870) 10 Eq 433. The liability of the legal representative of the deceased share holder to contribute is limited to the extent of the assets if any, which came into their hands from the deceased share holders. A I R 1931 Pat 44=130 Ind Cas 534=10 Pat 249. Illegally removed member is still a member 133 Ind Cas 424. To fix a deceased contributory's share with the liability of person representing his estate should be brought on record before an effective order may be made. A I R 1930 All 503=124 Ind, Cas 28.

Contributories in case of insolvency of member 161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories then—

- (1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly and may be called on to admit to proof against the state of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to

estimated  
made

Notes—In such a case a trustee in bankruptcy may be put on the list (1906) 1 Ch 1. It appears that a bankrupt is to be treated better than other contributories in a winding up. Vide *Re Duckworth*, 2 Ch 578, *Ex parte Strong*, 5 Ch 492. *Carrall and Haggard's Claim*, 4 Ch 174, *Ex parte Cooper*, 15 L T 637, *Re G E B* (1903) 2 K B 340.

### Winding up by Court

Circumstances in which company may be wound up by Court 162. A company may be wound up by the Court—

- (i) if the company has by special resolution resolved that the company be wound up by the Court,
- (ii) if default is made in filing the statutory report or in holding the statutory meeting
- (iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year
- (iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven
- (v) if the company is unable to pay its debts:
- (vi) if the Court is of opinion that it is just and equitable that the company should be wound up

Notes—The Court should exercise power under this section only on strong ground 86 Ind Cas 135=48 M 489, see also 39 B 16, 31 P R 1914, 39 B 47, 39 Ind Cas 570=39 A 334. It is only in extreme cases that a Court will at the suggestion of the minority disregard the wishes of the domestic forum and order the company to be wound up 59 Ind Cas 524, see also 59 Ind Cas 542=47 C 654, 23 C W N 844=38 Ind Cas 561. A creditor's application for winding up must be dismissed where a company has a *bona fide* defence to the claim A I R 1925 Rang 128=2 Rang 326=84 Ind Cas 1021. That there has been a fraud in the promotion or fraudulent misrepresentation in the prospectus is insufficient to found a winding up.

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Notes—An order for the winding up of a company was made by the Punjab Companies Act. Subsequent proceedings were *Lahore* against contributories residing in *Lahore* High Court. On an application by the liquidator to enforce these orders to enforce the orders by proceedings

**166** An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section either by the company, or by any (or creditor or creditors including any contingent or prospective creditor or creditors), contributory or contributories or by all or any of those parties together or separately

Provided that—

- (a) a contributory shall not be entitled to present a petition for winding up a company unless—
- (i) either the number of members is reduced, in the case of a private company, below two, or in the case of any other company below seven, or
- (ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him, or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder,
- (b) a petition for the dissolution of a company presented by a contributory shall be presented within a period of fourteen days after the last day on which the meeting ought to have been held,
- (c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court

Notes—The right is a statutory right and cannot be curtailed by the Articles of Association. *Association can make a special case* 373, (189) Ch D 151 to see if the majority of the creditors opposing the petition 88 Ind Cas 138

**167** An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory

up order. 74 Ind. Cas. Act, for dissolution of a company being in the hands of the

**168** Commencement of winding up by Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**Notes**—After a petition had been presented by certain creditors to the District e's Bank, Ltd and the petition, a meeting of number 1913 and a resolution passed to the subject to the superior to the notice of the addressed to him by. District Judge after

Company becomes as without the sanction of the Court. (1887) A. C. 575 ; A I R 1930 Mad 1012=59 M L J 826

169 The Court may at any time after the presentation of the petition for

such terms as the Court thinks fit

**Notes**—Even in voluntary liquidation the Court has some power as under this section *National Bank v Gopa Das*, 91 Ind Cas 1052 Under ss 207 and 215 read assets of the bank for its stay the execution of the in a suit by the bank prior to its going into liquidation *The National Bank of India v Gopal Das*, 28 O C 197=A I R 1925 Oudh 630 The principle upon which a company is to be wound up on the petition of a creditor is simply its inability to pay after proper demand is made and the lapse of three weeks Any such neglect must be judged by reference to the facts of each particular case, and when the defence is that the date is disputed, all that the Court has first to see is whether that dispute is on the face of it, genuine or merely a cloak of the company's real inability to pay just debts 27 Ind Cas 44=39 B 47 Where the company is insolvent a provisional liquidator may be appointed 21 Ind Cas 577=31 P R 1914=337 P L R 1913 A Court can rectify its own mistake 51 Ind Cas 723 This section does not bar an application to set aside an *ex parte* order 72 Ind Cas, 106 Carelessness or ignorance of a pleader is not sufficient to extend time fixed by s 169 73 Ind Cas 211 Where the liquidator has done all he could to comply with the provisions of law, he is entitled to extension 63 Ind Cas 607

170. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default

**Notes**—An order to wind up two companies cannot be made on one petition. *Shields Marine Insurance* (1868) 16 W R 69 Where a company is insolvent, a creditor whose debt is presently payable is entitled to a winding up order 11 H L C 389, (1870) 5 Ch 363, L R. 5 H L 176, (1873) 17 Eq 1, (1906) 2 Ch 327 But even is discretionary (1906) 2 Ch 327, see also adjourn the hearing 34 Beav 314, 17 Eq 4 Ch D 259 An order is not to be refused on company have been mortgaged to an amount

equal to or in excess of those assets, or that the company has no assets (1909) 1 Ir. 49, 24 C D, 259, (1905) 2 Ch 345, (1906) 1 Ch 841, (1906) 2 Ch 327

**171.** When a winding up order has been made, on suit or other legal proceeding, shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose

**Notes**—An unsecured creditor cannot be turned into a secured creditor after winding up by granting him specific performance of an agreement to create a charge. A rigid line is drawn at the winding up, and creditors should not be allowed to change their position after that date 1927 Bom 167. Limitation does not run after an order of winding up 1927 All 161 (F B). The effect of this section is not to restrict any of the rights to recover debts due to it which the crown may possess in virtue of its prerogative. The right to collect cess due under the Bengal Public Demands Recovery Act against a company in liquidation remains intact 53 C 328=96 Ind Cas 37. A suit can be instituted with the leave of the winding up Court 41 A 432=50 Ind Cas 115, 15 Ind, Cas 115, 58 Ind Cas 607, 37 Ind Cas 427=3 O L J 641, 20 C W N 715=88 Ind Cas 754. As regards what amounts to permission to institute suits, vide 37 Ind Cas 791. Leave under s 171 means leave by the winding up Court and when once given includes all subsidiary proceedings 50 Ind Cas 115. Once a winding up order has been made this section would apply and no suit or other proceedings may be proceeded with against the company except by the leave of the Court 58 C 946=133 Ind Cas 186. A suit by the Government is not in exception 134 Ind Cas 429. The Company Judge is authority responsible to see whether winding up proceedings would be properly safeguarded or not by grant or withholding of leave and only appellate Court can question his decision 124 Ind Cas 28. Leave should be refused absolutely only in exceptional cases 119 Ind Cas 273=A I R 1929 All 353. This section is applicable both to liquidation under courts supervision and liquidation by Court itself 109 Ind Cas 22. An order of the lower Court will not generally be disturbed by the appellate Court 37 Ind Cas 791, see also 36 Ind Cas 618. A director cannot institute a suit after winding up order 36 Ind Cas 617. As to when such permission is generally given, vide 47 Ind Cas 1005. An appeal by a company is not barred by this section, 47 Ind Cas 392.

**172** (1) On the making of a winding up order, it shall be the duty of the company forthwith to file with the registrar a copy of the order, and the petitioner in the winding up proceedings may so file a copy

Copy of winding up order to be filed with registrar

(2) On the filing of a copy of a winding up order, the registrar shall make a minute thereof in his books relating to the company, and shall notify in the local official Gazette that such an order has been made

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued

**Notes**—The position of servants, clerks and other employees of a company on the making of a compulsory order is that such order operates as a notice of dismissal to them as from the date of the order, and any right they may have to notice runs from that date. *Stiebel* p 1220 citing *Chipman's Case* (1866) 1 Eq 346, *Meredon's Case* (1886), 32 Ch D 366, *Mid and Counties District Bank v Attwood* (1903) 1 Ch 327. *Measures v Measures* (1910) 1 Ch 336, (1910) 2 Ch 248. a fresh contract for  
ous employment by the  
this will not ordinarily  
be the case 32 Ch D 366—*Stiebel* p 1220

**173.** The Court may at any time after an order for winding up, on the application of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Power of Court to stay winding up

Notes.—The power to make an order for the stay of proceedings under a voluntary winding up has section 215 read with section 173 of the with an application for stay of proceedings the Court has to see whether a stay is detrimental to the commercial morality and to the interests of the public at large. *Ibid In re Telescope Syndicate Ltd*, (1903) 2 Ch 174, see also *In re Steamship Titan & Co*, (1888) W N 17, *In re Schorschieff Electric Battery Syndicate, Ltd* (1888) W. N 166, see also 88 Ind Cas 138.

Court may have regard to wishes of creditors or contributories

174 The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

mean a majority of creditors.  
*Re Oilfields Finance Corporation, Ltd* (1915) 59 Sol 47; this section is applicable to questions arising both after and before the winding up order. *Re Rubber and Produce Investment Trust*, (1915) 1 Ch 382=84 L J Ch 534. Section 140 of the Indian Companies Act, (VI of 1882) does not make it obligatory on the Court to comply with the wishes of the majority of creditors. *M A J Noble v Bank of Burma Ltd*, 17 Ind Cas 852=5 Bur L T 193. In a compulsory winding up proceedings it is improper to allow a company to come in and fight for the grievances of an individual shareholder. A I R 1931 Cal 391=58 C 62. A fully paid up shareholder has the right to appear and to be heard upon the application to wind up the company. *Ibid*. In winding up a solvent company the wishes of the contributories are to be considered. 36 C W N 54=54 C L J 439 P C.

### Official Liquidators

175. (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person, or persons, to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up.

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(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(5) The acts of an official liquidator shall be valid notwithstanding any

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

Notes.—The appointment of any person as an official liquidator is so entirely a matter for the discretion of the Judge dealing with the winding up that an Appellate Court will not review his decision except under very special circumstances or unless it can be shown that the Judge had acted on a wrong principle. *M A J Noble v Bank of Burma*, 17 Ind Cas 853=5 Bur L T 193, A I R (1928) Rang 36. The Court has jurisdiction under clause (2) to appoint a provisional liquidator and such a provisional liquidator need not be the official receiver. *Unionist Club*, (1891) W N 64, *Bount & Co* (1893) W N 21, *North Wales Gunpowder*, (1892) 2 Q B 220, *Mercantile Bank of Australia*, (1892) 2 Ch

204 But it is usual in such a case to appoint the Official Receiver as the provisional liquidator *Mercantile Bank of Australia* (1892) 2 Ch 204 When one of two persons appointed liquidators jointly, refuses to act, the resolution appointing them becomes abortive A I R 1924 All 165=197 Ind Cas 22

Clause (6)—This clause avoids any question of competition between a receiver and an official liquidator The word assets means assets of the company and includes property subject to charge 58 C 946=133 Ind Cas 186

Resignations, removals fill  
ing up vacancies and compen or be removed by the Court on due cause  
sation shown

(2) Any vacancy in the official liquidator appointed by the Court shall be filled up by the Court

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct, and, if more liquidators than one are appointed, such remunerations shall be distributed amongst them in such proportions as the Court direct.

56 C W N 54=59 C L J 439-61 M L J 783 (P C) A winding up order was made on contributory's petition containing serious charges of misfeasance against the directors and a liquidator and committee of inspection nominated by the

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to sub section (1) *Re Rubber and Produce Invest trust* (1915) 1 Ch 382, see also *Re Oxford Building and Investment Co* (1883) 49 L T 495, *Re Ex parte Charles worth*, (1887) 36 Ch D 299

177 The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name

Notes—An official liquidator shall be described in his official name, vide 18A 198

178 (1) The official liquidator shall take into his custody, or under his control all the property, effects and actionable claims to which the company is or appears to be entitled

(2) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Notes—He can take into custody or under his control all the properties and things in action to which the company is or appears to be entitled, vide *Kent Coal field Syndicate* (1898) 1 Q B 754

179 The official liquidator shall have power, with the sanction of the Court, to do the following things.—

Powers of official liquidator

- (a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;
- (b) so far as may be necessary for
- (c) 1 property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ,
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;
- (e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ,
- (f) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;
- (g) to raise on the security of the assets of the company any money requisite ,
- (h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself. Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator General ,
- (i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets

**Clause (a)**—In a suit for or against an Official Liquidator the company's name should be used *Turquind v Kirby* 4 Eq 123 *Kent v La Communauté des Sœurs de Charité* (1973) A C 220, *Kintreys Case*, (1869) 5 Ch 95 But in certain cases the liquidator may be the proper plaintiff (1903) A C 220, The liquidator possesses higher rights than the company *London Celluloid Co* (1888) 39 Ch D. 190 certain facts, (1 1911 41 M 74 Section of the Act for the winding up of companies, 1907-1911

appointment of the liquidator 95 Ind Cas 927=48A 580 The fact that the calls are barred by them as against the company and that the company could not realise them by lapse of time is no answer to the liquidator's claim for contribution 10 Pat 249=A 1 R 1931 Pat 44

**Clause (b)**—He can continue the business for administration and realisation 17 Ch D. 35

for the direction of Court and the *Eastern Company*, (1870) 21 L T 220



180 The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally

appointed, may limit and restrict his powers by the order appointing him

182 The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties. Provided that where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration

Notes.—When no such sanction has been obtained the validity of the acts of the pleader is not affected 5 Lah 414

182 The official liquidator of a company which is being wound up by the Court shall keep in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court personally or by his agent inspect any such books

183 Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case may be

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up

(4) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors

(5) If any person is aggrieved by any act or decision of the official liquidator that person may apply to the Court, and the court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Clause (2) —In the winding up of a solvent company the Court and also the Official Liquidator, as to all matters affecting the contributories as a class, should have particular regard to the wishes as proved by any sufficient evidence 36 C W N 34

### *Ordinary powers of Court*

184 (1) As soon as may be after making a winding up order the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of acts of the

dispute between  
who are con-



only mean at any time in the course of liquidation proceedings, commencing from the date of the order *Sri Narain v Liquidator Union Bank* 74 Ind Cas 600 The Court has upon a summary application presented to it the power to direct the contributory to pay not only all moneys due from him as a member; but also any debt due from him to the company. The jurisdiction is permissible, but when a case is made out for the exercise thereof, it should not be declined unless very cogent reasons to the contrary are shown *The Lahore Bank v Kidar Nath*, 31 Ind Cas 746 The summary procedure under this section can be resorted to recover money from a firm, by selecting from among the partners one who is a contributory and calling upon him to liquidate the whole debt 4 Lah 239=77 Ind Cas 338; see also 53 Ind Cas 653, 7 Ind Cas 724, 3 Lah 382, 3 Lah L J 80 An order of payment made under section 186 must be regarded as a decree and enforced as such *Tharya Ram v Popat Ram*, 47 Ind Cas 997 A representative of a share-holder is liable to contribute to the extent of the assets in his hands 10 Pat 249=193 Pat 44

187 (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Notes—The power and duties of the Court in respect of making calls upon contributories conferred by the section may be exercised in a winding up by the Court, by the Liquidator as an officer of the Court *Stiebel* p 1166 The power is discretionary with the Court (1871) 5 H L, 128, see also (1891) 2 Ch 580 at p

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 J Ch 801, 12 Ind Cas 958

188 The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay as the case may require, and the order may be enforced by the official liquidator

Notes—The Bank of Bengal the Bank of Madras or the Bank of Bombay, now refers to Imperial Bank of India If a liquidator who has obtained an order wishes to enforce it he must obtain a further order for payment to himself *Leeds Banking Co* (1866) 1 Ch 150

**189** All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court

**Notes**—The Bank of Bengal, the Bank of Madras or the Bank of Bombay now refers to Imperial Bank of India Vide s 32 of the Imperial Bank of India, Act, 1920.

**190** (1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

**191** The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are provided.

**192** The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto

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company in which all the shares are of the same class as follows that is to say contributories the amount paid

to repay all shareholders the amount making such payments will be divided in proportion to the number of shares held by them respectively

**525** Every share holder is entitled to the proportionate part of the assets of the company *Birch v Cropper* (1889) 14 A C 525, see also *Wakefield Rolling Stock Co.*, (1892) 3 Ch 165, *Espuela Linl and Co* (1909) 2 Ch 187

**193** The Court may in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just

**Notes**—Where a lease provided that if lessee (a company) caused delay in payment of rent, the land lords would be entitled to recover the arrears with interest from the buildings which may have been erected on the land. *Held* (1) that in equity a charge was created on the buildings when they came into existence and (2) that although the charge did not amount to a transfer or a mortgage it gave a right of priority to the land lords over the unsecured creditors of the company in a winding up. *Keshav Lal v Giridhari Lal* 27 Ind Cas 34

**194** (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly

(2) The order, shall be reported within fifteen days of the making thereof by the Official Liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company

(3) If the official liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default

Notes—Unless the dissolution is set aside no action can be taken against the promoters directors etc (1891) 2 Ch 73

### *Extraordinary Powers of Court*

195 (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company

(2) The Court may examine him on oath concerning the same, either by words of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them

(3) The Court may require him to produce any documents in his custody or power relating to the company, but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien

(4) If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause him to be apprehended and brought before the Court for examination

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consideration 28 Ind Cas 287 The examination and petitioning creditors should not be when the creditor who seeks to attend is

engaged in litigation with the company in liquidation *Mooldu Dussard Cotton Manufacturing Co., Ltd. In re* 1 Rang 384=1924 Rang 24 The scope of examination under this section is to seek information on matters which may be just or beneficial for the winding up of the Company A I R 1931 Lah 8=159 Ind Cas 407 The powers of the Court given by this section is very wide and is not necessary that the Court must first determine that the person called upon to furnish the information does actually possess the information A I R 1931 Lah 8=130 Ind Cas 407 On search or inspection the party can not take copies but can only take notes of such search or inspection A I R 1930 Cal 521

196 (1) When an order has been made for winding up a company by the Court and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company or has been a director, manager or other officer of the company, shall attend before the Court, and be publicly examined, and the business of the company, and the management thereof

(2) The official liquidator shall take part in the examination, and for that purpose may if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(5) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is in the opinion of the Court exculpated from any charges made or suggested against him the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Clause (1)—The Court cannot order the official receiver to pay the costs of the examination personally *John Twiddle & Co* (1910) 2 K B 697. A summons to discharge an order for a public examination can be taken out as soon as the person to be examined knows of the order *Stedtel* p 1049 citing, *Trust and Investment Corporation of South Africa* (1892) 3 Ch 332. Before public examination is ordered the official liquidator must make out a *prima facie* case of fraud (1896) A C 146; (1893) 2 Q B 385, (1873) 1 Ch 210, (1879) 1 Ch 215 at p 231. Such fraud must be proved on the formation of a company (1894) 1 Ch 444. Court to order public examination of any company (1894) 2 K B 67 at p 68. Such an order may be discharged if it is shown that the Court had no jurisdiction to pass such an order. (1895) 1 Ch 395, (1899) 2 Ch 773.

It does not enable the Court to make an order under this section on the petition of a fully paid-up share holder *Dore Gallery* (1891) W N 68.

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Clause (5)—Clause (5) was enacted in order to enable the Court in charge of the liquidation proceedings to examine the persons mentioned therein *inter alia* to ascertain their conduct with regard to the management of the company and to find out its financial condition and its assets. In these proceedings there is no contest between two parties and therefore the proviso to s 132 of the Evidence Act does not confer any special privilege on the persons so examined. *Ram Chand Gurvala v Emperor*, A I R 1926 Lah 385

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t *Ram Chand*

*Gurvala v Emperor*, A I R 1926 Lah 385

197 The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order

198. Any powers by this Act conferred on the Court shall be in addition Saving of other proceedings or debtor of the company or the recovery of any call or other sums

Notes—Vide 46 P R 1915=29 Ind Cas 765

#### *Enforcement of and Appeal from Orders*

199 All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced

Notes—Where applications are made to the High Court for directing the District Courts concerned to enforce the payment orders made by another High Court in the matter of the winding up of the company, the proper procedure as indicated by the conjoint effect of this section and next section is that the order that is filed should be treated in the same manner as a decree passed by the High Court in which it is filed and transferred for execution to the respective District Courts concerned and it is not competent for the High Court to authorize the official liquidator to apply to the District Courts concerned for enforcing the order under s 164 A I R 1927 Mad 271

200 Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place and in the same manner in all respects, as if such order had been made by the Court that is hereby required to enforce the same

Notes—Sections 200 and 201 must be held to be subject to the special provisions of R 16 of O 21 of the C P Code and therefore a transferee of an order under section 186 of the Companies Act must in the first instance, apply to the Court which made the order. *Thirya Ram v Popal Ram*, 92 P R 1915=168 P W R 1918=47 Ind Cas 997

201 Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been

Mode of dealing with orders  
to be enforced by other Courts

made; and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

**Notes**—An order for the winding up of a company made by the Chief Court, and under section 164 were taken in the Court of the District in districts within the jurisdiction of A to enforce these orders. *Held* that the High Court had jurisdiction to enforce the orders by proceedings in execution before itself, or to authorise the Official Liquidator, to apply to the various District Courts in respect of each of the persons against whom orders for contribution had been passed, and that is the balance of convenience as in favour of the latter course, the Official Liquidator was authorised to proceed accordingly. *In the matter of the National Insurance and Banking Company, Ltd.*, 54 Ind Cas 384.

**202** Re hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

**Notes**—An order of District Judge dismissing objections to attachment is not appealable 1927 Lah 282. Notice of an appeal from any order or decision made in the winding up of a company should be given within three weeks after the order complained of unless such time is extended by the Court of appeal 22 M 291, see to set aside an order made by the Official Liquidator though it may result in the liquidator being sanctioned by the predecessor of the Judge, and consequently no appeal from such an order can be entertained. *Ghansham Das v Hindusthan Bank* 1 Lah 73=55 Ind Cas 928. A Judge conducting the liquidation can recall a wrong order and rectify a mistake 51 Ind Cas 723=33 P I R 1919. As to when an order can be treated as an order in winding up, *vide* 86 Ind Cas 65. An order of the liquidating Court can not be reopened in a regular suit 45 Ind Cas 84.

This section corresponds to section 169 of Act VI of 1882. For cases under that section *vide* 16 Ind Cas 794, 22 Ind Cas 795, 73 Ind Cas 221, 10 Ind Cas 433, 29 Ind Cas 263, 63 Ind Cas 607, 28 Ind Cas 142, 28 Ind Cas 600, 31 Ind Cas 725, 11 Ind Cas 562, 55 Ind Cas 928, 19 Ind Cas 53, 22 Ind Cas 250, 17 Ind Cas 85. A I R 1929 Lah 770 (F B), 36 C W N 59, 33 Bom L R 1495, A I R 1931 Sind 120 A I R 1931 Lah 8, A I R 1931 All 59 (2).

### *Voluntary winding up.*

Circumstances in which company may be wound up voluntarily. **203** A company may be wound up voluntarily—

- (1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily,
- (2) if the company resolves by special resolution that the company be wound up voluntarily,
- (3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

**Notes**—A company registered under this Act may be wound up voluntarily. *Torquay Brick Co., In re*, 32 Beav 481. In order to render an extraordinary resolution for the voluntary winding up of a company valid, it is necessary that notice of the meeting should express that it is intended to propose a resolution that the



company is unable by reason of its liabilities to continue its business *Silkstone Full Coillery Co In re*, 1 Ch D 38, see also 2 Ch 191 (1875) 1 Ch D 38, 15 C W N 1047, 35 P R 1917, 38 Ind Cas, 943 A resolution to wind up the affairs of a limited liability company voluntarily must be confirmed at a subsequent meeting of the share holders, and such resolution is only effective from such confirmation *Hornby's Case*, 19 L T 237 Where a company is wound up voluntarily by means of a preliminary and a confirmatory resolution the commencement dates from the passing of the second resolution see also *Hornby's Case* 37 L J Ch 919.  
 Cas 672=20 Bom L, R 692=42 Bom 595,  
 of a share holder as a contributory vide 28 Ind Cas 95 28 Ind Cas 95, 28 Ind Cas 142, 46 Ind Cas 71

**204** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up

**Notes**—A voluntary winding up of a company is to be deemed to commence only at the time of the passing of a special resolution as defined by section 81 clause 2 (b) i e not before the passing of the subsequent resolution confirming the preliminary resolution, where after the passing of such a resolution the shareholder has transferred all his shares in the company to the list of contributories *Hornby's Case* 37 L J Ch 919, see also (1868) 6 Eq 232, (1868) 4 Ch App 20, (1885) 31 Ch D 78, (1897) 1 Ch 373, 25 Ch D 118 Where a voluntary winding up is superseded by a compulsory order, the winding up dates from the presentation of the petition *Taurine Co In re* 53 L J Ch 271=25 Ch D 118, (1910) 2 Ch 78, 18 L T 205,

**205** When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business except so far as may be required for the beneficial winding up thereof

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved

**Notes**—The voluntary winding up does not operate as a notice of dismissal to servants *Midland Counting District Bank v Attwood* (1905) 1 Ch 357, *contra* (1872) 14 Eq 417, (1887) L R 19 Jr 740 A voluntary liquidator is an agent of the company *Knowles v Scott* (1891) 1 Ch 717 On the appointment of a liquidator all the powers of directors cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof Ordinary trade contracts made previous to the liquidation is terminated (1902) 2 K B 660, (1903) A C 414, (1882) 5 Q, B D 149

**206** (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the prescribed manner

and if a company fails to comply with this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty

**Notes**—Where a company has resolved by special or extraordinary resolution to wind up voluntarily it must give notice of the resolution by advertisement in the Gazette.—*Stiebel* p 1272

**207** The following consequences shall ensue on the voluntary winding up of a company —

Consequences of voluntary winding up

made, and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same

Notes—An order for the winding up of a company by the Chief Court, and under section 164

to apply to the various District Courts in respect of orders for contribution had been passed, and that in favour of the latter course the Official Liquidator was accordingly. *In the matter of the Nilgiri Insurance and Banking Company, Ltd* 51 Ind Cas 384

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### Voluntary winding up.

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- (3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Notes—A company registered under this Act may be wound up voluntarily *Torquay Bath Co, In re* 32 Beav 581 In order to render an extraordinary resolution for the voluntary winding up of a company valid it is necessary that notice of the meeting should express that it is intended to propose a resolution that the

company is unable by reason of its liabilities to continue its business *Silkstone Full Coillery Co In re*, 1 Ch D 38 see also 2 Ch 191 (1875) 1 Ch D 38, 15 C W N 1047, 35 P R 1917, 38 Ind Cas, 943 A resolution to wind up the affairs of a limited liability company voluntarily must be confirmed at a subsequent meeting of the share holders and such resolution is only effective from such confirmation *Hornby's Case*, 19 L T 237 Where a company is wound up voluntarily by means of a preliminary and a confirmatory resolution the commencement dates from the passing of the second resolution see also *Hornby's Case* 37 L J Ch 929  
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Commencement of voluntary winding up 204 A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up

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205 When a company is wound up voluntarily the company shall from the commencement of the winding up cease to carry on its business except so far as may be required for the beneficial winding up thereof

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved

Notes—The voluntary winding up does not operate as a notice of dismissal to servants *Midland Counting District Bank v Allwood*, (1905) 1 Ch 357, contra (1872) 14 Eq 417 (1837) L R 19 Jr 240 A voluntary liquidator is an agent of the company *Knowles v Scott* (1891) 1 Ch 717 On the appointment of a liquidator all the powers of directors cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof Ordinary trade contracts made previous to the liquidation is terminated (1902) 2 K B 660, (1903) A C 414, (1882) 5 Q, B D 149

206 (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the (any) circulating in the state.

the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty

Notes—Where a company has resolved by special or extraordinary resolution to wind up voluntarily, it must give notice of the resolution by advertisement in the Gazette.—*Stiebel* p 1272

Consequences of voluntary winding up 207 The following consequences shall ensue on the voluntary winding up of a company.—

- (i) the assets of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide be distributed among the
- (ii) the . . . . .ors  
ets  
of the company, and may fix the remuneration to be paid to him or them ;
- (iii) on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof ;
- (iv) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator in a winding up by the Court ;
- (v) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves ;
- (vi) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ,
- (vii) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two ,
- (viii) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator . and
- (ix) the Court may, on cause shown, remove a liquidator, and appoint another liquidator

where a company goes into a voluntary liquidation the Court generally stays execution of the decree obtained against the company 131 Ind Cas 379=A I R 1931 Lah 589 But dismissing the application for execution is not warranted 58 C 913 =35 C W N 299 After a company has gone into liquidation through a voluntary liquidation the remedy of a creditor is to take only what he can take under the scheme of the liquidation and no more 118 I . . .  
itself a statutory bar to the progress of an execution gone into voluntary liquidation, unless and until a Court having jurisdiction under Companies Act stay of proceedings and the liquidator or any action taken by a decree holder is entitled to move the Court having jurisdiction under the Companies Act 36 Ind Cas 397=38 A 407=14 A L J 513

208 (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar Notice by liquidator of his appointment a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Notes—Where a person is appointed a liquidator of any company however imperfect he may consider his appointment to be, if he is nominally a liquidator and

acts as such, he must carry out the duties and When a person accepts his appointment as according to law, and if he does not do so then in the nature of a misunderstanding he will be liable to a penalty under this section *Satish Chandra Ghosh v Emperor* 39 Ind Cas 478=15 A L J 346=39 A 412

209 (1) Every liquidator, appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice and once at least in some news the registered office or principal

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of, or jointly with, the liquidator appointed by the company and, if the creditors so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting

Provided that the Court may by order at any time, extend the time for making an application under this subsection for such period as the Court thinks proper

(3) may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just

(4) The Court shall make such order as to the costs of the application as it may think fit, and if it is of opinion, that having regard to the interests of the creditors, in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant

Notes—By an extraordinary resolution it was resolved that a company be wound up voluntarily and that a person (A) be appointed as liquidator. Subsequently it was resolved that another person (B) be appointed as liquidator. The liquidation was made under the joint liquidator. A creditor of the company applied for the appointment of B as joint liquidator. *Held*, the appointment of B as joint liquidator by the court was valid. B does not give him any rights whatsoever and no order can be made ratifying B's appointment with retrospective effect. *Held* also that, when an application is made for the appointment of B as joint liquidator, the appointment of A as liquidator is not affected.

Ind Cas 905

210. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy

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(2) For that purpose a general meeting may be called by any contributory or, if there were more liquidators than one, by the continuing liquidators

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court,

Notes—This section makes provision for the appointment of a successor to a liquidator in case of his death, resignation or otherwise 46A 759.

211 (1) A company about to be, or in course of being wound up

Delegation of authority to appoint liquidators voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company

Notes—The power given by this provision is never exercised *Stiebel v 1274*

212 (1) Any arrangement entered into between a company about to be,

Arrangement when binding on creditors or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three fourths in number and value of the creditors

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary or confirm the arrangement

Notes—Resolution passed on modification of composition scheme on application to Court if defective under mandatory section 212 will not be valid by doctrine of part performance 1930 A L J 1157

213 (1) Where a company is proposed to be, or is in course of being

Power for liquidators to accept shares etc as a consideration for sale of property of company wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator of the first mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares policies or other like interest in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided

(4) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

**Special resolution.**—A clause for winding up the company or for the appointment of liquidators may form part of a special resolution and be passed along with it. An amendment to a special resolution may be allowed to be moved at the first meeting, but no alteration whatever of the special resolution can be allowed at the confirmatory meeting (1902) 2 Ch 371, *Pirshuram v. The Tata Industrial Bank*, 90 Ind Cas 580=1925 Bom 49.

Every company has under s. 213 a right of amalgamation with another company irrespective of its own constitution in the memorandum and articles but the amalgamation will not bind the transferee company unless its constitution empowers it to effect such an acquisition 10 Ind Cas 195=52 B 571, 55 I A 274=32 C. W. N 1038.

Where a reconstruction is to be proposed under this section, the fact that such reconstruction is to be carried out under this section should appear in the scheme *Agri and Masterman's Bank*, (1866) 12 Eq 599 N. But it is not necessary to be passed without any amendment. On such a scheme the sanction of a special resolution is not necessary *Stiebel* p 1030.

**214. (1)** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration.

(2) The provisions of the Indian Arbitration Act, 1899\* other than those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

**Notes.**—The costs of an arbitration under this section are no doubt in the discretion of the arbitrator, but where the liquidator has made no offer the dissentient will usually not proceed at his peril [ *Imperial Mercantile Credit Association*, (1871) 12 Eq 504 ] and where the liquidator has made an offer he will have to show that it was sufficient *Morgan's Case* (1884) 28 C D 620—*Stiebel* p 1290.

**215. (1)** Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

**Notes.**—An order under this section depriving a creditor of all the rights to take advantage of winding up proceedings is appealable 1927 Cal 689. A voluntary liquidator is entitled to come to the Court and ask the Court, under this section to make an order for the public examination of directors etc, which the Court may make on the application of an official liquidator under section 196 of the Act. *No. 1000 v. Firman* 44 B 59=22 Bom L R 210=55 Ind Cas 831. On the applica-

after its going into liquidation the attachment ought to be removed by Court under

this section. 92 Ind. Cas. 12=A I R. 1928 All. 265 leaves intact the voluntary 406=111 Ind. Cas. 651. a decree holder from taking s. 215 the Court has power will be just and beneficial. The general practice is to stay execution. A. I. R. 1931 924) 2 K B 410. The liquidators in a voluntary t under this section to determine any question 40 L J Ch 264; 13 Ch. D. 803. A contribu- ion. 37 L T. 242

**216.** (1) Where a company is being wound up voluntarily, the liquidator may, from time to time summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or meeting a with respect to previous D -

**217.** In the case of every voluntary winding up as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement, specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in section 206.

(3) Within one week after the meeting, the liquidator shall file with the registrar a return of the holding of the meeting, and of its date, and in default of so doing, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved.

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested make an order referring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of Court under sub-section (4) is in the order, to file with the reg person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

**Notes**—After dissolution no winding up order can be made against a company. *Pinto Silver Mining Co.* (1878) 8 C D 273, (1879) 11 C. D. 140, (1888) W. N. 70.

**218.** All costs, charges and

Cost of voluntary liquidation

the assets of the company in priority to all other claims at the date of the winding up.



219 The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an

Saving for rights of creditors and contributories

rights of the creditor or, in the case of the rights of the contributories will be

A petitioner is to show only that he will be prejudiced by voluntary liquidation  
are in favour of  
(1875) 10 Ch 618,  
liquidation should  
ends on the facts

**220.** Where a company is being wound up voluntarily, and order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up

*Winding up subject to supervision of Court*

221 When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

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 191, *Pittet Four Case*

*Co* (1869) 3 Eq 664, *Sheffield Mortgage and Estates Co* (1887) W N 218 The extraordinary resolution may be passed after the presentation of the petition (1833) 31 W R 33, (1871) 64 L T 653 (1894) 1 Ch 414 But an order under this section is bad where there is no resolution or the resolution is defective 24 C D 481, A winding up order can only be set aside if fraud 29 M L W 72=A I R 1928 P C 261 made between dates of presentation of petition ordinary course of business A I R 1930 Mad 1012=39 M L J 826=129 Ind Cas 40

**222** A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court

**Notes**—The object of this section is that all unsecured creditors are to be paid *pari passu* 32 Bom L R 933=54 B 718=127 Ind Cas 82

**223** The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence

**Notes**—This section contains the provision which in any way indicates the circumstances which are to guide the Court in exercising its discretion as to granting or refusing a supervision order *Bank of Gibraltar and Malta*, (1865) 1 Ch 69 *Beufolais Wine Co* (1867) 3 Ch 15

**224** (1) Where an order is made for a winding up subject to supervision the Court may by the same or any subsequent order appoint any additional liquidator

(2) A liquidator appointed by the Court under this section shall have the same powers be subject to the same obligations and in all respects stand in the same position as if he had been appointed by the company

(3) The Court may remove any liquidator so appointed by the Court, or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation

**225** (1) Where an order is made for a winding up subject to supervision, the liquidator may subject to any restrictions imposed by the Court exercise all his powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily

(2) Except as provided in subsection (1) and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator,

the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

**Notes**—The commencement of the voluntary liquidation is from the time of the passing of the special resolution *Hornby's Case*, (1868) 37 L J Ch 929, *Daw's Case*, (1868) 6 Eq 232. This is also the time when a voluntary liquidation under supervision commences even where a petition has been presented and a provisional liquidator has been appointed at an earlier date *Stiebel* p 1264 citing (1889) 40 C D 361, (1888) 39 C D 306, (1885) 31 C D 78, (1868) 3 Ch 20, (1870) 11 Eq 478, (1868) 6 Eq 496.

**226** Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

**Notes**—The Court can make a compulsory order after it has made a supervision order in a very strong case *London and Mediterranean Bank* (1866) 12 L T 153, *Orrel Colliery and Fire Brick Co* (1879) W N 106, *United Service Co* (1868) 7 Eq 76, *New Oriental Bank Corporation* (1892) 3 Ch 563. In such a case the Court may order the voluntary winding up to proceed *Bristol Victoria Potteries Co*, (1873) 20 W R 569.

#### Supplemental Provisions

**227** (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

Avoidance of transfers, etc., after commencement of winding up

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

**Notes**—If there be several transfers sanctioned by the liquidator under this section all the transferors will be placed in the B list of contributories (1897) 1 Ch 298. When such transfer is void under clause (2) the validity of the transfer as between the parties is not affected (1867) 2 C P 228, 3 Q B 689. After winding up order is made company cannot enter into contracts or make payments without Court's sanction, but section 227 (2) does not in terms apply to contract for purchase of course which, if made honestly and in the ordinary course of business, may be sanctioned by Court 129 Ind Cas 40=A I R 1930 Mad 1012. Under sub section (2) Courts should exercise judicial discretion and the appellate Court can interfere in appropriate cases to prevent s 227 (2) working injustice to Company 54 Bom 718=32 Bom L R 953=127 Ind C 62.

**228** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act or the law of insolvency) all debts payable on a con-

Debts of all descriptions to be proved

**Scope**—This section is applicable to companies which are in a position to pay up all its liabilities including the cost of winding up. *Gore & Son* p 514.

includes all cases of winding up whether voluntary or by the order of the Court or under supervision of the Court (1877) 6 Ch D 177,

**229.** In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts proveable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section

**Notes**—Where there has been a genuine contest between a claimant or a creditor on the one hand and the company which goes into liquidation later on and the parties have fought out the case, *bonafide*, it should not be open to the official liquidator to re open the case and to have, as it were, a fresh trial of strength. But on the other hand where the decree rests on something less than a real trial on the merits of the case the question would arise whether the official liquidator would not be justified in putting the decree aside and asking for what has been called the consideration for the judgment. A I R (1927) All 426. This section made the provisions of s 30 of the Provincial Insolvency Act applicable to the case. Vide 1927 Lah 228. By virtue of this section the provisions of s 30 of the Provincial Insolvency Act, (III of 1907) can be applied. 45 B 1219. A company which cannot pay up its debts is to be considered as insolvent. *Ex parte Theys*, (1884) 25 Ch D 587, (1902) A C 187 at p 192, (1922) 2 Ch 369 at p 402.

In considering whether a company is insolvent the interest on debt upto the date of payment is also to be calculated. *Re Whitaker*, (1904) 1 Ch 299. A solvent company must also be in a position to pay the cost of liquidation as well. *Re Lang* (1895) 1 Ch 652. But where the company is insolvent, interests stop at the date commencement of winding up. (1869) 4 Ch App 643, (1881) 17 Ch D 334, (1877) 13 Eq 623. (1892) 1 Ch 639. This section makes the rules of bankruptcy applicable as far as may be. Where however there is conflict between the Indian Companies Act and the Insolvency Act the provisions of the former Act must be given effect to. 134 Ind Cas 200=A I R 1931 Lah 331. This section is applicable only to insolvent companies. A company which turns out to be insolvent on winding up is not an insolvent company and creditors are entitled to interest from commencement of winding up at contract rate. A I R 1931 Rang 334=133 Ind Cas 238. A secured creditor can stand wholly outside the winding up proceedings if he so elects and realise upon his security or his decree provided he has obtained leave to proceed or order of payment. A I R 1927 B 40. An attaching creditor is not a secured creditor. 122 Ind Cas 836=A I R 1930 Bom 16. As regards the right of a secured creditor vide 120 Ind Cas 702. Reference to 'some rules' in the section as in the insolvency in s 229 is wide and includes not rules in section of the Insolvency Act but also under power conferred by the Act and also rules of practice. 119 Ind Cas 273.

Preferential payments

**230.** (1) In a winding up there shall be paid in priority to all other debts—

- (a) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date,
- (b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant, and

(c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece work, in respect of services rendered to the company within the two months next before the said date.

(2) The foregoing debts—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion, and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof

Provided that in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made

(5) The date hereinafter in this section referred to is—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order, and

(b) in any other case, the date of the commencement of the winding up

*the matter of*, 24 A L J 347=93 Ind. Cas 93=A I R (1926) All 397 The word "revenue" is not necessarily *ejusdem generis* with words that follow and means income 1935 A L J 24=A I R 1935 All 884

A company having mortgaged all its property and assets subsequently passed between the date of the mortgage and the time the company made no profits, but paid three per cent mortgage less income tax. The company never paid over or accounted for such deduction of tax to the Inland Revenue Commissioners. On an originating summons taken to determine whether the Crown was entitled under section 209 (1) of the Companies Consolidation Act, 1908 (=this Act) to recover one of the sums so deducted for tax in priority to all other creditors or *pari passu* with other creditors who were preferential, *Et c.*, held that the Crown was not entitled to any such priority. On appeal *Held* that the Crown could not be said to answer the description of tax under section 209 (1) of the Companies (Consolidation) Act, 1908 as having any preferential rights over other creditors. *Lang Propeller, Ltd.* (1927) 1 Ch 120

231. (1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a com-

pany, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void

an explanation ousts the presumption of preference. *Re John Drage & Sons, Palmers and Roberts v Knight* (1926) 134 L T 765. Contracts of purchase entered into between presentation of winding up petition and winding up order will be confirmed if goods purchased in ordinary course of business and delivery taken 129 Ind Cas 40=A I R 1930 Mad 1012. A winding up Court cannot take cognizance of and adjudicate on the title of third persons except for the limited purpose mentioned in ss 231 and 232, and if it is necessary the liquidators must have recourse to regular suits 119 Ind Cas 273=1929 A L J 811.

232 (1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by the Government

Notes—The words "any attachment, distress or execution put in force" in this section must be considered as a whole 19 A L J 763=43 A 433=60 Ind Cas 763. A voluntary winding up of a company does not have the effect *ipso facto* of putting an end to attachments already in force 79 Ind Cas 968. A sale of assets of a company after winding up order and without the sanction of the Court is voidable 38 Ind Cas 91.

233 Where a company is being wound up a floating charge on the under taking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum.

Notes—A floating security is not a future security or a specific security, it is a present security which presently affects all the assets of the company expressed to be included in it 96 Ind Cas 417=50 B 547.

234 (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them.—

(i) pay any classes of creditors in full,

- (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present, or future, whereby the company may be rendered liable,
- (iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers

Notes—If a bank has gone into voluntary liquidation this section provides that a liquidator could compromise all calls, the sanction of an extraordinary resolutionary resolution was passed sanctioning it compromise was actually entered into the bank should be held bound thereby so far as occurring, thereupon being recoverable from the bank.

*Gobind Singh v Union Bank Ltd* 8, S C 4 *Lah* 249 Powers of liquidator's arbitration are not co extensive with powers of company and liquidation may not be allowed to make reference to private arbitration 110 Ind Cas 695 = A I R 1928 All 553 Sanction by extraordinary resolution as under s 234 is necessary in order that a compromise between a liquidator of a company and a contributor should bind the liquidator 77 Ind Cas 338

**235** (1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible

(3) The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

Notes—This section does not create any new rights or liabilities, but simply provide for the enforcement of the rights which have been created by the Companies Act, 1913. *Insurance Co Ltd* (1930) Born ex-director of a company, trustee, is by A I R 1923, 1139

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v *Lamaswami*, (1918) M W I

section are in the same position

is not intended to revive any

it is only reasonable that the powers of a liquidator under this section should extend  
to those sections only regarding which it can be shown that there is a subsisting  
right or liability No new right is created by this section but a summary mode of  
enforcing rights is provided by it 71 Ind Cas 899=1923 Lah 52 (2) on appeal  
from 69 Ind Cas 255 This section is not applicable to recover rent due from a  
director who rents a

s private capacity 85 Ind Cas 126  
ustee for the company and he is  
ie company and for that alone 41  
liable where they fail to supervise  
Cas 785 The mere fact that the  
strength of a promise to execute a  
mount to an act of misfeasance so  
the advance made Facts which

upon the directors will not subject  
to amount to gross negligence 2 O W N 920 The object of this section is to  
facilitate the recovery by the liquidator of assets of a company improperly dealt  
with by its promoters, directors or other officers 5 Lah 461 Depositors are not  
creditors 133 Ind Cas 360=1931 Mid 370 This section is copied from an English  
statute and must have the same meaning as in parent statute 97 Ind Cas 783=  
A 1 R 1926 Lah 624 This section simply provides a summary mode of enforcing  
existing rights which might otherwise have been enforced by suit 8 Lah 167=28 P L  
R 363=A 1 R 1927 Lah 433 An amendment of an application under this section  
introducing fraud and thereby entirely altering the character of the application will  
not be allowed especially when the case has been before Court for a considerable  
time A 1 R 1929 Lah 710=119 Ind Cas 429 Directors can claim reasonable  
costs *bona fide* incurred by them for company in an unsuccessful appeal against an  
order for winding up even though there may be no order as to costs 117 Ind  
Cas 568

**236** If any director, manager, officer or contributory of any company being  
wound up destroys mutilates, alters or falsifies  
Penalty for falsification of books or fraudulently secretes any books papers or  
securities or makes or is privy to the making of, any false or fraudulent entry  
in any register, book of account or document belonging to the company with  
intent to defraud or deceive any person, he shall be liable to imprisonment for  
a term which may extend to seven years and shall also be liable to fine

Notes—Prosecution under this section is sought at the expense of the company  
*Stiebel* p 1078

**237 (1)** If it appears to the Court in the course of a winding up by or subject  
to the supervision of the Court that any past or  
Prosecution of delinquent present director, manager, officer or member of  
directors, etc of the company has been guilty of any offence in  
relation to the company for which he is criminally responsible, the Court may,  
on the application of any person interested in the winding up, or of its own  
motion, direct the official liquidator or the liquidator (as the case may be) to  
prosecute for the offence, and may order the costs and expenses to be paid out  
of the assets of the company



(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

**Notes**—Proceedings under this section may in the High Court be taken by summons. The application can be made by the liquidator (*Northern Counties Bank* 31 W R 546, *Charles Denham & Co.* 53 L J Ch 1113) (or by a creditor *London and Globe Finance Corporation* (1903) 1 Ch 728) or a contributory, or by the Court of its own motion *Stibel* p 1078. The summons will be *ex parte* [53 L J Ch 1113, (1903) 1 Ch 728] but the Court may direct notice of the application to be given to creditors and others interested. The Court may of its own motion direct a prosecution of directors at the expense of the assets, but it will not as a rule ors can show that the assets of the prosecution (1903) 72 L J Ch ence or affidavit of the creditors

88 L T 194, 53 L J 1113. The fact that one of the directors had been convicted in his personal capacity of the offence is no reason why he should not be convicted of the same offence, also in his capacity as a partner of the firm which acted as the managing agents of the company *Tota Ram v The Crown*, 18 P R 1976 Cr = 143 P L R 1196 = 17 Cr L J 306 = 35 Ind Cas 482

**238.** If any person upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine

**Notes**—This section corresponds to section 218 of the English Companies Act, which section was repealed by section 1 of the Perjury Act of 1911. Section 1 of the English Perjury Act runs as follows: If any person on examination on oath authorised under this Act or in any affidavit or deposition in or about the winding up of a company or otherwise in or about any matter arising under this Act wilfully and corruptly gives evidence, he will be liable to the penalties for wilful perjury.

**239** (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of Meetings to ascertain wishes of creditors or contributories creditors or contributories as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court

(2) In the case of creditors, regard shall be had to the value of each creditor's debt

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles

directions as to the manner in (1893) W. N. 128. It is usual 6) W N 56. This section refers to sections 174 and 223 49 C 399 at p 423, 424. Under this section the Court's power is unlimited as regards the ordering of meeting of creditors or contributories 1 Ch 735, 49 C 399

**240** Where any company of the Documents of company to be evidence, *inter alia* between the Court, as prima facie evidence of the truth of all matters purporting to be therein recorded.

**Notes**—A person who is admitted by a contributory for some shares will often be in a more difficult position than the holder of other shares. *Ex parte Ke* brought into play by the mere Case (1863) 3 De G J & S 465 at p 468—*Stiebel* p 1101

**241** After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection of documents as the Court thinks just and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise

**Notes**—The right of inspection given by various sections as well as by articles of associations are taken away by this section. *Yorkshire Fibre Co* (1870) 9 Eq 650. *Kent Coal Syndicate* (1898) 1 Q B 754. *Somerset v Land Securities* (1897) W N 29. Under this section absolute discretion rests with the Court in granting it for the general purpose claims he may have against *Factories* (1887) 37 Ch D 83

Similarly an inspection is not allowed for help a dissentient share holder on a reconstruction. A person entitled to inspect can appoint an agent at his own expense (1901) Ch 561. (1904) W N 73. (1866) 15 L T 261. A person inspecting may take copies (1899) W N 134.

**242** (1) When a company has been wound up and is about to be dissolved the documents of the company and of the liquidators may be disposed of as follows (that is to say) —

(a) in the case of a winding up by or subject to the supervision of the Court in such way as the Court directs,

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs

(2) After three years from the dissolution of the company no responsibility shall rest on the company or the liquidators or any person to whom the custody of the documents has been committed by reason of the same not being forth coming to any person claiming to be interested therein

**Notes**—If after dissolution the books are in possession of the liquidator and as regards which he has received no instruction he may be ordered by the Court to produce them on an application for discovery and he cannot claim protection on the ground that he holds them on behalf of some one else. *London and Yorkshire Bank v Cooper* (1885) 15 Q B D 473

**243** (1) Where a company has been dissolved the court may, at any time within two years of the date of the dissolution on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved

(2) It shall be the duty of the person on whose application the order was made, within ten days of the order, to file with the Court a statement of the assets of the company and that person fails so to do he shall be liable for every day during which the

on the ground that there are undistributed assets. *Henderson v Nigal* (1911) 105 L T 105. The liquidator is not debarred from taking action on the company. *Mathra Das v Abdul*

39 Ind Cas 769=28 P L R 1917 Before the passing of this Act a liquidator was personally responsible for debts which remained unpaid with his knowledge and where he distributed the assets among its contributories *Pulsford v Dennish* (1903) 2 Ch 62. Even under the present law the liquidator is personally liable for debts in such a case, after the expiry of two years mentioned in the section

**244** (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent, at all reasonable times on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code,\* and shall be, punishable accordingly on the application of the liquidator

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues

**Notes**—This section applies to a voluntary winding up as well as to compulsory winding up (1894) 1 Ch 736

**245** (1) Any affidavit required to be sworn under the provisions or for the purposes of this part may be sworn in British India or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor General in Council or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice Consuls

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice Consul, attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of his Part

### Rules

**246** (1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure, 1908,† concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions herein before contained as to the reduction of the capital and the subdivisions of the shares of a company "and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed" ‡

(2) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the official liquidator, and subject

\* Act XLV of 1860

† Act V of 1908

‡ The words within quotations have been inserted by Act 11 of 1914.

to the control of the Court, that is to say, the powers and duties of the Court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories,
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets,
- (c) requiring delivery of property or documents to the liquidator,
- (d) making calls,
- (e) fixing a time within which debts and claims must be proved

Provided that the official liquidator shall not, without the special leave of the Court rectify the register of members, and shall not make any call without the special leave of the Court

**Notes**—Before the amendment by Act 11 of 1915 the power of the High Courts to make rules under this section was confined to making rules concerning the mode of proceeding to be had for winding up a company and for giving effect to the provisions contained as to the reductions of capital and the subdivisions of the shares of the company. Vide 28 Ind Cas 359. As regards interpretation of rule 53 framed by the Punjab Chief Court vide 44 Ind Cas 139.

### *Removal of defunct Companies from Register*

**247** (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation

(2) If the registrar does not within one month of sending the letter receive any answer thereto he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the local official Gazette with a view to striking the name of the company off the register

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation or does not within one month after sending the second letter receive any answer he may publish in the local official Gazette and send to the company by post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary, be

all be dissolved  
being wound up the registrar has no liquidator is acting or that the up and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business the registrar may publish in the local official Gazette and send to the company a like notice as is provided in the last preceding sub-section

( ) At the expiration of the time mentioned in the notice the registrar town by the company, strike thereof in the local official official Gazette of this notice he liability (if any) of every intinue and may be enforced as if the company had not been dissolved

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of

the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum

Notes—A company does not become defunct when the number of share holder becomes less than seven 86 Ind Cas 652 The words of this section are not mandatory, but only directory *Ibid* The fact that a company's name has been struck off the register under this section is no bar to a compulsory winding up order being made (1898) 1 Ch 100, (1902) 71 L J Ch 748 The fact that a company is in compulsory [27 Sol J 199, 27 Sol J 585, (1901) W N 46] or voluntary liquidation (34 Ch D 479) will not prevent the name of the company being restored to the register under the section but the Court will not make an order for this purpose unless it is shown that some good may accrue by the order going *e g* that debts can be got in or that the company will be enabled to carry on its business and that the company is carrying on its business or in operation *Carpenters Patent Davit etc Co* (1888) 21 T L R 374—*Stuebel* p 766 A penalty can not be imposed for restoring the name of the company (1905) 21 T L R 26 Even after dissolution an application under this section can be made (1916) W N 276 A person holding a large number of shares can apply under this section (1898) 1 Ch 100, (1901) W N 46 The registrar is not bound to remove the company from the register on discovering that it is not carrying on business, or that its members have been reduced to less than 7 even though an application for removing them is made 26 P L R 68=A I R 1925 Lah 443=86 Ind Cas 652 A company can be wound up even after it has been dissolved, with

be parties to original proceedings The registrar can not represent the companies 116 Ind Cas 427

## PART VI

### REGISTRATION OFFICE AND FEES

248 (1) For the purposes of the registration of companies under this Act, there shall be offices at such places, as the Local Government thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established

(2) The Local Government may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties

(3) The salaries of the persons appointed under this section shall be fixed by the Local Government

(4) The Local Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Local Government, not exceeding one rupee for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract, of any other document or any part of the other document, to be certified by the registrar on payment, or extract of such fees as the Local Government may appoint, three rupees for a certificate of incorporation, and three hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the Local Government otherwise directs, be done to or by the existing registrar of joint stock companies or in his absence to or by such persons as the Local Government may for the time being authorise, but, in the event of the Local Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Local Government may appoint.

249 (1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the Governor General in Council may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

## PART VII

### APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS

250 In the application of "A" —

Application of Act to companies formed under former Companies Acts

the company had been formed and registered under this Act as a company limited by shares, in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee, and, in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company.

Provided that—

- (1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them or under the Indian Companies Act, 1866,\* or the Indian Companies Act, 1882,†
- (2) reference, express or implied to the date of registration shall be construed as a reference to the date at which the company was registered under Act No XIX of 1857 and Act No VII of 1860, or either of them or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, as the case may be.

251 This Act shall apply to every company registered but not formed under Act No XIX of 1857 and Act No VII of 1860 or either of them, or under the Indian Companies Act, 1866,\* or the Indian Companies Act, 1882,† in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act.

Application of Act to companies registered but not formed under former Companies Acts

\*Act X, of 1866,

†Act VI of 1882

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them

252 A company registered under Act XIX, of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use or in such other manner as the company may direct

## PART VIII

### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

253 (1) With the exceptions and subject to the provisions mentioned and contained in this section —  
Companies capable of being registered

- (i) any company consisting of seven or more members which was in existence on the first day of May eighteen hundred and eighty two including any company registered under Act No XIX of 1857 and Act No VII of 1860 or either of them, and
  - (ii) any company formed after the date aforesaid whether before or after the commencement of this Act in pursuance of any Act of Parliament or act of the General in Council other than this Act, or of Letters Patent or being otherwise duly constituted according to law and consisting of seven or more members
- may at any time register under this Act as an unlimited company or as a company limited by shares or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up

(2) Provided as follows —

- (a) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent and not being a joint stock Company as hereinafter defined, shall not register in pursuance of this section,
- (b) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee,
- (c) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares,
- (d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose
- (e) Where a company not having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three fourths of the members present in person or by proxy at the meeting,
- (f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the

company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount

(3) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles

(4) A company registered under the Indian Companies Act, 1882,\* shall not be registered in pursuance of this section.

—A partnership consisting of seven or more persons, duly constituted by law so as to be a company, eg v Registrar of Joint Stock Companies, L. J Ch 296, see also (1920) Ch 201

Sub-section (3) —In cases not provided for by the Articles of Association the majority will be ascertained by a show of hands *Ernest v Homa Gold Mines* (1897) 1 Ch 1, *Harbury Bridge Co*, (1897) 11 C D 109.

Sub-section (4) —A Foreign corporation cannot be registered *Bulkely v Schutz*, L R 3 C P 768, *Beleman v Service* (1881) 6 A C 386

254 For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock and no other persons and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

255 Before the registration in pursuance of this Part of a joint stock company, there shall be delivered to the registrar the following documents (that is to say)

- (1) a list showing the names, addresses and occupations of all persons who on a day named in the list not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively distinguishing in cases where the shares are numbered each share by its number,
- (2) a copy of any Act of Parliament Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract or co partnery or other instrument constituting or regulating the company, and,
- (3) if the company, is intended to be registered as a limited company a statement specifying the following particulars (that is to say) —
  - (a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists,
  - (b) the number of shares taken and the amount paid on each share,
  - (c) the name of the company, with the addition of the word "Limited" as the last word thereof, and
  - (d) in the case of company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee



Requirements for registration by other than joint stock companies

256 Before the registration in pursuance of this Part of any company not being a joint company, there shall be delivered to the registrar—

- (1) a list showing the names, addresses and occupations of the directors of the company, and
- (2) a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co partnership of other instrument constituting or regulating the company and
- (3) in the case of a company intended to be registered as a company limited by guarantee a copy of the resolution declaring the amount of the guarantee

257 The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by a declaration of any two or more directors or other principal officers of the company

258 The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined

259 (1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty two proposes to register as a limited company, it shall, at least, thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation

260 No fees shall be charged in pursuance of this Part in respect of any company registered in pursuance of this Part of which the share holders was limited by some Act of Parliament or Act of the Governor General in Council or by Letters Patent

261 When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form part of its name and be registered as part of its name

262 On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand and seal that the company is incorporated as a company that it is limited, and shall have perpetual succession and a common seal

**263** All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein

**264** The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration

**265** All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner, nevertheless execution shall not be against any individual member of the company of a such suit or proceeding, but in the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company

**266** When a company is registered in pursuance of this Part

- (i) all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co partnership Letters Patent, or other instrument constituting or regulating the company including, in the case of a company, registered as a company limited by guarantee, the resolution declaring the amount of the guarantee shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so such thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum where contained in a registered memorandum, and the residue thereof were contained in registered articles
- (ii) all the provisions of this Act shall apply to the company and the members contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say) —
- (a) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution,
  - (b) the provision of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered,
  - (c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor General in Council relating to the company,
  - (d) subject to the provisions of this section, the company shall not have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the company,
  - (e) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company

(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid, and every contributory shall be liable to contribute to the assets of the company in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply,

(iii) the provisions of this Act with respect to—

(a) the registration of an unlimited company as limited,

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up,

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, Royal Charter, deed of settlement, contract of co partnership, Letters Patent or other instrument constituting or regulating the company,

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co partnership, Letters Patent, or other instrument constituting or regulating the company, as would if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act,

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulation which may, by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co partnership, Letters Patent or other instrument constituting or regulating the company, be vested in the company

267 (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable apply to an alteration under this section with the following modifications—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles, and,

**263** All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein

**264** The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration

**265** All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place, nevertheless execution shall not issue against the effects of any individual member of the company of any decree or order obtained in any such suit or proceeding, but in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company

**266.** When a company is registered in pursuance of this Part

(i) all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co partnership, Letters Patent, or other instrument constituting or regulating the company including, in the case of a company, registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so such thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, where contained in a registered memorandum, and the residue thereof

(ii) all the provisions of this Act relating to the members contributories of the company shall apply to the members contributories of the company in the same manner as if the company had been formed under this Act, subject as follows (that is to say) —

(a) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution,

(b) the provision of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor General in Council relating to the company,

(d) subject to the provisions of this section, the company shall not have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the company,

(e) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company

(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid, and every contributory shall be liable to contribute to the assets of the company in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply,

(ii) the provisions of this Act with respect to—

(a) the registration of an unlimited company as limited,

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up,

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, Royal Charter, deed of settlement, contract of co partnership, Letters Patent or other instrument constituting or regulating the company,

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co partnership, Letters Patent, or other instrument constituting or regulating the company, as would if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act,

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulation which may, by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co partnership, Letters Patent or other instrument constituting or regulating the company, be vested in the company

267 (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement

Power to substitute memorandum and articles for deed of settlement

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable apply to an alteration under this section with the following modifications—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles, and,

(d) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company not being an Act of Parliament or an Act of the Governor General in Council, a Royal Charter or Letters Patent

**Object**—The object clause in the out the objects by reference to the old poses to convert itself from an unlimited under section 67 of the Act before the *Glasgow* (1911) S C 1337

**268** The provisos of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company

**269** Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company except by leave of the Court, and subject to such terms as the Court may impose

**Notes**—The dismissal of a suit against a registered company after the company went into liquidation is no bar to the maintenance of the claim before the official liquidator *Leary v W K Porter* 24 Ind Cas 99

## PART IX

### WINDING UP OF UNREGISTERED COMPANIES

**110** For the purposes of this Part the expression "unregistered company" shall not include a Railway company incorporated by Act of Parliament or by an Act of the Governor-General in Council, nor a company registered under the Indian Railway Companies Act, 1866\* or under any Act repealed thereby or under the Indian Companies Act 1882† or under this Act but, save as aforesaid, shall include any partnership association or company consisting of more than seven members

**Includes.** The companies at the date of petition should consist of more than seven members *Bolton Benefit Loan Society* (1879) 12 C D 679 In *New York and Continental Line* (1909) 54 Sol J 117 it was suggested by *Edy J* that under the English Companies (Consolidation) Act 1908 it was not necessary for an unregistered company to have more than seven members in order to enable it to be wound up It will be observed that this section merely includes the companies herein named under the court can section, if presentation of petition is made on or after the date of the

271 (1) Subject to the provisions of this Part, any unregistered company may be wound up under this act, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the following exceptions and additions —

(i) an unregistered company, shall for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or if it has a principal place of business situate in more than one province then in each province where it has a principal place of business, and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company,

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision,

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say) —

(a) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs

(b) if the company is unable to pay its debts

(c) if the Court is of opinion that it is just and equitable that the company should be wound up,

(iv) an unregistered company shall for the purposes of the Act, be deemed to be unable to pay its debts —

(a) if a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor,

(b) If any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same,

(c) if, execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied, and

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act

**Notes**—A foreign company consisting of more than seven members can be wound up under this section if it has office and assets here *Syrian Ottoman Rail Co* (1904) 20 T L R 217, *Mitheson Bros* (1884) 7 C D 225 *Commercial Bank of India* 1868) 6 Eq 517 *Jarvis Conklin Mortgage Co* (1893) 11 T L R 373, 2 Mysore Law Journal 165, 33 Ch D 174, (1892) 2 Ch 204, 5 C 888 The Court has jurisdiction where such a company transacts business within its jurisdiction and has an office within its jurisdiction (1893) 6 Eq 517 The fact that an order for the winding up of the company or for continuing its winding up subject to supervision has been made by a competent Court of the place of the company's incorporation does not make any difference to the jurisdiction of the Court here *Stiebel* p 787 citing 27 Ch D 225 33 Ch D 174 62 L J Ch 561 An inchoate foreign company or a partnership for promoting foreign company cannot be wound up (1872) 26 L T 229 Concerns of the same nature as companies exactly designated can be dealt with under this section 127 Ind Crs 736=A I R 1930 Rang 337

**272** (1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the cost and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the assignees of insolvent contributories shall apply

**Notes**—Under this section every debtor to the company is not a contributory *equitably to the trustee* (1878) 8 Ch D 679 *Sets of the company and* *Saries Case* (1890) 45 C

*See also Ex parte Littlebale* (1874) 9 Ch 757

**273** The provision of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company

**Notes**—In a compulsory winding up the onus lies upon the person who wishes to show that the action should be continued notwithstanding the winding up *Currie v Consolidated Kent Collieries Corporation* (1905) 1 K B 134 cited in *Stiebel* p 900

**274** Where an order has been made for winding up a company, no suit or proceedings shall be commenced or proceeded with by or on behalf of any contributory of the company in respect of any debt



of the company except by leave of the Court, and subject to such terms as the Court may impose

Notes—This section is applicable to action against a contributory as such and not to an action by a holder of promissory notes though they had been given as security for advances to the company *South of France Pottery Works Syndicate* (1877) 37 L T 260

**275.** If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly, and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property

All properties under this section vests in the *Graham v Edge* (1888) 20 Q B D 683  
must join in giving effect to a valid con  
4 Ch D 23

**276** The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act, but an unregistered company shall not except in the event of its being wound up be deemed to be a company under this Act, and then only to the extent provided by this part

## PART X

### COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA

**277.** (1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written

(b) . . . . . company,

(c) . . . . .

(d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company's service of process and any notices required to be served on the company,

and, in the event of any alteration being made in any such instrument or in such address, or in the directors or managers or in the names or address

of any such persons as aforesaid, the company shall, within the prescribed time file with the registrar a notice of the alteration

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

(i) in a case where by the law, for the time being in force of the country in which the company is incorporated such company is required to file with the public authority an annual balance sheet—a copy of that balance sheet, or

(ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act

Provided that the Council in Council may, by notification in which it may impose such restrictions and conditions, if any, as it may think fit, apply to such company or any class of such companies

(4) Every company to which this section applies and which uses the word 'Limited' as part of its name, shall—

(a) in every prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated and

(b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place, and

(c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company

(5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence fifty rupees for every day during which the default continues

(6) F

(a)

the prescribed manner

(b)

as a share transfer or

(c)

, occupying the position

(d) the expression 'pr

advertisement

subscription or

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed

**Notes**—The only mode of serving processes on foreign companies is that prescribed by S 277 and not what are prescribed by Or 29 R 2 C P Code A I R 1028 Sind 111

## PART XI

**SUPPLEMENTAL**

*Legal proceedings, offences, etc.*

278 (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence  
Cognizance of offences against this Act

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William Madras and

Criminal Procedure, 1898, \*  
of the said Code, be deemed

to be non cognizable

**Complaint**—Ordinarily a Magistrate should be chary of proceeding on a complaint of this kind except after reference to the Registrar of the joint stock companies, or on the complaint of a responsible person. 12 Ind Cas 972, see also 14 P P 1916 Cr Simple cases may be tried by a magistrate summarily. 35 A 173

279 The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered

**280.** Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that that company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

*Stiebel* p 327

In directing the security the probable cost of the action is to be estimated *Dominion Brewery v. Foster*, (1897) 77 L T 507, *Imperial Bank of China v. Bank of Hindustan*, (1866) 1 Ch 437

281 If in any proceeding before any Court against a director of a company for negligence or breach of trust it appears to such Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper

**Notes**—Directors being required by Articles of Association to control management of company, but blindly trusting dishonest manager are not exempted though honest 47 All 663=23 A L J 473=88 Ind Cas 785 Section 281 is not designed to cover gross neglect of a director's ordinary duties over a long series of years 54 B 226=32 Bom L R 232=A I R 1930 Bom 522=127 Ind Cas 305 A director would be liable to wilful fraud or negligence if he had shut his eyes to the facts which were before him and neglected to give any consideration to his duties not caring whether he was fulfilling them or not 127 Ind Cas 305=32 Bom L R 232=A I R 1930 Bom 571

**282** Whoever in any return, report, certificate balance sheet or other document, required by or for the purposes of any Penalty for false statement of the provisions of this Act wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Notes**—According to the prospectus for the flotation of limited company sent by the accused to the Registrar of Joint Stock companies it appeared that five persons who had agreed to be Directors of the company had as such undertaken to subscribe for 500 shares Two of these Directors never paid any sum due from them but inspite

—hence business  
500 shares and  
even the two  
them and he  
manager signs a

renders himself liable to prosecution  
as not necessary for him to sign the  
L R 297 In order to fix the penalty

under s 282 the false statements must be made wilfully knowing them to be false and no offence is committed if no dishonesty or motive for dishonesty is shown or where the directors acted on the advice of counsel A I R 1929 Bom 443=122 Ind Cas 141

**283** If any person or persons trade or carry on business under any name or title of which Limited is the last word that Penalty for improper use of word Limited that person or those persons shall unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used

**Notes**—A solicitor who enters an appearance for such persons under such name will be personally liable for costs *Stiebel* p 55 citing *Simmons v Liberal Opinion Ltd* (1911) 1 C L 966

**284** The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act 1882, shall be deemed to remain in full force

**Notes**—In winding up proceedings commenced before the commencement of Act VII of 1913 the former Act VI of 1882 is to be applied as is the new Act has not been passed at all *Gordhan Das v Kanthi* 97 Ind Cas 265=24 C W 35 see also *Hem Raj v Punjab Tannery*, 1913 Lah. 98, 58 Ind Cas 601, 68 Ind Cas 792, 28 Ind Cas 600, 43 Ind Cas 642

**285** Every instrument of transfer or other document made before the commencement of this Act in pursuance of any Saving of document enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instru

ment or document the repealed enactment shall be deemed to remain in full force

**N B**—This section corresponds to section 288 of the English Act. An instrument of transfer includes conveyance and deed of mortgage. Vide s 288 of the English Act

**286** (1) The offices existing at the commencement of this Act for registration of joint stock companies shall be continued as if they had been established under this Act

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act

(3) The existing registrars, assistant registrars and officers in those offices shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them but subject to any regulations of the Local Government with regard to the execution of their duties

**N B**—This section corresponds to section 289 of the English Companies Act

Savings for Indian Life Assurance Companies Act 1912 and Provident Insurance Societies Act 1912

**287** Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act 1912 or of the Provident Insurance Societies Act 1912

**288** In sections 1 and 18 of Act No XXI of 1860 (for the registration of joint stock companies in Act XXI of 1860)

Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act 1912 or of the Provident Insurance Societies Act 1912

**289** Save as provided in sections 188 and 189 nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay

**290** (1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof

Provided that the repeal shall not affect—

(a) the incorporation of any company registered under any enactment hereby repealed, nor

(b) Table B in the Schedule annexed to Act No XIV of 1857, or any part thereof so far as the same applies to any company existing at the commencement of this Act, nor

(c) Table A in the First Schedule annexed to the Indian Companies Act, 1882 or any part thereof so far as the same applies to any company existing at the commencement of this Act

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed passed or done under this Act

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals

## SCHEDULES.

### THE FIRST SCHEDULE.

See sections 2, 17, 18, 79, 266.

#### TABLE A

#### REGULATIONS FOR MANAGEMENT OF A COMPANY.

#### LIMITED BY SHARES.

##### *Preliminary.*

1. In these regulations, unless the context otherwise requires, expressions defined in Indian Companies Act, 1913, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate

##### *Business.*

2 The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

(Notes —Section 282 makes provision for untrue declaration under section 103. 46 A. 218

##### *Shares.*

3 Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine

Notes —Very frequently the different classes, conferring different shares conferring a preferential dividend after a specified dividend (Will v. United Lankat Plantations, 50 J. 3/9) and either with or without a right to repayment of capital on a winding up in priority to other shares. In such last

er the other  
316 Prefere-  
1889) 14 A C  
.., Vol I p 802.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class to these regulations relating the provisions but so that the necessary *tandis* apply, representing by proxy one-third of the issued shares of the class must holding or

5 No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent of the nominal amount of the share, and the director shall as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104

the t interest of  
 the Directors are liable to make good the loss sustained by the company (1900) 2 under value  
 Ch 305 In allotting shares the directors must exercise the powers with good faith  
 (1903) 2 Ch 506, (1920) 1 Ch 77

6 Every person whose name is entered as a member in the register of members shall without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon provided that, in respect of a share or a shares held jointly by several persons, the company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all

7 If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8 No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of the company's shares

#### *Lien*

9. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause The company's lien if any, on a share shall extend to all dividends payable thereon

Notes—This lien has priority over mortgagee of the shares *Borlan's Trust v Steel Brothers* (1901) 1 Ch 279 see also *New London and Brazilian Bank v Brockbank* 21 Ch D 307, *Brillford v Briggs* 12 A C 79 The transferee takes subject to a lien the company had against his transferor *Stiebel* p 274

10 The company may sell, in such manner as the director thinks fit any shares on which the company has lien but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled by reason of his death or insolvency to the share

11 The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale

#### *Calls on Shares*

12 The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed

one fourth of the nominal amount of the share, or be payable at less than one month from the last call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or the times so specified the amount called on his shares.

**Notes**—The articles of association usually contain provision for enabling calls to be made, and not infrequently provide that not more than a certain amount is to be called up at a time and that a specified period must lapse between two calls. An article authorising calls to be made from time to time but providing that no calls shall exceed a specified sum, will not prevent two calls each of which calls are payable at different dates. *Stiebel* p 261 citing *Universal Corporation v Hughes* (1909) 5 C 1434. A director not validly appointed but who does not know of his defective appointment can make a call. *Dawson v African Co* (1898) 1 Ch 6. *British Asbestors v Boyd* (1903) 2 Ch 439, *Boschok Proprietary v Fuke* (1906) 1 Ch 148, *Transport Co v Schomberg* (1905) 21 T L R 305, *British Medical v Jones* (1896) 74 L T 384. But a person who has not been appointed a director at all cannot make a call. *Tyne Mutual Steamship Co v Brown* (1896) 74 L T 283. *Gordon Gally etc v Co McLester*, (1876) 1 A C 39.

13 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14 If sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

**Notes**—This provision does not apply to *Flannel and Tweed Co* (1875) 20 E

ng up *Welsh*  
Eq 184

15 The provisions of these articles shall apply in the case of non payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16 The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17 The directors may if they think fit receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him and upon all or any of the moneys so advanced may (until the same would but for such advance become presently payable) pay interest at such rate (not exceeding without the sanction of the company in general meeting six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

**Notes**—The powers given under this article is perfectly valid. *Lock v Queens Island Co*, (1896) A C 461 (1896) 1 Ch 397. *Dale v Martin* (1883) 11 L R 371. When such a payment has been made the relation of debtor and creditor and not that of company and share holder exists *qua* such payment between the company and the member making the payment. *Stiebel* p 263 citing *Lock v Queensland Co*, (1896) A C 461.

### Transfer and transmission of shares

18 The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

**Notes**—Where the article is silent on the subject the transfer is to be made in accordance with the custom of the company. *Morison's Case* (1867) 4 Ch 596.

19 Shares in the company shall be transferred in the following form or in any usual or common form which the directors shall approve.



I, A B of \_\_\_\_\_ in consideration of the sum of rupees \_\_\_\_\_ paid to me by C D of \_\_\_\_\_ (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the \_\_\_\_\_ Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the day of \_\_\_\_\_

Witness to the signature of, etc

Notes—This article is directory only (1904) 1 Ch 815

20 The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The transfers during the fourteen days \_\_\_\_\_ eral meeting in each year the ment of transfer unless—

(a) a fee not exceeding two rupees is paid to the company in respect thereof, and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer

Notes—Where the deed of transfer is not properly stamped a company may refuse registration *Maynard v Consolidated Kent Collieries* (1903) 2 K B 331. Where the articles restrict transfers by a person indebted to the company it was held that it must be read with the articles giving the company a lien *Stockton Malleable Iron Co.*, (1876) 2 Ch D 101 cited in *Stiebel* p 285

21 The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors, or survivor or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share

of an article to the contrary personal representatives will have the same right of property conferred on them by the shares as would the member through whom they claim *James v Bueri Venturi etc, Syndicate*, (1896) 1 Ch 456, *New Zealand*

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time, be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself to make such transfer of the share as the deceased or insolvent person could have made. In either case, he shall have the same right to decline or to accept the share in the case of a transfer of the share with or insolvency.

Notes—Transfers of share or other interest of a deceased member of a company which are made by his personal representative will bind only the personal representa-

tative is not himself a member, he valid as if he had been a member at the time of the execution of the transfer *Stiebel* p 284

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company

#### *Forfeiture of shares.*

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment so much of the call or instalment as is unpaid, together with any interest which may have accrued,

Notes—The power of forfeiture is not implied and as such the articles of association must make provision for the same *Clarke v Hurst*, 6 H L C 633; *Barton's Case* (1859) 4 De G & J 46 A prospective notice that shares will be forfeited without any further resolution of the directors, be

directors is necessary 130 Ind Cas 534 = A I R 1931 Pat 44 A valid default are conditions precedent to and necessary for a valid forfeiture 125 Ind Cas 419

25. The notice shall fourteen days from the required by the notice is payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect

Notes—The provisions of the articles dealing with forfeiture must be strictly followed as any irregularity in the forfeiture (*Johnson v Lytle Agency* 5 Ch D 657) or even in a call out of which the forfeiture arose (*Bottomley's Case*, 18 Ch D 631, *Gordon Gulley v McLister* (1876) 1 A C 39) may avoid the whole forfeiture *Stiebel* p 276

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

Notes—The directors have right to sell forfeited shares at a discount *Rimwell's Case*, 50 L J Ch 827 = 45 L T 431 Where the balance of unpaid shares has been paid by the defaulting share holder a person who has purchased forfeited shares is discharged from all calls due prior to his purchase *Randit Gold Co* (1904) 2 Ch 463 The company may issue forfeited shares as paid up to the extent of the money actually paid on them before forfeiture 68 L J Ch 11, 50 L J Ch 827

cease to be a member

cease if and when the company received payment of all or the nominal amount of the shares

**Notes**—A forfeited share holder ceases to be a member but his liability for money payable to the company at the time of forfeiture in respect of the forfeited share including any interest on arrears of calls remains *Stöcken's Case* (1868) 3 Ch 412, *Ladies Dress Association v Pulbrook* (1900) 2 Q B 276. On forfeiture of share the share holder ceases to have any liability for future calls and becomes liable for unpaid calls as a debtor of the company 110 Ind Cas 33. If the forfeiture takes place within a year from the winding up such a forfeited share holder is placed in the B list of the contributories *Creyke's Case*, (1870) 5 Ch 63, *Marshall v Glamorgan* (1868) 7 Eq 129, *Bates Case* (1878) 8 Ch D 334.

29 A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any,) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**Notes**—It is usual for the articles to provide that where forfeited shares have been sold the purchaser shall have good title and the right of the person aggrieved shall be in damages against the company only. Such a right may be enforced in winding up *New Chile Gold Mining Co* (1890) 45 Ch D 398 cited in *Stiebel* p 276.

30 The provisions of these regulations as to forfeiture shall apply in the case of non payment of any sum which by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium as if the same had been payable by virtue of a call duly made and notified.

#### *Conversion of shares into stock*

31 The directors may with the sanction of the company previously given in general meeting, convert any paid up shares into stock and may with the like sanction re-convert any stock into paid up shares of any denomination.

32 The holders of stock may transfer the same or any part thereof, in the same manner, and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33 The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34 Such of the regulations of the company (other than those relating to share-warrants) as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

#### *Share-warrants*

35 The company may issue share-warrants, and accordingly the directors may, in their discretion with respect to any share which is fully paid up or applicable

ie share, and authentic time to time require as receiving the certificate the warrant and such fee as the directors may from time to time require issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant

36 A share warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto

37 The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant

Notes—A share warrant is a negotiable instrument *Webb Hale & Co v Alexander Water Co* (1905) 93 L T 339

38 The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor

39 Subject as herein otherwise expressly provided, no person shall as bearer of a share warrant sign a requisition for calling a meeting of the company or attend or vote or exercise any other privilege of a member at a meeting of the company or be entitled to receive any notices from the company but the bearer of share warrant shall be entitled in other respect to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company

40 The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction

#### *Alteration of Capital*

41 The directors may, with the sanction of an extraordinary resolution of the Company, increase the share capital by such sum to be divided into shares of such amount, as the resolution shall prescribe

Notes—The exact increase proposed must be given in the notice (1916) 2 Ch 57

42 Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion as nearly as the circumstances which they are entitled to receive notices of the shares offered, and limited by the amount of the increase, as may be deemed to be deemed, except of an intimation from

the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

**Notes**—The article is mandatory and not merely directory. 3 Bom H C O C J 9. Under this clause the representatives of a deceased member are entitled to the shares to which the deceased would have been entitled. *James v Buena Ventura* (1896) 1 Ch 456, *Allen v Gold Reefs of West Africa*, (1900) 1 Ch 656. If shares are held by trustees any new shares to which they become entitled belong to the estate. 50 L J Ch 747, the right to call for the

provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44 The company may, by special resolution —

- (a) consolidate and divide its share capital into shares of larger amount than its existing shares,
- (b) by sub division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub section (1) of section 50 of the Indian Companies Act 1913
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person,
- (d) reduce its share capital in any manner and with and subject to, any incident authorised, and consent required, by law

### General Meetings

45 The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913

every year at such time (not less than 14 days before the anniversary of the last preceding general meeting of the company in general meeting, or that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

**Notes**—The directors can call such a meeting. (1875) 10 Q B 329 at p 339. A secretary has no power to call such a meeting. (1900) 2 Ch 230, (1901) 2 Ch 431. Only the directors of the company in general meeting can authorise the name of a company being used in any proceedings. *La Compagnie de Maynil v Whitey* (1896) 1 Ch 788.

called ordinary meetings,

it, call an extraordinary meeting. It may also be called on such conditions as provided by the directors at any time there are not less than a quorum, any

director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

*Proceedings at General Meeting*

49 Fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company, but the non receipt of the notice by any member shall not invalidate the proceedings at any general meeting

Notes — Notice cannot be given that a meeting will be held on certain contingencies happening *Alexander v Simpson*, (1889) 43 Ch D 139, *Espuela Land and Cattle Co* (900) 48 W R 684 As to what will amount to a sufficient statement of the general nature of business, vide *Betts v Macnaghten*, (1910) 1 Ch 430

50 All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of the consideration of the accounts, balance sheets, directors and auditors, the election of directors of those retiring by rotation, and the fixing of the remuneration of the auditors

51 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, save as herein otherwise provided, three members personally present shall be a quorum

Notes — In the article it is generally provided that a certain number of members is to constitute a quorum *Cf Hemans v Hotchkiss Ordnance Co* (1899) 1 Ch 11. If there is no provision the majority can bind the company *Rev v Lario* 1775) 1 Cowp 248 *Rev v Monday* (1877) 2 Cowp 530, *Grindley v Bayler* (1793) 1 Bos & Lull 229 Even where the articles do not make any provision for quorum 120 members must be present to constitute a meeting *Sharp v Dimes* Q B D 76 *Sanitary Carbon Co* (1877) W N 223 In computing quorum the proxies are not counted *Cf 23 W P 405, Eng* 1900 W N 274 (Eng)

52 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if called upon the requisition of members shall be dissolved in any other case it shall stand adjourned to the same day in the next week at the same time and place and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum

Notes — If the adjourned meeting if a quorum is not present within half an hour the members whose number must be two or more shall be a quorum One member can not constitute a quorum, 2 Q B D 26 In counting quorum members not entitled to vote are not counted *Henderson v Lunt & Co* (1884) 21 Reue 674

53 The chairman if any, of the board of directors shall preside as chairman at every general meeting of the company,

Notes — The duties of the Chairman are to preserve order, and to take care that proceedings are conducted in a proper manner and that the sense of the meeting is properly ascertained with regard to any question that is before the meeting *Steele p 377 citing National Dwelling Society v Sykes* (1894) 3 Ch 159

54 If there is no such chairman or if at any meeting, he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman

Notes — In such a case the elected chairman is not bound to vacate the chair even if the permanent chairman comes afterwards *Blackwell p 18*

55 The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left

ournment or of the business to be

**Notes**—The chairman cannot adjourn the meeting at his own pleasure. If he does so the meeting can elect its own chairman. *National Dwelling Society v Sykes* (1894) 3 Ch 159. The chairman can adjourn where it is impossible to conduct the meeting. *Reg v. D Oyley* (1840), 12 A & E 139, *Lee v. Chester* (1834) 1 A & E 342. But the chairman is not bound to adjourn the meeting even where the majority desires it. *Salisbury Gold Mining Co v Hathorn*, (1898) A C 268.

56 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously or by a particular majority or lost and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against, that resolution.

**Notes**—It is the chairman's business to ascertain the sense of the meeting. This

*Siren Log Signals Co* (1875) 52 L 1 846

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded

Notes  
865, Reg Wimbledon Local Board (1882)  
8 Q B D 1875) 32 L T 558 A holder  
of proxy may not demand such a poll Reg v Corporation Stock Investment (1878)  
3 Q B D 442, Havem Gold Mining Co (1882) 20 Ch D 151 The effect of such  
demand is to do away with the proceeding of show of hands altogether  
Anthony v Segar (1789) 1 Hag C C 13, Reg v St Matthew, Bethnal  
Green (1875) 3 L T 558 Reg v Cooper (1870) L R 5 Q B 475 Such a demand  
but the consent of the second

*asie Gold Mines* (1900) 2 Ch  
R

58 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote

Notes.—Where there is no provision in the Articles of Association on the chairman is not entitled to a casting vote. *Nels v Longbottom*, (1894) 1 Q B 767. In the absence of Association any proposal would be void. Cf *Re Chairman*, (1704) 1 Hol. 1. *Re Tipperary* (1903) 2 Ir 106. A case in which the chairman is entitled to a casting vote.

59 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Notes—The right time to demand a poll would seem to be immediately after of hands. *Campbell v Mound* (1836) 5 A & E 120. When and where the poll is to be held. *Reg v Chester* (1834) 1 A & E 342, *Chillington*.

### Votes of Members

60 On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

Notes—Each member present will have one vote. *Harbury Bridge Coal Iron, and Waggon Co* (1879) 11 Ch D 109. A holder of a proxy who is not a member can only vote if he is entitled to vote as such (1897) 1 Ch 1, (1885) 52 L. T. 846. On a poll the number of votes each member has and also proxies will be counted. Not infrequently scrutineers are appointed but the result of the poll should be declared by the chairman. *Stibel* p. 395 citing *Indian Zoedone Co* (1884) 26 Ch D 70.

61 In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62 A member of unsound mind or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll by his committee or other legal guardian, and any such committee or guardian may on a poll vote by proxy.

63 No member shall be entitled to vote, at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64 On a poll votes may be given either personally or by proxy. Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

Notes—No member is entitled to vote by proxy unless the Articles of Association authorize him to do so. *Harbur v Phillips* (1883) 23 Ch D 14.

65 The —  
of the appt  
is a corp  
or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

Notes—*Prima facie* there is no right to vote by proxy, for the common law does not recognize any such mode of voting, but the Articles create a right for it is extremely inconvenient that a member should be obliged personally to attend. *Law* p. 172. Where the Articles make provision signed in the presence of a witness in such a case, signature in the presence of a witness is necessary. *Harben v Phillips* 23 Ch D 32. A proxy can not attest his own appointment. *Ex parte Cullen*, (1861) 2 Q. B. 151.

66 The instrument appointing a proxy and the power of attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at



which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

**Notes**—The Articles very commonly require instruments of proxy to be deposited with the company a certain number of hours before the meeting. *Palmer's Company Law* p 173. The presence of a member in a meeting after appointing a proxy does not cancel the proxy but if he votes at the meeting the proxy will be revoked. *Knight v Bulkley*, 5 Jur N S 817.

67 An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve —

Company Limited.

"I of \_\_\_\_\_ in the district of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof

Signed this \_\_\_\_\_ day of \_\_\_\_\_

**Notes**—This article does not require a proxy to be attested. Under the Indian Stamp Act a proxy requires 2 annas stamp, vide Art 52 of the Stamp Act. In England a proxy for a single meeting requires a 10 s stamp. Vide se. See also (1915) 32 T L R 183. A duly filled up before it is deposited or used. *Ernest v Loma Co* (1897) 1 Ch 1. The signatories must put their initials, or signatures and dates on the stamp. 71 L J Ch 755.

#### *Directors*

68 The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

**Notes**—A company can not act in its own person, for it has no person. *Per Lord Cairns, in Ferguson v Wilson* L R 2 Ch 89. So directors are appointed to carry the business on behalf of the company. A limited company may be a director. *Bulaway's, Market Co* (1907) 2 Ch 458. "First directors are usually named in the Articles of Association, if there are any, but not uncommonly the Articles, instead of naming them, contain a power for the subscribers, or the majority of them by writing, to appoint them." *Palmer's Company Law* p 111. The majority of the subscribers may appoint the first directors either by signing the appointment or by \_\_\_\_\_ of the subscribers are present \_\_\_\_\_ of the subscribers \_\_\_\_\_ notice of such a meeting must \_\_\_\_\_

69 The remuneration of the directors shall from time to time be determined by the company in general meeting.

**Notes**—*Prima facie* \_\_\_\_\_ *Imperial & Co*, 3 Bar \_\_\_\_\_ *v Royal Aquarists* \_\_\_\_\_ Articles make provision \_\_\_\_\_ (1921) 1 K B 423. even where there is no provision in the Articles or where it has not been determined \_\_\_\_\_ But where there is no provision in the Articles or where it has not been determined \_\_\_\_\_

**Notes**—The qualification is required in order to give a director a personal interest in the holding. *Archer's Case*, (1832) 1 Ch 377. The effect of such a clause is, that the director is under an obligation to acquire the requisite qualification in some way or other, whether from the company, or by transfer from a friend.

chase in the market, but that he is to have a reasonable time—viz a few weeks—  
*Palmer's Company Law* p 183  
*Glory Paper Mills* (1894) 3 Ch 473  
 the effect of raising the share qualification

### *Powers and duties of Directors*

71 The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act 1913 or any statutory modification thereof for the time being in force or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

Notes—The articles generally give to the directors a number of specific powers scattered up and down the various clauses but in addition to these specific powers there is almost always inserted a general clause on the lines of this article providing that the directors may exercise all the powers of the company not by the articles or by statute required to be exercised by the company in general meeting *Palmer's Company Law* p 189 Such a general vesting of powers in the directors is valid and effective and all that has to be done in considering whether any particular transaction is within the powers conferred by such a clause on the directors, is to search the articles and the Acts to see whether there is any express provision requiring for that transaction the authority of the company in general meeting and, if there is no such provision the directors must be treated as competent to carry out the transaction *Ibid* p 189 see also L R 6 Ch 83, 20 Eq 339, (1891) 1 Ch 173 45 L J Ch 437

72 The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit, and a director so appointed shall not while holding that office be subject to retirement by rotation or taken into account in determining the rotation, of retirement of directors but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined

Notes—The directors cannot determine by resolution that the articles shall not apply to them. The directors may appoint servants and agents and any By r or all

case may be (1908) 99 L T 524, (1874) 9 Ch 691

73 The amount for the time being remaining undischarged of moneys company (otherwise the issued share general meeting

Notes—Under article 71 the directors have got the power of borrowing a not extraordinary of their

74 The directors shall, duly comply with the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charge, affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein

75 The directors shall cause minutes to be made in books provided for the purpose—

- (a) of \_\_\_\_\_
- (b) of \_\_\_\_\_ of the directors

(c) of all resolutions and proceedings at all meetings of the company and, of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose

### *The Seal*

76 The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose, and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence

Notes—The affixing of seals by some unauthorised person does not bind the company *Mayor etc. of Merchants of the Staple v Bank of England* (1887) 21 Q B D 160, *Ruben v Great Fingall* (1906) A C 439

### *Disqualifications of Directors*

77 The office of directors shall be vacated if the director—

- (a) ceases to be a director by virtue of section 85 of the Indian Companies Act, 1913, or
- (b) holds or any partner of his or the firm of which he is a member holds any other office of profit under the company except that of managing director or manager, or
- (c) is adjudged insolvent, or
- (d) is found lunatic or becomes of unsound mind, or
- (e) is concerned or participates in the profits of any contract with the company, or
- (f) is punished with imprisonment for a term exceeding six months

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted

Notes—On the happening of the event a director vacates his office automatically *Bodriga Co. Limited* (1904) 1 Ch 276 Even apart from such a provision it is well settled that the acceptance by a director of an incompatible office vacates his directorship *Pulmer's Carriage Co. v 182* citing *Milner v Toller* 2 T R 81, *Lales v Cumberland and West Co.* 6 H & N 451, *Iron Ship Co v Frost* L R 3 C P 484

Clause (e)—Becomes insolvent after election (1896) 1 Ch 6, see also 10 H L Cas 404, *Sissons v S* 54 S J 802

### Rotation of Directors

75 At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year, one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third shall retire from office.

79 The directors to retire in every year shall be those who have been longest in office since their last election, but is between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot

80 A retiring director shall be eligible for re-election

8: The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82 If at any meeting at the places of the vacating c  
adjourned till the same day  
if at the adjourned meeting the places of the vacating directors are not filled  
up the vacating directors or such of them as have not had their places filled  
up shall be deemed to have been re elected at the adjourned meeting

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office

84 Any casual vacancy occurring on the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

**Notes**—Such a power continues to be exercisable even after a general meeting of the company if the vacancy still continues. *Munster v Cammell* (1887) 21 Ch D 183. *Zennett Bros v Lewis*, (1904) 20 T L R 1.

85 The directors shall have power at any time and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director

86 The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead the person so appointed shall be subject to re-election at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

*Notes*—Even in the absence of such an article from a company's Articles of Association, a director can be removed for misconduct. *Boston Deep Sea Fishing Co v Ansell* (1888) 39 Ch D 339, *Cf Kayshe v Alturas Gold Co* (1888) 36 W R 495. By this article a director can be removed by an extraordinary resolution in such a case the delinquent director is not entitled to a hearing in his defence. *Dean v Bennett* (1876) 6 Ch 489, *Haymon v Governors of Rugby School* (1874) 18 Eq 28. He is also not entitled to any notice. *African Association v Allen*, (1910) 1 K B 396.

### Proceedings of Directors

87 The directors may meet together for the despatch of business, adjourn Questions arising at any  
in case of an equality of  
A director may, and  
time summon a meeting

**Notes**—Notice of the meeting must be given to all directors 42 Ch D 160 But such notice can be dispensed with where they are travelling abroad 59 L J Ch 591.

The directors need not meet where they agree to a particular course *Ex parte Kennedy* (1890) 44 Ch D 472, *Hollows v Fernie* (1867) 3 Eq 520

**Vote**—Every director has got one vote Vide 11 Ch D 197 Any question raised in a meeting is to be decided by a majority of votes *Rex v Vaxlo*, (1775) 1 Cowp 248 *Rex v Monday*, (1877) 3 Cowp 530, *Perry v Shipway*, (1859) 1 Giff 1 *Wilkinson v Malin*, (1832) 2 Tyr 544

**Meeting**—The meeting of the directors should be duly convened, (1900) 2 Ch 230 (1867) 2 Exch 158 Apart from any special powers the directors can only act as a board *D Arcy v The Tamar*, etc *Railway*, (1867) L R 2 Ex 158, *Howards' Case*, (1866) 1 Ch, 561, *John Morby Building Co v Carras* (1891) 2 Ch 386 There need not be any fixed place of meeting All that is required is that they must meet in some place where all may be present and may have the opportunity of expressing their assent or dissent *D Arcy v The Tamar etc*, (1867) L R 2 Ex 158

**Casting vote**—A chairman who is not duly appointed can not give a casting vote (1920) 1 Ir Rep 107

88 The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall (when the number of directors exceeds three) be three

**Notes**—In the absence of any provision for quorum in the Articles the majority of the whole number of directors can act *York Trinitys v Willows* (1882) 8 Q B D 685 But it is doubtful whether any smaller number can act *Portuguese Consolidated Copper Co v Steele's Case* (1889) 42 Ch D 160 In a meeting where the quorum is present all the authorities powers and discretions vested in the directors can be exercised A bare quorum is capable to act and bind the company at a meeting duly convened with proper notice given to the other directors, at which therefore all the other directors may, if they please, be present (1888) 38 Ch D 546 at p 550 Even a quorum of one can be fixed (1916) 2 Ch 142 The directors who are not competent to vote are not counted (1904) 1 Ch 32, (1903) 19 T L R 602

89 The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

**Notes**—Where the Articles provide that the directors are not to be less than a certain number in such a case, if there are not the minimum number of directors the directors cannot act *Kirk v Bell*, (1851) 16 Q B 290, *Faure v Phillipart*, (1888) 58 L T 325, *British Empire Match Co* 59 1 T 291 It is usual for the Articles to provide that the continuing directors may act and the scope of such an Article will not be limited to cases where there are more than the minimum number or to allowing continuing directors to act in ordinary business only 23 Ch D 413, 8 Q B D 685 (1900) 2 Ch 272, (1901) 1 Ch 115 An Article allowing continuing directors to act does not apply where there never has been the minimum number of directors *Sly Spring and Co* (1911) 2 Ch 40 But the better opinion seems to be that under such an Article continuing directors can act though there are too few of them to form a quorum (1900) 2 Ch 272, (1901) 1 Ch (115), 8 Q B D 685, 23 Ch D 413 *Stiebel* p 361

90 The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting

**Chairman**—The duties of the Chairman are to preserve order, and to take care that proceedings are conducted in a proper manner, and that the sense of the meeting

is properly ascertained with regard to any question that is before the meeting  
*National Dwellings Society v Sykes*, (1894) 3 Ch 159

91 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so "formed"\* shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors

Notes — The committee must be appointed by the directors to be the intention of the Article  
 Ch D 118, (1916) 2 Ch 142  
 supervision over the acts of the  
 ) 99 L T 524, see also *Crittwell's*

Case (1874) 9 Ch 691

92. A committee may elect a chairman of their meetings, if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting

93 A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote

94 All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding, that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director

Notes — The defects must be discovered after the act. *Murray v Bush*, (1873) L R 6 H L 37. *British Asbestos Co v Boyd*, (1903) 2 Ch 439. The word "qualified" must not be read in the narrow sense of qualification as regards holding the qualification shares. *British Asbestos Co v Boyd* (1903) 2 Ch 430 but see 42 Ch D 160. When a dividend is declared and becomes payable it is a debt. *Re Severn & Wil Co* (1895) 1 Ch 559. Until declaration the shareholder can not sue for it (1907) 1 Ch 353

### Dividends and Reserve

95 The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors

Notes — Dividends are generally declared in a general meeting. 25 Ch D 752. Dividends may only be paid in cash (1889) 42 Ch D 635 at p 645 (1867) 3 Ch App 26. Where payment by part is authorized the company is absolved from its liability by sending the dividend warrant by post. *Thairwall v Great Northern Railway*, (1901) 2 K B 509

96 The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company

Notes — The article authorises the directors to pay *interim* dividends only out of profits. Vide (1903) 30 T L R 16 (1914) 1 Ch 558, (1901) 85 L T 27

97 No dividends shall be paid otherwise than out of profits

Notes — Dividends are only payable out of profits and not out of capital. 50, *In re National Funds Insurance Association*. *Alexandra Palace Co* 21 Ch D 149, out of capital is *ultra vires*. *Arrvor v Whitworth* 12 App Cas 409. If the directors pay dividends out of the capital they are jointly and severally responsible for payment. *Fletcroft's Case* 21 Ch D 519. If the directors pay fictitious dividends may be made criminally liable. *Burns v Pennell* (1849) 2 H L C 525.

\*The word within quotations has been substituted by Act 10 of 1914

*Regina v Esdaile* (1858) 1 G & F 213 So dividends can only be paid out of profits ascertained by a proper profit and loss account and balance sheet, as commercial men generally ascertain profits, throughout the world *Holby's Case* 2 Eq 175, 4 Ch 475, (1894) 2 Ch 264, (1892) 2 Ch 198, 4 Ch D 825, 16 Ch D 347, 35 Ch D 582

98 Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share

Notes—One of the most important points which the articles have to determine in reference to dividends is in what proportion the dividends are to be made payable as between the members. In the absence of any provision in the articles 'all the shares are entitled to participate equally in dividend, without regard to the amount paid up upon each' *Oakbank Oil Co v. Crum*, 8 App Cas 65, see also *Bridge-water Co*, 14 App Cas 575. But this article gives a rateable dividend on the amounts paid on the shares

99 The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such applications may at the like discretion either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit

Notes—Even where there is no provision in the article the directors can set apart a portion of the profit as reserve fund. They may invest such fund in any investments which they consider desirable *Berling v Earle*, (1902) A C 13, *Fisher v Blak and White Co* (1901) 1 Ch 174. It is generally available for distribution of profits in succeeding years *Horre & Co* (1904) 2 Ch 708 *Bouch v Sproule* (1887) 12 A C 385, *Pe Alsbury* (1890) 45 Ch D 237

100 If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share

Notes—As between tenant for life and remainder man, the tenant for life is entitled to all profits distributed unless the company has validly capitalized them by resolution or otherwise *Stiebel* p 300 citing *Bouch v Sproule* (1887) 12 A C 385 *Pe Pierce* (1907) 2 Ch 389, *Re Northage* (1891) 60 L J Ch 488 *Hume Nisbet's Settlement* (1911) 27 T L R 461, *Re Palmer* (1912) 56 Sol J 363

101 Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the person entitled to share therein

Notes—Where a dividend is declared between the date of a contract for sale of shares and the transfer it will be payable to the transferee if the contract be silent on the point *Stiebel* p 304 citing *Black v Honors him* (1879) 4 Ex D 24

102 No dividend shall bear interest against the company

*Cf Ruskton & Grissel* (1870) 10 Eq 393

### Accounts

103 The directors shall cause true accounts to be kept—

- (a) of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

## (b) of the assets and liabilities of the company

Notes—Directors are agents and in some sense trustees for the company. This being so, they are under the clearest obligation to keep proper accounts of their  
 " " and of all dealings and transactions in behalf of the company. It is one  
 " " of Eldon pointed out in *White v Lincoln* (1803)  
 " " and to communicate the contents of it to his  
 p 222

104 The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors

Notes—A director by virtue of his office has the right to inspect the accounts of the company (1890) *W N (Eng)* 209. This right of inspection ceases on voluntary winding up *Yorkshire & Co* 9 Eq 650, *Kent Coalfields Syndicate* (1898) 1 Q B 754

105 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Notes—The right of inspection of accounts and books of the company is not a statutory right. This article does not prevent a shareholder to inspect the register of members or the register of mortgages, for a member has statutory right to inspect them *Palmer's Company Law* p 222

106 Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting

107 The profit and loss account shall show arranged under the most convenient heads the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expenses of the establishment salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated which the addition of the reasons why only a portion of such expenditure is charged against the income of the year

108 A balance-sheet shall be made out in every year and laid before the company  
 such meet \_\_\_\_\_ months before  
 rector as \_\_\_\_\_ part of the di  
 recomme \_\_\_\_\_ int which they  
 they propose to carry to a reserve fund (if any) which

109 A copy of the balance sheet and report, shall, seven days previously to the meeting be sent to the person entitled to receive notices of general meetings in the manner in which notices are to be given hereunder

110 The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force



*Audit*

111 Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modifications thereof for the time being in force.

*Notices.*

112. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he address, if any, within British ing of notices to him of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

Notes—The notice must be given to every member within reach *Smith v* is not known, notice 59 L J Ch 591, *Union Hill Silver* non service of notice *Refining Co* (1857) 3 K. & J 408 Notice is to be given only to members on the register *Sussex, Brick Co* (1904) 1 Ch 598

113 If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices in a newspaper circulating in company shall be deemed to be sement appears could appear apart from special *General Trust Co v Interna*, 88 No notice need be given

114. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holders named first in the register in respect of the share.

Notes—In the absence of such a provision in the articles such a notice is not sufficient *Cf Patentwood Keg Syndicate v Peirse*, (1906) W N 164

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any British India supplied for the purpose or (until such an address has been so ner in which the same might have been occurred

Notes—These persons are not entitled to any notice in the absence of such an article (1909) 1 Ch 656, (1896) 1 Ch 456, (1894) 1 Q B 622

116 Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who, but for his death or insolvency, would be entitled to receive notice of the meeting No other persons shall be entitled to receive notices of general meetings

## TABLE B.

( See sections 249 and 262).

## TABLE OF FEES TO BE PAID TO THE REGISTRAR,

*I.—By a company having a share capital*

|                                                                                                                                                                                                                                                                                                        | RS. A. P. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ... ..                                                                                                                                                                                               | 40 0 0    |
| 2. For registration of a company whose nominal share capital exceeds Rs 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—                                                                               |           |
| For every 10,000 rupees of nominal share capital; or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ... ..                                                                                                                                                                   | 20 0 0    |
| For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees ... ..                                                                                                                                                                 | 5 0 0     |
| For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 1,00,000 rupees ... ..                                                                                                                                                                                     | 1 0 0     |
| 3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or, part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration |           |
| Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration    |           |
| 4. For registration of any existing company, except such companies as are by this Act, exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company                                                                               |           |
| *5. For filing returns of allotments prescribed by section 104 of the said Act in cases in which the aggregate paid up value of the shares allotted does not exceed Rs 100, one per cent on the paid up value of the shares allotted, in cases in which the paid up value exceeds Rs 100, three rupees |           |
| 6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of ... ..                                                                                                                                                                                 | 5 0 0     |

*II.—By a Company not having a share capital*

|                                                                                                                                                                                                                                               |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ... ..                                                                                                                 | 40 0 0  |
| 2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ... ..                                                                                                | 100 0 0 |
| 3. For registration of a company whose number of members, as stated in the articles of association exceeds 100, but is not stated to be unlimited the above fee of Rs 100 with an additional Rs 5 for every 50 members or less number than 50 |         |
| 4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ... ..                                                                                                     | 400 0 0 |

- 5 For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable (in respect of such increase)\* if such increase had been stated in the articles of association at the time of registration

Provided that no one company shall be liable to pay on the whole a greater fee than Rs 400 in respect of its number of members taking into account the fee paid on the first registration of the company

- 6 For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company

- 17 For filing any other document required or authorised by the said Act or rules made thereunder other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up

3 0 0

- 8 For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of

5 0 0

## THE SECOND SCHEDULE

(See section 98)

### STATEMENT IN LIEU OF PROSPECTUS

filed by

Pursuant to section 98 of the Indian Companies Act, 1913 Presented for filing by

LIMITED

THE INDIAN COMPANIES ACT, 19

LIMITED

### STATEMENT IN LIEU OF PROSPECTUS

| The nominal share capital of the company                                                                                        | Rs                                                          |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Divided into                                                                                                                    | Shares of Rs each<br>Shares of Rs each<br>Shares of Rs each |
| Names, descriptions and addresses of directors or proposed directors and of the managers or proposed managers                   |                                                             |
| Minimum subscriptions (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment |                                                             |

\* Vide Gazette of India, 1917 Pt I p 178-

† Vide the Gazette of India dated the 22nd July 1916 Part I p 997

## THE SECOND SCHEDULE—continued

|                                                                                                                                                                                                                                              |                                                                     |                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash                                                                                                                             | 1<br>Rs paid                                                        | shares of fully                                                                  |
| The consideration for the intended issue of those shares and debentures                                                                                                                                                                      | 2<br>3<br>4                                                         | shares upon which Rs per share credited as paid<br>Debenture Rs<br>Consideration |
| Names and addresses of (a) vendors of property purchased or acquired (b) or proposed to be purchased or acquired by the company                                                                                                              |                                                                     |                                                                                  |
| Amount (in cash shares or debentures) payable to each separate vendor                                                                                                                                                                        |                                                                     |                                                                                  |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill                                                                                              | Total purchase Rs price<br>Cash<br>Shares<br>Debentures<br>Goodwill |                                                                                  |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or Rate of the commission                               | Amount paid<br><br>payable<br>Rate per cent                         |                                                                                  |
| Estimated amount of preliminary expenses                                                                                                                                                                                                     | Rs                                                                  |                                                                                  |
| Amount paid or intended to be paid to any promoter<br>Consideration for the payment                                                                                                                                                          | Name of promoter<br>Amount Rs<br>Consideration                      |                                                                                  |
| Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement) |                                                                     |                                                                                  |
| Time and place at which the contracts or copies thereof may be inspected                                                                                                                                                                     |                                                                     |                                                                                  |

(a) For definition of vendor see section 94 of the Indian Companies Act 1913  
 (b) See section 95 of the Indian Companies Act 1913

THE SECOND SCHEDULE—*concluded*

|                                                            |
|------------------------------------------------------------|
| Name and addresses of the auditors of the company (if any) |
|------------------------------------------------------------|

|                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Full particulars of the nature and extent of the interest of every director in the promotion of or in the property property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                |
|----------------|
| of the company |
|----------------|

|                                                       |
|-------------------------------------------------------|
| firm,<br>said to<br>y any<br>/ him<br>um or<br>nation |
|-------------------------------------------------------|

|                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                          |
|--------------------------|
| Nature of the provisions |
|--------------------------|

(Signature of the person above named as directors or proposed directors or of their agents authorised in writing)

## THE THIRD SCHEDULE

## FORM A

[See sections 6 and 151]

## MEMORANDUM OF ASSOCIATION OF A COMPANY, LIMITED BY SHARES

1st—The name of the company is 'The Eastern Steam Packet Company, Limited'

2nd—The registered office of the company will be situated in the province of Bombay

3rd—The object, for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object"

4th—The liability of the members is limited

5th—The share capital of the company is two hundred thousand rupees divided into one thousand shares of two hundred rupees each

We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of subscribers | Number of shares taken by each subscriber |
|--------------------------------------------------|-------------------------------------------|
| 1 A B of merchant                                | 100                                       |
| 2 C D, ,                                         | 25                                        |
| 3 E F, ,                                         | 30                                        |
| 4 G H                                            | 40                                        |
| 5 I J                                            | 15                                        |
| 6 K L                                            | 5                                         |
| 7 M N                                            | 10                                        |
| Total shares taken                               | 325                                       |

Dated the                      day  
Witness to the above signatures

19    X    Y    of

### FORM B

(See sections 7 and 151)

#### MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY, LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

##### *Memorandum of Association*

1st —The name of the company is "The Mutual Calcutta Marine Association Limited"

2nd —The registered office of the company will be situate in Calcutta

3rd —The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object"

4th —The liability of the members is limited

5th —Every member of the company undertakes to contribute to the assets of the company one year after, before he ceases to be a member, an amount as may be determined by the company not exceeding rupees

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association

##### *Names, Addresses and Descriptions of Subscribers*

- "1 A B of
- "2 C D of
- "3 E F of
- "4 G H of
- "5 I J of
- "6 K L of
- "7 M N of

Dated the                      day of  
Witness to the above signatures

X Y, of

##### ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

##### *Number of Members*

1 The company for the purpose of registration is declared to consist of five hundred members

2 The directors hereinafter mentioned may whenever the business of the association requires it, register an increase of numbers

*Definition of Members*

3 Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained

*General Meetings*

4 The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine

5 A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the director shall appoint. In default of a general meeting being so held, a general meeting shall be held, in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors

6 The above mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary

7 The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members call an extraordinary general meeting

8 Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company

9 On receipt of the requisition the directors shall forth with proceed to call a general meeting if they do not proceed to cause a meeting to be held within twenty one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting

*Proceedings at General Meetings*

10 Fourteen days' notice at the least, specifying the place, the day and the hour of meeting and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, but the non receipt of such a notice by any member shall not invalidate the proceedings at any general meeting

11 All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election, of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors

12 No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) —if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five, if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten

13 If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members shall be dissolved in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*

14 The chairman (if any) of the directors shall preside as chairman at every general meeting of the company

15 If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting

16 The chairman may, with the consent of the meeting adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

the same shall be taken in such  
shall be deemed to be the

### *Votes of Members*

19 Every member shall have one vote and no more.

20 If any member is a lunatic or idiot, he may vote by his committee or other legal guardian

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid

22. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of the Indian Companies Act, 1913, is in force. A resolution under the hand of the appointor, or, if such, its common seal

23 (1) No person shall act a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he purposes to vote

24 Any instrument appointing a proxy shall be in the following form :—

*Company, Limited,*

I, \_\_\_\_\_ of \_\_\_\_\_ being a Member of the \_\_\_\_\_ Company Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof,  
Signed this \_\_\_\_\_ day of \_\_\_\_\_

*Directors.*

25 The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association

26 Until directors are appointed the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913 be deemed to be directors

### *Powers of Directors*

27 The business of the company shall be managed by the directors, who may not by the Indian Companies Act be regulated in accordance with any statutory modification of the said sections shall have "holders" and as if "first

### *Elections of Directors.*

28 The directors shall be elected annually by the company in general meeting.

### *Business of Company*

(Here insert rules as to mode in which business of insurance is to be conducted) Audit

29 Auditors shall be appointed by the company in general meeting, regulated in accordance with any statutory modification of the said sections shall have "holders" and as if "first



*Notices.*

30 A notice may be given by the company to any member either personally or by sending it by post to him to his registered address

31 Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and, unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post

*Names Addresses and Descriptions of Subscribers*

1 A B of  
 2 C D of  
 3 E F of  
 4 G H of  
 5 I J of  
 6 K L of  
 7 M N of

Dated the            day of            19  
 Witness to the above signatures  
 X Y of

## FORM C

*(See sections 7 and 151)*MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY  
LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL*Memorandum of Association*

- 1st—The name of the company is The Snowy Range Hotel Company Limited
- 2nd—The registered office of the company will be situated in the province of Bengal
- 3rd—The objects for which the company is established are to provide for the accommodation of travellers and for the promotion of any trade or commerce or any industry or any other object or objects conducive to the attainment of the above objects
- 4th—The liability of the members is limited
- 5th—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

| Names, Addresses and Descriptions of Subscribers | Number of shares taken by each Subscriber |
|--------------------------------------------------|-------------------------------------------|
| 1 A B of                                         | 200                                       |
| 2 C D of                                         | 25                                        |
| 3 E F of                                         | 50                                        |
| 4 G H of                                         | 40                                        |
| 5 I J of                                         | 15                                        |
| 6 K L of                                         | 5                                         |
| 7 M N of                                         | 10                                        |
| Total shares taken                               | 345                                       |

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_ 19\_\_\_\_  
 Witness to the above signatures  
 X Y, of

*Articles of association to accompany preceding Memorandum of Association*

- 1 The share capital of the company is five hundred thousand rupees divided into five thousand shares of one hundred rupees each
- 2 The directors may, with the sanction of the company in general meeting reduce the amount of shares in the company
- 3 The directors may, with the sanction of the company in general meeting cancel any shares belonging to the company
- 4 All the articles of Table A of the Indian Companies Act, 1913 shall be deemed to be incorporated with these articles and to apply to the company

*Names, Addresses and Descriptions of Subscribers*

|    |        |          |
|----|--------|----------|
| "1 | A B of | merchant |
| "2 | C D of |          |
| "3 | E F of |          |
| "4 | G H of |          |
| "5 | I J of |          |
| "6 | K L of |          |
| "7 | M N of |          |

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_ 19\_\_\_\_  
 Witness to the above signatures  
 X Y of

**FORM D.**

*(See sections 8 and 151)*

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL**

*Memorandum of Association*

- 1st—The name of the company is The patent Stereotype Company  
 2nd—The registered office of the company will be situate in the province of Bombay  
 3rd—The objects for which the company is established are the working of a patent method of founding and casting stereotype plates of which method P Q of Bombay is the sole patentee

We the several persons whose names are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

| Names, Addresses and Descriptions of Subscribers | Number of shares taken by each Subscriber |
|--------------------------------------------------|-------------------------------------------|
| "1 A B of                                        |                                           |
| "2 C D of                                        | 3                                         |
| "3 E F of                                        | 2                                         |
| "4 G H of                                        | 1                                         |
| "5 I J of                                        | 2                                         |
| "6 K L of                                        | 2                                         |
| "7 M, N of                                       | 1                                         |
| Total shares taken                               | 12                                        |

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_ 19\_\_\_\_  
 Witness to the above signatures  
 X Y, of

*Articles of Association to accompany the preceding Memorandum of Association*

1 The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each

2 All the articles of Table A of the Indian Companies Act 1913, shall be deemed to be incorporated with these articles, and to apply to the company

*Names, Addresses and Descriptions of Subscribers,*

|    |          |          |
|----|----------|----------|
| "1 | A B of   | merchant |
| "2 | C D of   |          |
| "3 | E F. of  |          |
| "4 | G H. of  |          |
| "5 | I J of   |          |
| "6 | K L of   |          |
| "7 | M. N. of |          |

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_ 19 .

Witness to the above signatures  
X, Y, of

FORM E

AS REQUIRED BY PART II OF THE ACT

*(See Section 32)*

Summary of Share Capital and Shares of the Company, Limited made up to the \_\_\_\_\_ day of \_\_\_\_\_ 19 (being the day of the first ordinary general meeting in 19 )

Nominal share capital Rs \_\_\_\_\_ { shares of Rs \_\_\_\_\_ each  
divided into\* { shares of Rs \_\_\_\_\_ each

Total number of shares taken up\* to the \_\_\_\_\_ day }  
of \_\_\_\_\_ 19 Which number must agree with the }  
total shown in the List as hold by existing members }

Number of shares issued subject to payment wholly  
in cash

Number of shares issued as fully paid up otherwise than  
in cash

Number of shares issued as partly paid up to the }  
extent of \_\_\_\_\_ per share otherwise than in cash }

† There has been called up on each—of shares Rs

There has been called up on each—of shares Rs

The above has been called up on each of shares Rs

‡ \_\_\_\_\_ payments on } Rs

\_\_\_\_\_ ered as paid }  
\_\_\_\_\_ fully paid up } Rs

otherwise than in cash

Total amount (if any) agreed to be considered as paid }  
on shares which have been issued as partly paid }  
up to the extent of \_\_\_\_\_ per share } Rs

\_\_\_\_\_ Rs

\_\_\_\_\_ Rs

\* When there are shares of different kinds or amounts e.g., Preference and Ordinary or Rs 200 or Rs 100, state the numbers and nominal values separately

† Where various amounts have been called or there are shares of different kinds state them separately

‡ Include what has been received or forfeited as well as on existing shares







Names and addresses of the persons who are the Directors of the  
Limited on the day of

19

Names

Addresses

Names and addresses of the persons who are the managers of the  
Limited on the day of

19

Names

Addresses

NOTE—Banking companies must add a list of all their places of business

I do hereby certify that the above list and summary  
truly and correctly states the facts as they stood on the  
day of 19

(Signature)

(State whether director manager or secretary)

FORM F

(See section 132)

Balance-sheet as at

LIMITED  
19 .

## CAPITAL AND LIABILITIES

## CAPITAL—

Authorised Capital shares of Rs each

Issued Capital shares of Rs each

Subscribed Capital shares of Rs each

Amount called up at Rs per share

Less—Calls unpaid

Add—Forfeited shares (amount paid up)

RESERVE FUND OR DEVELOPMENT FUND

ANY SINKING FUND

ANY OTHER FUND CREATED OUT OF NET  
PROFITS

ANY PENSION OR INSURANCE FUND

PROVISION FOR BAD &amp; DOUBTFUL DEBTS

LOANS ON MORTGAGE OR MORTGAGE

DEBENTURES BONDS

Rs As P Rs As P

| CAPITAL AND LIABILITIES                                                                                                                                                                |    |   |   |    |    |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|---|---|----|----|---|
|                                                                                                                                                                                        | Rs | A | P | Rs | As | P |
| LOANS OTHERWISE SECURED<br>(Stating the nature of security)                                                                                                                            |    |   |   |    |    |   |
| LOANS UNSECURED                                                                                                                                                                        |    |   |   |    |    |   |
| INTEREST                                                                                                                                                                               |    |   |   |    |    |   |
| Accrued on Mortgages, Debentures<br>or other Secured Loans                                                                                                                             |    |   |   |    |    |   |
| UNCLAIMED DIVIDENDS                                                                                                                                                                    |    |   |   |    |    |   |
| LIABILITIES                                                                                                                                                                            |    |   |   |    |    |   |
| For Goods supplied                                                                                                                                                                     |    |   |   |    |    |   |
| " Expenses                                                                                                                                                                             |    |   |   |    |    |   |
| " Acceptances                                                                                                                                                                          |    |   |   |    |    |   |
| " Other Finance                                                                                                                                                                        |    |   |   |    |    |   |
| ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS                                                                                                                                               |    |   |   |    |    |   |
| (For the portion for which value has still to be given, e.g. in the case of the following classes of Companies Newspaper, Fire Insurance Theatre Club Banking, Steamship Companies &c) |    |   |   |    |    |   |
| PROFIT AND LOSS                                                                                                                                                                        |    |   |   |    |    |   |
| Balance as per previous Balance sheet                                                                                                                                                  |    |   |   |    |    |   |
| Less—appropriation thereof                                                                                                                                                             |    |   |   |    |    |   |
| Balance brought forward                                                                                                                                                                |    |   |   |    |    |   |
| Profit since last Balance sheet                                                                                                                                                        |    |   |   |    |    |   |
| (N.B.—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance sheet)                                                             |    |   |   |    |    |   |
| CONTINGENT LIABILITIES—                                                                                                                                                                |    |   |   |    |    |   |
| Claims against the Company not acknowledged as debts                                                                                                                                   |    |   |   |    |    |   |
| Moneys for which the Company is contingently liable                                                                                                                                    |    |   |   |    |    |   |
| Arrears of Cumulative Preference Dividends                                                                                                                                             |    |   |   |    |    |   |
| PROPERTY AND ASSETS                                                                                                                                                                    |    |   |   |    |    |   |
| FIXED CAPITAL EXPENDITURE                                                                                                                                                              |    |   |   |    |    |   |
| expen                                                                                                                                                                                  |    |   |   |    |    |   |
| lease                                                                                                                                                                                  |    |   |   |    |    |   |
| furni                                                                                                                                                                                  |    |   |   |    |    |   |
| trade                                                                                                                                                                                  |    |   |   |    |    |   |
| Capital                                                                                                                                                                                |    |   |   |    |    |   |
| during construction etc and stating in every case the original cost and the total Depreciation written off under each head)                                                            |    |   |   |    |    |   |
| PRELIMINARY EXPENSES                                                                                                                                                                   |    |   |   |    |    |   |
| COMMISSION OR BROKERAGE                                                                                                                                                                |    |   |   |    |    |   |
| (Commissions or Brokerage paid for under writing or placing shares or debentures until written off)                                                                                    |    |   |   |    |    |   |



| PROPERTY AND ASSETS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  | Rs | As | P. | Rs  | As  | P.  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|----|----|----|-----|-----|-----|
| <b>STORES AND SPARE GEAR</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |    |    |    |     |     |     |
| <b>LOOSE TOOLS</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |    |    |    |     |     |     |
| <b>LIVE STOCK</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |    |    |    | ..  | ... | ..  |
| <b>STOCK IN TRADE</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |    |    |    | ... | ... | ... |
| (Stating mode of valuation, e.g. cost or market-value)                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |    |    |    | ..  | ... | ... |
| <b>BILLS OF EXCHANGE</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |    |    |    |     |     |     |
| <b>BOOK DEBTS</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |    |    |    | ..  | ... | ... |
| (Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the debtor's personal security, and distinguishing in all cases between debts considered good and debts considered doubtful or bad Debts due by Directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated in all cases) |  |  |    |    |    | ... | ... | ... |
| <b>ADVANCES</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |    |    |    |     |     |     |
| (Recoverable in cash or in kind or for value to be received e.g., Rates, Taxes, Insurance, etc.)                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |    |    |    | ... | ... | ... |
| <b>INVESTMENTS</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |    |    |    | ..  | ... | ... |
| (Nature of Investment and mode of valuation, e.g. cost or market value)                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |    |    |    |     |     |     |
| <b>INTEREST ACCRUED ON INVESTMENTS</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |    |    |    | ..  | ..  | ... |
| <b>CASH AND OTHER BALANCES</b> ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |    |    |    |     |     |     |
| Amount in hand ... ..                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  | .. |    |    |     | ..  | ... |
| Balances with Agents and Bankers (in detail showing whether on Deposit or current account etc.)                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |    |    |    |     |     |     |
| <b>Profit and Loss</b> (giving, in the case of a debit balance, details as far as possible as in the case of a credit balance)                                                                                                                                                                                                                                                                                                                                                                     |  |  |    |    |    |     |     |     |

## FORM G

(See Section 136)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES  
AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

\* The share capital of the company is Rs ..... divided into ..... shares of Rs ..... each

The number of shares issued is ..... Call to the amount of Rs ..... per share have been made, under which the sum of Rs ..... has been received

The liabilities of the company on the thirty first day of December (or thirtieth of June), were —

Debts owing to sundry persons by the company

Under decree, Rs .....

On mortgages or bonds, Rs .....

On notes, bills or hundis, Rs .....

On other contracts, Rs .....

\* If the Company has no capital divided into shares the portion of the statement relating to capital and share must be omitted

## THE FOURTH SCHEDULE

(See section 290)

## ENACTMENTS REPEALED

| 1    | 2   | 3                                                          | 4                                                                           |
|------|-----|------------------------------------------------------------|-----------------------------------------------------------------------------|
| Year | No  | Subject or short title                                     | Extent of repeal                                                            |
| 1882 | VI  | The Indian Companies Act, 1882                             | So much as has not been repealed                                            |
| 1887 | VI  | The Indian Companies Act (1882) Amendment Act 1887         | The whole                                                                   |
| 1891 | XII | The Amending Act, 1891                                     | So much of the Second Schedule as relates to the Indian Companies Act, 1882 |
| 1895 | XII | The Indian Companies (Memorandum of Association) Act, 1895 | The whole                                                                   |
| 1899 | IX  | The Indian Arbitration Act 1899                            | The second proviso to Section 3 relating to the Indian Companies Act, 1882  |
| 1900 | IV  | The Indian Companies (Branch Registers) Act 1900           | The whole                                                                   |
| 1910 | IV  | The Indian Companies Amendment Act 1910                    | The whole                                                                   |

## THE CONTEMPT OF COURTS ACT

## ACT No XII OF 1926.

RECEIVED THE ASSENT OF THE G. G. ON THE 8TH MARCH 1926

*An Act to define and limit the powers of certain Courts in punishing contempts of Courts*

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate courts

And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of court, It is hereby enacted as follows—

Notes—The several High Courts of Judicature established by Letters Patent are superior courts of record and as such they have power to attach and commit for contempt of court, It is hereby enacted as follows—

Penal Code

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powers of the courts are as unrestricted as are the powers of superior courts of record in England. It has not been decided whether the court of Judicial Commissioners of the Central Provinces Oudh, and Sindh have these general powers either in regard to contempt of their own proceedings or of the superior courts of record to attach and commit for contempt of court, contempts of courts are also indictable misdemeanours at common law. In India on the other hand, though the Indian Penal Code makes certain acts which would be punishable as contempts of court in England specific offences, it does not provide generally for the punishment of contempts of the authority of Judicial officers not committed in their presence,

2 "The condition of the law in India as summarised above has long been

courts against contempts which are not already provided for in the Indian Penal Code to the High Courts themselves. The Bill removes any doubts as to the powers of the High Courts of Judicature in regard to the protection of their subordinate courts for such contempts. It will show clearly that the courts of the Judicial Commissioners of the Central Provinces Oudh and Sindh, will have the same powers of punishing for contempts committed in regard to their own proceedings or of the

Short title, extent and commencement

1 (1) This Act may be called the CONTEMPT OF COURTS ACT 1926.

(2) It shall extend to the whole of British India

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint

2. (1) Subject to the provisions of sub section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

(2) Subject to the provisions of sub section (3), a chief court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub section (1)

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code

.. .. section is a criminal offence  
.. .. ce be proved by legal evidence  
.. .. N S 111 A statement resting  
.. .. Queen v The Stranger, L R  
.. .. ed not deny that which is not  
legally proved against him and

The jurisdiction of the Court of King's Bench in England for contempt of inferior Court is thus summarised by *Jenkins C J* in 17 C W N at pp 1279-1280  
'*Rex v Daris* L R (1906) 1 K B 32 came before the old King's Bench Division  
' .. .. of attachment for contempt of Court. This contempt consisted  
' .. .. a newspaper calculated to give an exceedingly  
' .. .. ner, who had been arrested and brought before  
' .. .. was made while the case was still before the

Magistrate and prior to committal. It was held that the High Court had power to punish for contempt of itself, and secondly because, on still the Kings Benchers of the Court of the Kings Benches possessed the summary power of punishment. It was on the second of these two grounds that the Advocate General relied in his opening.

'This phase of *Rex v Davis*, demands close attention in order to see whether it rests on reasoning which can legitimately be applied here. Certain links in that chain of reasoning are evident, others perhaps are not so clear.

'First then the jurisdiction assumed in *Rex v Davis*, was inherited if at all, from the old Kings Bench and not from the other Courts of Record which became amalgamated in the English High Court though those Courts too had the power to commit for contempt of themselves that belongs to every superior Court of Record.

'Next this jurisdiction inherited from the old King's Bench was of a very special character and, unless I have misread the judgment, it vested on the Courts power to punish every kind of mis demeanour, in that it was in a special manner the guardian and protector of public justice throughout the kingdom the *custos morum*, a dignity that reverted to it or was revived on the abolition of the Star Chamber by 16 Char I c 10. Ordinarily mis demeanour was punishable by indictment or information, but when it was a contempt of Court it was also punishable *brevi manu* by attachment. When this summary proceeding was first used is in some doubt, but the opinion has been expressed that the earliest instance of its use where the contempt was an attack on a Judge, not in the face of the Court, was in 1720.

'The fact that there was one alternative mode of bringing the offender before the Court where the mis demeanour was a contempt of Court was merely a difference of procedure the subject matter was the same, that is to say the prosecution of an offence in the Court of King's Bench.

'The helplessness of the inferior Court and its subjection to the superintendence and control of the King's Bench were not the foundation of the jurisdiction, but merely the occasion and the reason for its exercise.

to punish on a summary proceeding as well as an indictment or information all before the 7 C W N Law must, jurisdiction with the ed was an ence and d be right

of 1800 ?" wers that ct in rela of that Act XLV

Then it was held by his lordship that neither the Supreme Court nor the Sudder Dewant Adawlat nor the Sudder Nizumat Adawlat had jurisdiction to commit a Mofussil. The Calcutta High Court power and authority in any man Dewany Adawlat and the Sudder Nizamat Adawlat, has not derived any such jurisdiction from any of those Courts. *Ibid*, but see *Re Venkata Rao*, 21 M L J 832 and *King Emperor v P G Kulkarni* 24 Bom L R 16.

**Scope**—Every superior Court of record has power to commit for contempt of themselves. 17 C W N 1279. The High Courts are superior Courts of records and it for contempt of themselves. This section unit for contempts of Mofussil Courts over. This section gives legislative sanction to and 24 Bom L R 16. So the rule of law nger the law. Sub section (2) gives power ntempts committed in regard to their own



Magistrate and prior to committal. It was held that the High Court had power to attach, first because these might come to the assizes for trial, and secondly, because, even if the committal had actually been made to the quarter session, still the King's Bench Division as the inheritor of all the jurisdictions and powers of the Court of the King's Benches possessed the summary power of punishment. It was on the second of these two grounds that the Advocate General relied in his opening.

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"The fact that there was one alternative mode of bringing the offender before the Court where the mis demeanour was a contempt of Court was merely a difference of procedure; the subject-matter was the same, that is to say, the prosecution of an offence in the Court of King's Bench.

"The helplessness of the inferior Court and its subjection to the superintendence and control of the King's Bench were not the foundation of the jurisdiction, but merely the occasion and the reason for its exercise.

**Powers of High Courts for contempts of inferior Courts before the passing of this Act**—In *the matter of the Attorney General v. The Queen*, 17 C W N. 1253 at p. 1250 *Jenkins C J* said: "These principles of the old Common Law must, I think be that the Court of King's Bench as the *custos morum*, had jurisdiction to punish on a summary proceeding as well as in indictment or information all offences in the kingdom being a contempt of Court as tending to interfere with the administration of justice. When the Court so much and embarrassed was an inferior Criminal Court unable to protect itself but under the superintendence and control of the Court of King's Bench, the case was one in which it would be right that the common law principle should be applied in a summary proceeding.

"Have we then these powers? Has this High Court common law powers that would enable it to punish as an offence on a summary proceeding, conduct in relation to a proceeding in a Mofussil criminal Court and not in the face of that Court, such conduct not being an offence under the Indian Penal Code, Act XLV of 1860?"

Then it was held by his lordship that neither the Supreme Court nor the Sudder Dewani Adawlat nor the Sudder Nizamat Adawlat had jurisdiction to commit a person for contempt of a Criminal Court in the Mofussil. The Calcutta High Court which has inherited all the jurisdiction and every power and authority in any manner vested in the Supreme Court, the Sudder Dewani Adawlat and the Sudder Nizamat Adawlat, has not derived any such jurisdiction from any of those Courts. *Ibid.*, but see *As Pant vs Rao*, 21 M L J 832 and *King Emperor v P G Kulkarni*, 24 Bom L R 16.

**Scope**—Every superior Court of record has power to commit for contempt of themselves. 17 C W N 1279. The High Courts are superior Courts of records and as such they have jurisdiction to commit for contempt of themselves. This section gives jurisdiction to High Court to commit for contempt of themselves. This section which the High Court has jurisdiction. This section gives legislative sanction to the decision reported in 21 M L J 832 and 24 Bom L R 16. So the rule of law laid down in 17 C W N. 1253 is no longer the law. Sub section (2) gives power to the Chief Courts of punishing for contempts committed in regard to their own

proceedings or of the proceedings of Courts subordinate to them. By sub section (3) in lieu of the existing unrestricted powers of the High Courts of Judicature the nature of the offence of contempt of Court is defined. The publication of *comments* on a case which is pending trial in a Court amounts to a contempt of Court if the comments are such as are likely to prejudice the administration of justice in the case. 29 C L J 565. Applications for contempt cannot be subject matter of reference by the Lower Court to the High Court. Such application can be heard by a Bench of the High Court hearing criminal appeals unless they are specially referred to by the Chief Justice. 35 C W N 1265. As regards procedure in cases of contempt of mofussil Court. Vide 35 C W N 1265.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished. Limit of punishment for Contempt of Court with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Notes.—By this section the unrestricted power of the High Court is limited and the extent of punishment is defined—Vide *Statement of Objects and Reasons*

## THE INDIAN CONTRACT ACT 1872

### ACT XI OF 1872

RECEIVED THE G G S ASSENT ON THE 25TH APRIL, 1872

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts. It is hereby enacted  
Preamble as follows:—

Notes.—For statement of Objects and Reasons of the Bill, which was based on a Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India dated July 6 1866, see *Gazette of India*, 1867, Extraordinary p 39. For the Report of Select Committee, see *Ibid*, 1871, p 313 and *Ibid* 1872, p 527.

### PRELIMINARY

1. This Act may be called "The Indian Contract Act, 1872."

It extends to the whole of British India; and it shall come into force on the first day of September 1872.

Extent.—The Indian Contract Act has been declared in force in—

The Santhal Parganas (Vide the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justices and Laws Regulation (III of 1899) s 3.

The Arakan Hill District (Vide the Arakan Hill District Laws Regulation (I of 1916) s 2.

Upper Burma (except the Shan States)—Vide the Burma Laws Act (XIII of 1898)

British Baluchistan (Vide the British Baluchistan Laws Regulation (II of 1913)

The Contract Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874) to be in force in—

The Tanai of the Province of Agra (Vide *Gazette of India*, 1876 Pt I p. 505)

The Districts of Hazaribagh Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (Vide *Gazette of India* 1881, Pt I p. 509)

This Act has been extended by notification under s 5 of the Scheduled Districts Act (XIV of 1874) to the whole of Upper Burma except the Shan States (Vide *Gazette of India* 1893 Pt II p. 272)

**Contract Act**—The Contr -- -- -- -- B L R 451=  
 21 W R 352, 5 M I A 452 -- -- -- -- 194=19 Bom  
 L R 370 It is an amending a -- -- -- -- B 630 (P C)  
 The practice of looking more at -- -- -- -- ct than at the  
 words of the section is not co -- -- -- -- Ram, 22 W  
 R 367 When on any subject it lay<sup>e</sup> down a law which is at variance with English  
 law, the law laid down in the Contract Act is binding on Indian Courts 38 Ind  
 Cas 915 As regards the application of the English common law customs Vide  
 4 I A 23 The Contract Act nowhere says any thing about the place where  
 the contract is made and it is no part of the ordinary law of contract 58 C 539=  
 A I R 1931 Cal 659

\* Nothing herein contained shall affect the provisions of any Statute Act,  
 or Regulation not hereby expressly repealed, nor  
 Enactments repealed any usage or custom of trade, nor any incident  
 of any contract, not inconsistent with the provisions of this Act

**Notes**—Ti of this Act" are not  
 to be connect Both the grammatical  
 construction of that the application  
 of these word immediately precedes  
 them 18 C 620 (P C)=18 I A 121, but see 14 B L R 76=22 W R 370 As  
 regards wh<sup>at</sup> usages and customs are not affected vide 18 C 620, 6 C 1, 9 Ind  
 Cas 966, 30 C 530, 48 B 518

2. In this Act the following words and expressions are used in the  
 Interpretation clause following senses, unless a contrary intention  
 appears from the context —

(a)—When one person signifies to another his willingness to do or to  
 abstain from doing anything, with a view to  
 Proposal obtaining the assent of that other to such act  
 or abstinence, he is said to make a proposal,

(b)—When the person to whom the proposal is made signifies his assent  
 thereto, the proposal, is said to be accepted  
 Promise A proposal, when accepted, becomes a promise

(c)—The person making the proposal is called the 'promisor,' and the  
 person accepting the proposal is called the  
 "Promisor and Promisee promisee

(d) When at the desire, of the promisor, the promisee or any other  
 person has done or abstained from doing,  
 Consideration or does or abstains from doing, or promises to do  
 or to abstain from doing something, such act or abstinence or promise is  
 called a consideration for the promise,

(e)—Every promise and every set of promises  
 forming the consideration for each other is an  
 "Agreement" agreement

(f)—Promises which form the consideration  
 or part of the consideration for each other are  
 "Reciprocal promises" called reciprocal promises

(g)—An agreement not enforceable by law is  
 said to be void  
 "Void agreement"

(h)—An agreement enforceable by law is a  
 contract  
 "Contract"

(i)—An agreement which is enforceable by law at the option of one or more  
 of the parties thereto but not at the option of the  
 other or others, is a voidable contract  
 "Voidable contract"



'Void contract'

(2)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Clause—(a)—An invitation for offers does not amount to a proposal, *Thanawala* O C 17, 65 Ind Cas 282, 8 Ind Cas 601 Plaintiff at G asking for quotations for salt and the terms In reply defendant sent a post card stating his intention when he should require salt Plaintiff wired for one wagon of salt and on a breach arising out of this contract he sued the defendant for damages at L Defendant objected that the contract having been entered into at G the Court at L had no jurisdiction to entertain the suit Held that defendant's post card was a mere invitation for offers and not a proposal Held further, that plaintiff's wire constituted the proposal and that the contract was completed by defendant signifying his assent to the proposal at G 65 Ind Cas 282, see also 54 Ind Cas 550, but see 23 Ind Cas 322 A bid for auction is an offer 20 Ind Cas 970 An offer can be withdrawn before acceptance *Ibid*; 31 Ind Cas 890. As regards what is a proposal, vide, 71 Ind Cas 958, 13 B 669, 16 M 283. Offer without acceptance cannot bind transferee 91 Ind Cas 181

de when, and not until it is communicated *dine* 4 B & A 621 A reward can not be it had been offered *Fitch v Snedaker* 38 N Y 248, see also *Taylor v Laird*, 25 L J Ex 329 'So a promise may be either the acceptance of an offer or an offer accepted, and commonly it is one or the other' *Pollock p 7 R* by letter offered to sell to the appellant company a patent for Rs

terms spoke of the transaction as a sale of the patent for Rs 30,000 Held that the only contract between R and the company was that contained in the statute and so far only as the 8 C W N 1185 by letters, it is 12 O C 17= ses of offers and acceptance by letters the document is to be read as a whole 20 Ind Cas 282 As regards what is an incomplete negotiation vide, 39 B 529 There cannot be acceptance by conduct, where the work was not done in pursuance of the offer 19 Ind Cas 576=11 A L J 489 Mere expression of an intention is not a contract. 20 A 203 P C Bought and sold notes together may form the contract in accordance with the custom of merchants in Calcutta 17 C 173 The negotiations preliminary to a contract are distinguishable from the contract itself 3 Agra 9

Sub section(c)—By this sub section, the word 'promisee' means "the person accepting the proposal" only, unless a contrary intention appears from the context 4 M. L. T. 335

...ance, or the promise thereof, accepted by the other, as an Contract p 10 In *Currie v* ... of consideration was e law, may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility, given, or suffered or undertaken by the other " In this sub section, consideration means an act, abstinence or promise made by the promisor or some other person at the desire of the promisor Where the promisee did not do anything at the request of the maker of the promise, the promissory ... 5 Ind. Cas.

137 134 Ind Cas 1011 The term "consideration" implies a promise with reference to which it is a consideration 16 M L J 422 A gratuitous promise made without consideration is not enforceable *Cottage Street Church* 121 Mass 528, *Re Hudson, Creed v Henderson* 54 L J Ch 811, 36 A 268=12 A L J, 351 But a contract may arise where a subscriber authorises a definite expenditure which is incurred in reliance on his making it good *Kedir Nath Bhattacharjee v Gorie Mahomed*, 14 C 64 A very wide definition of the term "consideration" is given by *Yates J* in *Pillans v Van Microph*, (1765) 3 Burr 1664 at p 1674 in the following words "Any damage to another or suspension or forbearance of his right is a foundation for his undertaking, and will make it binding though no actual benefit accrues to the party undertaking" Old debts may form good consideration for present transfer 50 Ind Cas 117, 12 A L J 629=23 Ind Cas 900 Even time barred debts may be a good consideration 1925 Oudh 27 Past cohabitation between a man and a woman can not be called a consideration 3 A 787 A consideration need not be adequate to the promise but it must be of some value in the eye of the law *Anson on Contract* p 89 In *Bolton v Madden* 1 R. 9 Q B 55, *Blackburn J* said: "Its adequacy is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced" See also *Bainbridge v Firmstone*, 8 A & E 743, *Haigh v Brooks*, 10 A & E. 309 A promisee's act by which a third party is benefited is a sufficient consideration 22 C W N 188, see also 89 Ind Cas 819 The abandonment of a claim is a good consideration 20 C W N 201 (P C), see also 72 Ind Cas 9, 44 M L J 240 48 M L J 721 89 Ind Cas 174, 20 C W N 680, 46 Ind Cas 19 88 Ind Cas 768 51 Ind Cas 963, 65 Ind Cas 52 58 Ind Cas 30, 17 Ind Cas 466, must be good and valuable 25 Ind Cas some value in the eye of the law, 2 Q B 851 Forbearance to sue is a 134 Ind Cas 1105 134 Ind Cas 819=A I R, 1931 Lah 756 127 Ind Cas 894 Agreement to convey property cannot be ignored as *nudum pactum* A I R 1931 All 113

*Bindir*  
*Cookburn*

incident to it. It would be another matter if a person made a claim which he knew

58 Ind Cas 734, 54 Ind Cas 325 1925 Pat 68

## CHAPTER I

### OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS

3 The communication of proposals, the acceptance of proposals, and the revocation of proposals, and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposals, acceptance, or revocation, or which has the effect of communicating it

Notes—An offer or its acceptance or both may be made either by words or conduct *Anson* p 28 A common illustration is afforded by the sending of goods and their use or consumption by the person to whom they are sent The sending is the offer the use or consumption is the acceptance importing a promise to pay the price *Ibid* citing *Hut v Mills*, 15 M & W 87, see also *Plynter v Williams* 1 C & M 810 The communication takes place when it is brought to the knowledge of the person to whom it is made *Taylor v Laird* (1856) 25 L J Ex 329, *Richardson v Roentree*, (1894) A C 217 An offer must be made with the intention of creating legal relations 23 B 420 So a mere invitation to a dinner is

no offer *Ibid* 'Where a relation exists between two parties which involves the performance of certain duties by one of them and the payment of reward to him by the other, the law will imply or the jury may infer a promise by each party to do what is to be done by him' *Morgan v Ravey*, 30 L J Ex 131

Communication, when complete 4 The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made

The communication of an acceptance is complete,  
as against the proposer, when it is put in a course of transmission to him,  
so as to be out of the power of the proposer,  
as against the acceptor, when it comes to the knowledge of the proposer

The communication of a revocation is complete,  
as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it,  
as against the person to whom it is made, when it comes to his knowledge

### Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price

The communication of the proposal is complete when B receives the letter

(b) B accepts A's proposal by a letter sent by post

The communication of the acceptance is complete

as against A when the letter is posted,

as against B when the letter is received by A

(c) A revokes his proposal by telegram

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

Notes—Under this section the communication of acceptance is complete as against the proposer, only when it is put in a course of transmission to him, and communication to a proposer contained in a letter not proved to have been correctly addressed to him, could not although posted be said to have been 'put in a course of transmission' to him within the meaning of this section 9 A 369=A W N (1887) 34 An acceptance is made in the place where the letter accepting the offer is finally posted 6 A L J 63=1 Ind Cas 77, see also 76 P R 1896 An offer by letter is made at the place where it reaches the acceptor 54 Ind Cas 550

a certain sum of money on certain king to pay, but constitutes only a fer by letter is complete when letter is 7 Loh 50=98 Ind Cas 902 Optional clause in acceptance is counter offer and acceptance is not complete 57 Ind Cas 971 Contract is made where letter of acceptance is posted A I R 1973 Lab 427

5 A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards

Revocation of proposals and acceptances

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards

### Illustrations

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards

137, 134 Ind Cas 1011 The term "consideration" implies a promise with reference to which it is a consideration 16 M L J 422 A gratuitous promise made without consideration is not enforceable *Cottage Street Church* 121 Mass, 528, *Re Hudson, Creed v Penderston*, 54 L J Ch 811, 36 A 268=12 A L J, 351 But a contract may arise where a subscriber authorises a definite expenditure which is incurred in reliance on his making it good *Kedar Nath Bhattacharyee v Gorie Mahomed*, 14 C 64 A very wide definition of the term "consideration" is given by *Yates J* in *Pillans v Van Meir*, (1765) 3 Burr 1664 at p 1674 in the following words Any damage to another or suspension or forbearance of his right is a foundation for his undertaking, and will make it binding though no actual benefit accrues to the party undertaking Old debts may form good consideration for present transfer 50 Ind Cas 117, 12 A L J 619=23 Ind Cas 900 Even time barred debts may be a good consideration 1925 Oudh 27 Past cohabitation between a man and a woman can not be called a consideration 3 A 787 A consideration need not be adequate to the promise but it must be of some value in the eye of the law *Anson on Contract* p 89 In *Bolton v Madden* L R 9 Q B 53, *Blackburn J* said: "Its adequacy is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced" See also *Bainbridge v Farmstone* 8 A & E 743, *Haigh v Brooks*, 10 A & E. 309 A promisee's act by which a third party is benefited is a sufficient consideration 22 C W N 188, see also 80 Ind Cas 819 The abandonment of a claim is a good consideration 20 C W N 201 (P C), see also 72 Ind Cas 95; 44 M L J 240, 46 M L J 721 80 Ind Cas 174, 20 C W N 680, 46 Ind Cas 19 88 Ind Cas 768 51 Ind Cas 963, 65 Ind Cas 52 58 Ind Cas 30, 17 Ind Cas 466 74 Ind Cas 316 A must be good some value in the eye of the law, moving from 2 Q B 851 Forbearance to sue is a sufficient 134 Ind Cas 1105, 134 Ind Cas 819=A I R, 1931 Lah 756 127 Ind Cas 894 Agreement to re-convey property cannot be ignored as *nudum pactum* A I R 1931 All 113

**Binding effect of compromise**—In *Collister v ...* *Cookburn C J* said Every day ... making it has a fair chance of success to sue will (sue he gives up advantage and is incident to it to be unfounded and by his conduct would and suffer ... escapes the ... see also

## CHAPTER I

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**Notes**—An offer or its acceptance or both may be made either by words or conduct *Anson* p 28 A common illustration is afforded by the sending of goods and their use or consumption by the person to whom they are sent The sending is the offer, the use or consumption is the acceptance importing a promise to pay the price *Inducing, Hart v Mills*, 15 M & W 87, see also *Paynter v Williams*, 1 C & M 810 The communication takes place when it is brought to the knowledge of the person to whom it is made *Taylor v Laird* (1856) 25 L J Ex 319, *Richardson v Rowntree*, (1894) A C 257 An offer must be made with the intention of creating legal relations. 23 B 470 So a mere invitation to a dinner is

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The revocation is complete as against A when the telegram is despatched It is complete as against B when B receives it

B revokes his acceptance by telegram B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

**Notes**—Under this section, the communication of acceptance is complete as against the proposer, only when it is put in a course of transmission to him, and communication to a proposer contained in a letter not proved to have been correctly addressed to him, could not although posted be said to have been "put in a course of transmission" to him within the meaning of this section 9 A 369=A W N (1887) 34 An acceptance is made in the place where the letter accepting the offer is finally posted 6 A L J 63=1 Ind Cas 77, see also 76 P R 1896 An offer by letter is made at the place where it reaches the acceptor 54 Ind Cas 559 Where a document contains a request to borrow a certain sum of money on certain conditions it is not an unconditional undertaking to pay, but constitutes only a proposal under this section 13 B 669 Offer by letter is complete when letter is delivered at addressee's residence A I R 1927 Lah 50=98 Ind Cas 902 Optional clause in acceptance is counter offer and acceptance is not complete 57 Ind Cas 971 Contract is made where letter of acceptance is posted A I R 1923 Lah 427

5 A proposal may be revoked at any time before the communication of

its acceptance is complete as against the proposer,  
but not afterwards  
Revocation of proposals and acceptances

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards

### Illustrations

A proposes, by a letter sent by post, to sell his house to B B accepts the proposal by a letter sent by post

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards

**Notes**—In the absence of consideration for a promise to keep an offer open for a time the promise is a *nudum pactum* and may be revoked at any time before acceptance thereof 2 M L J 57 The contract is made at the place where the letter is sent.

A L J 213 = 1 Ind Cas 77 less brought to the knowledge

1344 In that case the question

the mere posting of a letter

observing 'If the defendant's

received an offer by post and had

id waited such a time as to be quite

been posted before acceptance of it

practical convenience require that a

person who has accepted an offer not known to him to have been revoked, shall be

in a position safely to act upon the footing that the offer and acceptance constitute

a contract binding on both parties'

According to English law acceptance takes place when a letter is put into the post office *Henthorn v Fraser*, (1892) 2 Ch 27 (C A) So a telegram revoking the acceptance would be operative, though it reaches the offeror before the letter. But under this section an acceptance can be revoked by a telegram if it reaches the offer or before the letter of acceptance. On this section *Mr Anson says* "What is to happen if the letter of acceptance is lost? Is the proposer to be for ever bound though the acceptor is free?"

Revocation how made

6 A proposal is revoked—

(8) by the communication of notice of revocation by the proposer to the other party,

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed by the lapse of a reasonable time, without communication of the acceptance,

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance, or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

**Notes**—Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone. But the powder may have burnt if it has become damp or the man who laid the train may remove it before the match is applied. So an offer may lapse for want of acceptance or be revoked before acceptance. *Anson's Contract* p 35

**Clause (1)**—An offer to guarantee moneys to be advanced to a third party on discount to a certain extent for the space of twelve calendar months is countermandable within that time. *Offord v Davies* 12 C B (N S) 748 = 31 L J C P 319 Where the defendant offered to purchase a lot of goods from the plaintiff and to give him six weeks for a return of the goods, the plaintiff accepted, the defendant might revoke the offer. *Routledge v Grant* 4 Bing 653. Such revocation must reach the party before acceptance. *Saunders v McLean* 49 L J Q B 701 = 5 Q B D 346

**Clause (2)**—Where a party fixes a time within which an offer is to remain open the offer would lapse after that time. *Dickinson v Dodds* 2 Ch D 463. An instance of an offer lapsing by the efflux of a reasonable time is supplied by the case of the *Pamgate Hotel Co v Mantelero* L R 11 Exch 111.

**Clause (3)**—It is an implied condition that an offer of a bargain is accepted only if the offeror is qualified to perform it. If the offeror is not qualified to perform it, the offer is not accepted. *Wheaton*, 225

**Clause (4)**—An acceptance communicated to the representatives of the offeror can not bind them. *Anson's Contract* p 37

Acceptance must be absolute 7 In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified,

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise: but if he fails to do so, he accepts the acceptance.

Notes—To convert a proposal into a promise the acceptance must be unqualified and without condition. When once a proposal is practically refused it does not hold good and no acceptance after the refusal could convert the proposal into a promise so as to create a contract. *Nirod Chandra v Raja Kirtya Nanda* (1922) P 24. If there is a variation in the acceptance the acceptance is not an acceptance but a counter proposal and there is no contract until this counter proposal is in its turn, accepted by the original proposer. 2 S L R 7. This section lays down that

proposal which must be accepted by the original promisor before the contract is made. A person making a proposal can not impose on the party to whom it is addressed the obligation to refuse it under the penalty of imputed assent or attach to his silence the legal result that he must be deemed to have accepted it. 24 B 510=2 Bom L R 691 see also 54 Ind Cas 437=18 A L J 73, 37 Ind Cas 792=(1917) W N 91 22 Ind Cas 811=92 P R 1913, 6 A L J 213=1 Ind Cas 77, 45 B 8=57 Ind Cas 971, 9 A L J 285, A I R 1931 Lah 260=134 Ind Cas 1110. Where acceptance was made subject to confirmation by mail as usual there was no absolute and unconditional acceptance and hence no promise. 123 Ind Cas 838, A I R 1930 Lah 325, but see 120 Ind Cas 482, 122 Ind Cas 507. A counter offer puts an end to the original offer. 98 Ind Cas 272, see also 80 Ind Cas 308. If a contract has to be made out from correspondence between the parties the whole of the correspondence must be taken into consideration. 54 Ind Cas 550.

Acceptance by performing conditions or receiving consideration 8 Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal.

Notes—Acceptance of a proposal may be made without communication by the conduct of the acceptor. 42 A 187=18 A L J 73=54 Ind Cas 437, 113 Ind Cas 780, 29 C L J 279 (P C). A suit for recovery of a reward offered by public advertisement can be founded only on a contract. In order to constitute a contract there must be an offer and acceptance unless there is a presumption of acceptance. *Lalman*

9 In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as Promises, express and implied such proposal or acceptance is made otherwise than in words the promise is said to be implied.

Notes—Under this section an implied contract is as much an agreement between the parties as an express contract and is equally binding. 16 Ind Cas 607, 78 Ind Cas 445. In the absence of an express agreement for payment of fees a

See also 54 Ind Cas 437 44 B 474 P C, 31 Ind Cas 783, 9 M L A 256

## CHAPTER II

### OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10 All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses or any law relating to the registration of documents

Notes—The Indian Contract Act so far as it goes is exhaustive and imperative. This section makes it essential that all contracting parties should be 'competent to contract', and expressly provides that a person who by reason of infancy, is incompetent to contract can not make a contract within the meaning of the Act. A contract therefore, entered into with an infant is not voidable but void. 30 C 539 P C = 30 I A 114 = 7 C W N 441 = 5 Bom L R 421 26 A 342. Such a contract cannot be ratified by a minor on attaining majority. 130 Ind Cas 598, 128 Ind Cas 312.

A minor in whose favour a promissory note has been executed can enforce the same by filing a suit on it. *Sharfath Ali v Noor Mahomed*, 2 Bur L J 227. Formalities laid down by law must be gone through in order to create binding contract and to attach liability. 122 Ind Cas 763.

11 Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Notes—A contract entered into with an infant is not voidable but void. 30 C 539 P C, 27 Ind Cas 733, 32 C L J 214 (P C), 46 Ind Cas 765, 46 A 568, 23 P R 1888. A minor is not estopped from pleading his minority. 21 C W N 257 (P C) see also 9 Ind Cas 124, 31 A 21 = 1 Ind Cas 704, 60 Ind Cas 267, 54 Ind Cas 876 38 M 1071, 1924 Lah 294. But minority must be proved. 45 C 909 P C, 89 Ind Cas 108. But there is nothing in law to prevent a sale of immoveable property in favour of a minor and the minor can sue for possession of the property as such vendor. 68 Ind Cas 197. Once a guardian is appointed by Court the minority continues till the age of 21 and any assent to an alienation by the minor is valueless even though the necessity for a guardian may not have continued. A I R 1931 Lah 394. In a suit by the plaintiff who was a minor for the cancellation of a contract, the defendant was held liable on his returning. 9 O L J 404, 19 Ind Cas 610 =

30 C 539, 49 Ind Cas 543

A lease of the property of a minor by a person purporting to act on his behalf but who is not his certified guardian nor a near relation is not binding on the minor, unless the lessee can prove that the lease was for the benefit of the minor. 63 Ind Cas 255. A plaintiff can by a suit set aside his mortgage on the ground of minority falsely representing which a case he is not. J 88 (P C), 9 Lah. Mad 945, 122 Ind Cas 893, 89 Ind the only ground on which equity interferes



to make a person of full age return money or property which he obtained during minority is fraud 23 Ind Cas 799=26 M L J 612, 25 T L R 265, 53 S J 243, 18 Ch D 109, 29 W R 747, 50 L J Ch 673, 45 L T 193, (1913) 2 K B 335, 82 L J K B 393, 108 L T 834 20 Manson 129, 99 T L R 352, 3 De E & J 63, 26 L J Bk 33, 4 Jur (N S) 1257, 6 W R 640 (Eng), 45 A 644, 8, Ind Cas 79

It is perfectly open to a person who owns property to convey that property to a minor, and the conveyance may be made in the minor's name and will convey a perfectly good title to the minor 18 Ind Cas 451, 24 Ind Cas 927, 39 Ind Cas 44, 79 Ind Cas 955

A lease or mortgage by a minor is void it is incapable of ratification express or implied by the acceptance of rent by the lessee on attaining majority A I R 1931 Bom 178=33 Bom L R 111 58 C 224=A I R 1931 Cal 393, 122 Ind Cas 466, 102 Ind Cas 449, 100 Ind Cas 748

12 A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it he is capable of understanding it and of forming a rational judgment as to its effect upon his interest

A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind

A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind

### Illustrations

(a) A patient in a lunatic asylum who is at intervals of sound mind may contract during those intervals

(b) A sane man, who is delirious from fever or who is so drunk, that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests cannot contract whilst such delirium or drunkenness lasts

Notes—According to English Law a contract of a lunatic is binding upon him unless it can be shown that at the time of making the contract he was wholly the other party knew of his intentions into a contract and he did not know what he

understand business and forming rational judgment as to its effect upon his interest 4 Pat L T 17=1923 P 187=68 Ind Cas 372 Where therefore, in a suit challenging the validity of certain deeds the plaintiff relies on unsoundness of mind he must establish it sufficiently to satisfy this test Mere to prove utter mental dark Warren, 9 Ves 60, at p 911; B D 661 Illustration (a) is contract is void under this 10 Bom L R 1004 Where mortgagor is found to be of unsound mind but having lucid intervals no general rule could be laid down as to where burden of proof lay A I R 1930

medical man is entitled to a reasonable remuneration for his services. See 55 Ind Cas 777, 25 under dealings between parties. See also 54 Ind Cas 437, 44 B 474 P C, 31 Ind Cas 783, 9 M I A 256.

## CHAPTER II

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A minor in whose favour a promissory note has been executed can enforce the same by filing a suit on it *Sharfath Ali v Noor Mahomed*, 2 Bur L J 227. Formalities laid down by law must be gone through in order to create binding contract and to attach liability 122 Ind Cas 763.

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by reason of the fact that he prac  
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It is perfectly open to a person who owns property to convey that property to a minor, and the conveyance may be made in the minor's name and will convey a perfectly good title to the minor, 18 Ind Cas 451, 24 Ind Cas 927, 39 Ind Cas 44, 79 Ind Cas 955

A sale of the property of the minor by a *de facto* guardian is valid, if it is made for the benefit of the minor or because of his necessity, 32 Ind Cas 638, 26 Bom L R 1035 A lunatic is not disqualified from being a transferee of a property 79 Ind Cas 955 A contract by a minor being void cannot be ratified 53 Ind Cas, 123; 51 Ind Cas 410

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(b) A sane man, who is delirious from fever or who is so drunk, that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts

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According to this section a contract entered into by a person of unsound mind is void 41 P R 1912, 17 M L J 78 The presumption is in favour of sanity 1 M H C R 214 Party must prove total incapacity to understand business and forming rational judgment as to its effect upon his interest 4 Pat L T 17=1923 P 187=68 Ind Cas 372 Where therefore, in a suit challenging the validity of certain deeds, the plaintiff relies on unsoundness of mind he must establish it sufficiently to satisfy this test Mere to prove utter mental dark- Warren, 9 Ves, 605 at p 911, B. D 661 Illustration (a) is contract is void under this to Bom L R 1004 Where mortgagor is found to be of unsound mind but having lucid intervals, no general rule could be laid down as to where burden of proof lay A. I R 1930 Rang 24

Undue influence and capacity to enter into contract are totally different. A I R. 1927 Cal 889=104 Ind. Cas 527.

Although a mortgage may be made by a person who is of legal age and unsound mind unless it is void under s 132.

Ex 132, "that a drunkard man when he recovers his senses, might insist on the fulfilment of his bargain and therefore that he can ratify it so as to bind himself to the performance of it" But under the Indian Law, such a contract being totally void no question of ratification arises. Vide notes under s 11.

"Consent" defined

18. Two or more persons are said to consent when they agree upon the same thing in the same sense.

Notes - Where the signature of a blind man is obtained to a document by the contents being misread to him, document is not binding on him.

*Singh v Bhagwant*, 80 Ind Cas terms beyond the knowledge of the executants, and consequently proved to be a different one from that which they thought they were executing, it was held that, the said executants not having read the deed, but having trusted to information falsely given them their signatures could not amount to its contents 3 B 342 But it is doubtful whether the rule would apply to a man who can read but who forbears to read 80 Ind Cas 67 Where by a promisee's fraud a person is induced to execute deed under belief that he is signing some other instrument of a different nature the transaction is void 20 Ind Cas 525 Where parties were under a mistake as to period for which agreement is entered into, that agreement is not contract. 100 Ind Cas 573=A I R 1927 Lah 240

"Free consent" defined

14 Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21, and 22

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake

which has to be considered question recurs in various form or consideration of the consent of both or expression of intention? the consent is given by mistake—Vide *Anson's* 11 as by ordinary principles or laws, any the *dhar*

*Jag v. Shri Shrinivas Ramani*, 19 C. W. 229=42 I. A 135=17 Bom. L. R 527=39 B. 441 (P C)

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Explanation.**—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

### Illustration

A on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code

A afterwards sues B for breach of contract at Calcutta

A has employed coercion, although his act is not an offence by the law of England and although section 506 of the Indian Penal Code was not in force at the time when or place where, the act was done

**Notes.**—The definition of coercion in this section is expressly inserted for the special object of applying to s. 14, where "free consent" is required, to an agree

Bank of

son to

entered

32 M L J 494=41 M 33, see also 25 B 10, 4 A 352, 22 A 224 A refusal to

convey the equity of redemption except on certain

or threatening to detain property to the prejudice

this section 27 C L J 78=45 Ind Cas 738 Me

not coercion 10 Ind Cas 344=15 O C 192

party *Ibid.*, 3 L W 490=34 Ind Cas 578 Ti

Law is not applicable in India 16 Ind Cas 344=15 O C 192 In order to avoid a

contract the coercion must be such as comes within the provision of this section

15 C 656 Where a person fearing the result of a prosecution enters into an agree

ment with the complainant in consideration of his abandoning it the consent of such

person cannot be said to be coerced by coercion or undue influence under ss 15 and

P W R 1911 90 Ind Cas 453 Detaining

detain property unlawfully is coercion 55 Ind

5

16. \* (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are "Undue influence" defined such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other

(2) In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other,

Nothing in this sub section shall affect the provisions of section 111 of the Indian Evidence Act, 1872

### Illustration

(a) A, having advanced money to his son, B, during his minority, upon B's

(c) A, being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence

Notes—In order to reap the benefit of this section it is necessary for the defence to establish that the executants of a deed were induced to sign it because the plaintiff was in a position to dominate his will and used that position to obtain unfair advantage. 90 P. L. R. 1901=36 P. R. 1901. In the absence of any plea

P. W. R. 1911, 2 P. R. 1902, 5 O. C. 307, 7 A. L. J. 745=32 A. 589=6 Ind. Cas. 572, 47 Ind. Cas. 11. In order to avoid a contract on the ground that it was induced by undue influence, two things must be established: (1) that one of the parties was in a position to dominate the will of the other, and (2) that he used the position to obtain an unfair advantage over the other. The burden of proof lies in the first instance on the party who raises that plea. If that party proves that the other party was not only in a position to dominate his will and this he can do by establishing the facts mentioned in sub-clauses (a) and (b) of Cl. (2) but that the transaction entered into was also unconscionable, then the burden of proving that the contract was not induced by undue influence is shifted upon the other party. 9 Mys. L. J. 373.

It is for the person claiming the benefit from the disposition of property by the *pardashin* lady to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate it must have been read over to her. If the terms are intricate they must have been adequately explained to her.

First clause of this section: it is necessary for the defence to show that an unfair advantage has been obtained over him, while to bring the case within sub-section 3 he must prove that the transaction is unconscionable, unless these elements are proved the mere fact that one of the parties is in a position to dominate the will of the other does not entitle the latter to free himself from his obligation under the contract. *Ibid*. By the amendment of section 16 of the Contract Act the

did not fall within the section as it originally stood. 36 M. 533, see also 20 Ind. Cas. 8. Where the parties are at arms length and the party against whom undue influence is pleaded is not in a position to dominate the will of the other party, there can be no undue influence. A. I. R. 1932 All. 174.

The amendments in the Indian Law of contract went further in the direction of relief against harsh and unconscionable bargains than those of English money-lending Act, and the dicta of English Judges under that Act might therefore be accepted. *Abdul Majid v. Kierode*, 19 C. W. N. 809. Where pressure for undue

In a transaction where the rate of interest is very high it must be proved that the lender was in a position to dominate the will of the debtor 10 Ind Cas 249, 7 Ind Cas 261=32 A 590 (N), U B R (1897-1901) Vol II, 315, see also 5 Ind Cas 486, 148 P L R 1911, 28 B 639, 25 B 126 Urgent need of money is not by itself sufficient proof that the obligee was in a position to dominate the will of the obligor 4 S L R 276 It cannot be held that a state of fear by itself constitutes undue influence under this section Assuming a state of fear amounting to mental distress which enfeebles the mind, there must be further action of some kind, the employment of pressure or influence by or on behalf of the other party to the agreement 22 A 224 A deed is not void on the ground of undue influence, merely because the deed was executed while the defendant was under arrest in execution of a previous money decree 51 P R 1908 The mere fact that one of the parties was in a position to dominate the will of the other will not avoid the contract 3 S L R 130=4 Ind Cas 610 It is incumbent on a party be he plaintiff or defendant who seeks to set aside a contract on the ground of undue influence or fraud to give in his pleadings full particulars of the circumstances on which he relies on the basis of his plea 8 O C 210 Apart from the recent statute an English Court of Equity cannot give relief from a transaction or contract merely on the ground that it was a hard bargain except perhaps where extortion is so great as to be of itself evidence of fraud 4 C L J 1 (P C)=28 A 570 (P C)=33 I A 118 In order to avoid a contract on the ground of undue influence a Court should consider only the terms of this section *Idem*

The equitable doctrine of undue influence applies to cases, in which the position of the donor and the donee has been such that it has been the duty of the donee to advise the donor or even to manage his property In such cases the Court throws upon the donee the burden of proving that he has not abused his position and of proving that the gift made to him has not been brought about by any undue influence on his part It is necessary to show that the donor had independent advice, and was removed from the influence of the donee when the gift was made to him 29 M 161 (F B), see also 11 O C 29, The term "unfair advantage" in clause (1) of sec on 16 is used as meaning an advantage obtained by unrighteous means 9 Bom L R 1164=32 B 37

The Indian Contract Act throws upon the person dealing with an expectant heir and in a position to dominate the latter's will the burden of showing that he has not used his position to obtain an unfair advantage The illustrations to an Indian Statute are to be taken as part of the Statute 23 C W N (P C)

Undue influence is not established by proof of relations of the parties having been such that the one naturally relied upon the other for advice and that the other was in a position to dominate the will of the first in giving it To render influence 'undue' it must be established that the person in a position of domination has used that position to obtain unfair advantage for himself and so as to cause injury to the person relying upon his authority or aid It is only when the bargain is with the influencer or brought about by him and is in itself unconscionable that the burden is thrown upon the influencer to establish affirmatively that the other party was scrupulously kept separately advised in the independence of a free agent 43 M 546=55 Ind Cas 447 (P C) The plea of undue influence is not open to a man who at the time of the transaction in dispute was of mature age and of some intelligence and who, for some years previously managed his own affairs 42 A 922=29 C W N 598=58 Ind Cas 845 (P C) In a case of undue influence active confidence between the person executing a document and the person under whose influence the document is said to have been executed, must be established 11 L W 112

As regards payment of exorbitant rate of interest, vide 56 Ind Cas 74, 24 C W N 444, 54 Ind Cas 783, 57 Ind Cas 1004, 54 Ind, Cas 558, 1 P L T 34, 24 O C 313, 59 Ind Cas 277, 48 C 93, 48 Ind Cas. 1=29 C L J 165, P C 51 Ind Cas 496, 69 Ind Cas 637, 74 Ind Cas 346, 72 Ind Cas 767, 74 Ind Cas 193, 10 O L J 390, 1923 Lah 634, 13 C L J 95, 96 Ind Cas 413, A I R 1926 Cal 171, 96 Ind Cas 684, (1924) Lah 21, (1924) P 71, 1924 Oudh 118, 2 Mys L J (B & C) 19, 9 O L J 442, 68 Ind Cas 687, A I R 1931 Nag 91

In respect of a transaction by a *parlanurita* lady it must be shown that the lady had independent advice and sufficient intelligence to understand the rele

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Notes—In order to reap the benefit of this section it is necessary for the defence to establish that the executants of a deed were induced to sign it because the plaintiff was in a position to dominate his will and used that position to obtain unfair advantage 90 P. L. R. 1901=36 P. R. 1901. In the absence of any plea to the contrary, the law of contract went further in the direction of unconscionable bargains than those of English money-lenders. 19 C. W. N. 809. Where pressure for undue influence is non-existent, a suit for refund does not lie 19 C. W. N. 383. The fact that a compoundable criminal case was pending between the parties and the prosecution was ready to compound the offence and to withdraw the charge if the plaintiff agreed to it, and that the plaintiff was ready to agree to it on condition of

1901=151 P. L. R. 1901, 10 Ind. Cas. 14=8 A. L. J. 407; 32 B. 208; 22 Ind. Cas. 406; 24 Ind. Cas. 67, vide also 20 M. L. J. 785; 5 O. C. 256; 111 P. R. 1908; 5 M. L. T. 204, 16 C. L. J. 76 (P.C.), 11 C. W. N. 249 (P.C.); 9 Bom. L. R. 143=31 B. 348, 6 Ind. Cas. 233, 7 A. L. J. 729=7 Ind. Cas. 286; 12 C. W. N. 1102; 134 P. W. R. 1911, 2 P. R. 1902, 5 O. C. 307, 7 A. L. J. 745=32 A. 589=6 Ind. Cas. 572, 47 Ind. Cas. 11. In order to avoid a contract on the ground that it was induced by undue influence, two things must be established: (1) that one of the parties was in a position to dominate the will of the other; and (2) that he used the position to obtain an unfair advantage over the other. The burden of proof lies in the first instance on the party who raises that plea. If that party proves that the other party was not only in a position to dominate his will and this he can do by establishing the facts mentioned in sub-clauses (a) and (b) of Cl (2) but that the transaction entered into was also unconscionable, then the burden of proving that the contract was not induced by undue influence is shifted upon the other party 9 Mys. L. J. 373.

It is for the person claiming the benefit from the disposition of property by the *pardinashin* lady to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate it must have been read over to her. If the terms are such as to be a bargain, it has been adequately explained by the defendant legal adviser.

also A. I. J. The borrower does not itself place the lender in a position to dominate his will within the meaning of this section 17 C. L. J. 212. To bring a case within the first clause of this section, it is necessary for the defence to show that an unfair advantage has been obtained over him, while to bring the case within sub-section 3 he must prove that the transaction is unconscionable, unless these elements are proved, the mere fact that one of the parties is in a position to dominate the will of the other, does not entitle the latter to free himself from his obligation under the contract *Ibid*. By the amendment of section 16 of the Contract Act, the substituted definition of undue influence includes within its scope cases which his respect action may influence.

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In a transaction where the rate of interest is very high it must be proved that the lender was in a position to dominate the will of the debtor 10 Ind Cas 249 7 Ind Cas 261=32 A 590 (N), U B R (1897—1901) Vol II, 315, see also 5 Ind Cas 486, 148 P L R 1911, 28 B 639, 25 B 126 Urgent need of money is not by itself sufficient proof that the obligee was in a position to dominate the will of the obligor 4 S L R 276 It cannot be held that a state of fear by itself constitutes undue influence under this section Assuming a state of fear amounting to mental distress which enfeebles the mind, there must be further action of some kind, the employment of pressure or influence by or on behalf of the other party to the agreement 22 A 224 A deed is not void on the ground of undue influence, merely because the deed was executed while the defendant was under arrest in execution of a previous money decree 51 P R 1908 The mere fact that one of the parties was in a position to dominate the will of the other will not avoid the contract 3 S L R 130=4 Ind Cas 610 It is incumbent on a party be he plaintiff or defendant, who seeks to set aside a contract on the ground of undue influence or fraud to give in his pleadings full particulars of the circumstances on which he relies on the basis of his plea 8 O C 210 Apart from the recent statute an English Court of Equity cannot give relief from a transaction or contract merely on the ground that it was a hard bargain except perhaps where extortion is so great as to be of itself evidence of fraud 4 C L J 1 (P C)=28 A 570 (P C)=331 A 118 In order to avoid a contract on the ground of undue influence a Court should consider only the terms of this section *Ibid*

The equitable doctrine of undue influence applies to cases, in which the position of the donor and the donee has been such that it has been the duty of the donee to advise the donor or even to manage his property In such cases the Court throws upon the donee the burden of proving that he has not abused his position and of proving that the gift made to him has not been brought about by any undue influence on his part It is necessary to show that the donor had independent advice, and was removed from the influence of the donee when the gift was made to him 29 M 161 (F B), see also 11 O C 295 The term "unfair advantage" in clause (1) of section 16 is used as meaning an advantage obtained by unrighteous means 9 Bom L R 1164=32 B 37

The Indian Contract Act throws upon the person dealing with an expectant heir and in a position to dominate the latter's will the burden of showing that he has not used his position to obtain an unfair advantage The illustrations to an Indian Statute are to be taken as part of the Statute 23 C W N (P C)

Undue influence is not established by proof of relations of the parties having been such that the one naturally relied upon the other for advice and that the other was in a position to dominate the will of the first in giving it To render influence "undue" it must be established that the person in a position of domination has used that position to obtain unfair advantage for himself and so as to cause injury to the person relying upon his authority or aid It is only when the bargain is with the influencer or brought about by him and is in itself unconscionable that the burden is thrown upon the influencer to establish affirmatively that the other party was scrupulously kept separately advised in the independence of a free agent 43 M 546=55 Ind Cas 447 (P C) The plea of undue influence is not open to a man who at the time of the transaction in dispute, was of mature age and of some intelligence and who, for some years previously managed his own affairs 42 A 922=29 C W N 598=58 Ind Cas 845 (P C) In a case of undue influence active confidence between the person executing a document and the person under whose influence the document is said to have been executed, must be established 11 L W 112

As regards payment of exorbitant rate of interest, vide 56 Ind Cas 74, 24 C W N 444, 54 Ind Cas 78, 57 Ind Cas 1004, 54 Ind, Cas 558, 1 P L T 34, 24 O C 313, 59 Ind Cas 277, 48 C 93, 48 Ind Cas. 1=29 C L J 165, P C 51 Ind Cas 496, 67 Ind Cas 637, 74 Ind Cas 346, 72 Ind Cas 767, 74 Ind Cas 195 10 O L J 390, 1973 Lah 634 13 C L J 95, 96 Ind Cas 413, A I R 1926 Cal 171, 96 Ind Cas 684, (1974) Lah 21, (1924) P 71, 1974 Oudh 118, 2 Mys L J (B & C) 19, 9 O L J 442, 68 Ind Cas 687, A, I R 1931 Nag 91

In respect of a transaction by a *fiduciary* lady, it must be shown that the lady had independent advice and sufficient intelligence to understand the relevant

and important matters, that she did understand them as they were explained to her, that nothing was concealed and that there was no undue influence or misrepresentation 28 M L T 351=(1920) M W N 631=47 I A 265 (P C), see also 1926 P 582, 40 C L J 393, 65 Ind Cas 380 Undue influence is a species of fraud, which must be pleaded with precision and when a case of undue influence or fraud is not made in the pleadings such a case cannot be made at the trial, which have no power otherwise to pound interest 60 Ind Cas 282=2 F of money on the part of a borrower to dominate his will 48 Ind Cas 32 but capable of exercising independent and intelligent judgment no presumption of undue influence arises 4 Pat L T 707, 74 Ind Cas 517; 68 Ind Cas 372 It is not enough to prove undue influence that a vendor of property was in a disturbed state of mind and anxious to dispose of property at the time of sale 72 Ind Cas 1032, see also 93 Ind Cas 995, 96 Ind Cas 468, A I R (1926) Cal 455; 11 O L J 523; 78 Ind Cas 565 1924 Lah 337; 1 Pat 263, 9 O L J 439; 66 Ind Cas 642, 68 Ind Cas 597

**Sub-section 3**—By this sub section three matters are dealt with In the first place the relations between the parties must be such that one is in a position to dominate the will of the other Once that position is substantiated the second stage has been reached i.e. the issue whether the contract has been induced by undue influence Upon the determination of this issue a third point emerges, which is that of the *onus probandi* the burden of proving that the contract was not induced by undue influence is upon the person who is in a position to dominate the will of the other 28 C W N 834=11 I A 1011

**17** "Fraud" means and includes any of the following acts committed by a

'Fraud' defined party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto, or his agent or to induce him to enter into the contract—

- (1)—The suggestion as to a fact, of that which is not true, by one who does not believe it to be true,
- (2)—The active concealment of a fact by one having knowledge or belief of the fact,
- (3)—A promise made without any intention of performing it,
- (4)—Any other act fitted to deceive,
- (5)—Any such act or omission as the law specially declares to be fraudulent

**Explanation**—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech

### Illustrations

(a) A sells, by auction, to B, a horse which A knows to be unsound A says nothing to B about it

(b) B is A's agent A sells a horse to C B says nothing to C about the horse

(c) B says to A, "I will buy your horse for Rs. 100" A says nothing to B about the horse

(d) A and B being traders, enter upon a contract A has private information of a change in prices which would affect B's willingness to proceed with the contract A is not bound to inform B

**Notes**—Fraud is a false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should induce the other party to act upon it. It is a tortious act. See *R v. G. H. I. C. 403*, *Lord Cairns* never morally censurable, however proceeding at a proper time for sales, would, in my opinion form no

ground for an action in the nature of an action for misrepresentation. There must in my opinion, be some active mis statement of fact, or, at all events, such a partial and fragmentary statement of fact, as that the withholding of that which is not stated makes the statement false. The action is maintainable if the damage of the mis statement is due to the knowledge of the defendant. *1911 Co., 2 C P D.*

So "fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth or (3) recklessly, and carelessly whether it be true or false." *Per Lord Herschell, in Terry v Peek, 14 App Cas 374, see also 45 A 624-11 A L J 571=1924 All 17* Equal means of knowledge, representation, or any thing calculated to mislead at a particular point 133 Ind Cas 372=A I R 1932 All 5. They do not by themselves constitute fraud.

1. A 1932 All 5. Fraud must be proved in the making of the contract and not its performance 37 B 158; 46 B 489. This misrepresentation must be misrepresentation of fact *Harry v Young, 1 Yelv 20, Lindsay v Hurd, L R 5 P C, at P 243, 20 C L J 474, 43 Ind Cas 101, 17 C 291 P. C.* To make a man liable for fraud moral fraud must be proved against him. I do not understand legal fraud, to my mind it has no more meaning than legal heat or legal cold, legal light or legal shade. *Well v Bell, 3 Ex D 249* Fraud may be committed by a party's agent with his connivance 28 B 405, see also 39 Ind Cas 169. Specific fraud must be pleaded and proved 10 Ind Cas 922, see also 25 Ind Cas 789.

"Misrepresentation" defined 18. "Misrepresentation" means an untrue statement which includes—

(1) the positive assertion, in a manner not warranted by the information in the person making it, of that which is not true though he believes it to be true

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

Notes—There is a difference between misrepresentation or innocent mis statement of fact and fraud or wilful mis statement of fact. *Anson p 156* 1 *Arkwright v Newbold, 17 Ch D 320 Cotton L J* said "It must be borne in mind that in an action for setting aside a contract which has been obtained by misrepresentation the plaintiff may succeed though the misrepresentation was innocent, but in an action for deceit, the representation to found the action must not be innocent, that is to say it must be made either with the knowledge of its being false or with reckless disregard whether it is or it is not true." It is fraud in law if a party makes representations which he knows to be false and injury ensues although the motive from which the representation is proceeded may not have been bad. *Pe Tuddal C J in Foster v Charles, 7 Bing 107, see 3 B 242* Misrepresentation is a mis statement of facts not known to be false or a non disclosure of facts not intended to deceive. *Anson p 159* Where a person makes a positive assertion relying upon the statement of another, that a certain third party would become a director he is not warranted in making that assertion within the meaning of section 18 of the Contract Act 4 C W N 370. Silence in some cases may amount to misrepresentation 42 C 28=24 Ind Cas 193. There is no misrepresentation where the truth can be discovered with ordinary diligence 71 Ind Cas 161, 36 Ind Cas 34, 38 Ind Cas 300. A person who makes a statement which is false, and which he knows to be false, may give a right to avoid the contract. *Per Lord Bramwell, in Derry v Peek* 4. The distinction between fraud and misrepresentation is that in the one case the person making the statement does not believe it to be true and in the other he believes it to be true. Though in both cases it is a mis statement of fact which misleads the promisee 53 A 374=1931 A L J 153=A I R 1931 All 154. Misstatement by innocent misrepresentation has no legal effect of contract. A I R, 1932 Bom 151 (b) A seller of goods is to be taken as a mere lien holder in case of misrepresentation 122 Ind Cas 1.



ground for an action in the nature of an action for misrepresentation. There must be a false statement of fact, which is not true at the time it is made, and which is material to the damage of the person to whom it is made unless that statement is false to the knowledge of the person making it. *Per Bramwell J in Dickson v Telegraph Co*, 1 C P D 1. So fraud is proved when it is shown that a false representation has been made, (1) knowingly, or (2) without belief in its truth or (3) recklessly and carelessly whether it be true or false. *Per Lord Herschell in Lerry v Peek* 14 App Cas 374, see also 45 A 674=11 A L J 571=1924 All 17. Equal means of knowledge is immaterial where there is an express representation or any thing calculated to deceive or to lull suspicion upon a particular point 133 Ind Cas 372=A I R 1931 Mad. 603 (2) Secrecy and haste do not by themselves constitute fraud A I R 1932 All 5. Fraud must be proved in the making of the contract and not in its performance 37 B 158, 46 B 489. This misrepresentation must be a misrepresentation of fact *Harry v Young* 1 Yelv 20, *Indisley v Hurd* L R 5 P C at P 243, 20 C L J 474, 43 Ind Cas 101, 17 C 291 P, C. To make a man liable for fraud moral fraud must be proved against him. I do not understand legal fraud, to my mind it has no more meaning than legal heat or legal cold, legal light or legal shade. *Well v Bell*, 3 Ex D 249. Fraud may be committed by a party's agent with his connivance 28 B 40, see also 39 Ind Cas 169. Specific fraud must be pleaded and proved 10 Ind Cas 922, see also 23 Ind Cas 789.

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action the action must not be innocent, that is the knowledge of its being false or with a view to deceive. It is fraud in law if a party knows to be false and injures, even though the motive from which the representation is proceeded may not have been bad. *Per Tiddall C J in Foster v Charles* 7 Bing 107, see 3 B 742. Misrepresentation is a misstatement of facts not known to be false or a non disclosure of facts not intended to deceive. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159.

section 18 of the Indian Contract Act, which defines misrepresentation, does not require that the person making the statement should know it to be false. It is sufficient that he should believe it to be true. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159. Where a person makes a positive assertion relying on facts which he believes to be true, and which in fact are false, he is not guilty of fraud, but of misrepresentation. *Anson* p 159.

19. When consent to an agreement is caused by coercion\*, fraud, or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused

Voidability of agreements without free consent

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true

*Exception* — If such consent was caused by misrepresentation or by silence fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

*Explanation* — A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

#### Illustrations

(a) A intending to deceive B falsely represents that five hundred maunds of indigo are made annually at A's factory and thereby induces B to buy the factory. The contract is voidable at the option of B

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out, and the mortgaged debt redeemed

(d) B, having discovered a vein of ore on the estate of A adopts means to conceal and does conceal the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under value. The contract is voidable at the option of A

(e) A is entitled to succeed to an estate at the death of B, B dies, C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A

*Notes* — A misrepresentation should in fact materially induce the contract in order to give a right of avoidance. 31 C L J 151. If a contract is obtained by fraud or cheating it is voidable at the instance of the party defrauded or cheated.

114 Where the misrepresentation or fraud is the consent of the party the contract is not voidable. 1 Cas 764. Illustration (b) is not exhaustive. Explanation to the section. *Ibid*. In order to enable the Court set aside a completed transaction the thing must speak for itself. 96 Ind Cas 453. Where the question is whether a certain statement is a part of a contract or a mere representation, it is essential that in order to make it a term of the misrepresentation knowing the fact entered, it is not incumbent upon the means of discovering the truth within the meaning of s 17 as 'silence' and not to misrepresentation. 53 A 374 = 119 Ind Cas 684.

\* In s 19 the words 'under influence' have been omitted being repealed by the Indian Contract Act Amendment Act (VI) of 1899 s 3

The exception to this section applies only to cases where the contracting party might with due diligence, have discovered the misrepresentation before he entered into the contract 38 Ind Cas 500

Para (2)—Whenever consent to a contract is obtained by deceit, the contract is voidable at the option of the party deceived. The other party cannot take advantage of his own wrong *Pollock on Contract* p 503

19A,\* When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused

Power to set aside contract induced by undue influence

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just

### Illustrations

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money lender, advances Rs 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs 100 with such interest as may seem just.

Notes.—Under second clause the Court is entitled to impose terms and suggestion to the parties without their consent. 88 Ind Cas 1013=33 A L J 856=A I R (1925) All 783, see also 31 B 348, 84 Ind Cas 124. Where a transaction of mortgage is alleged to have been brought about by undue influence exercised on the mortgagor and the mortgagor himself did not at any time avoid the contract of mortgage and did not seek to avoid it as defendant in a suit on the mortgage, it is not open to a transferee from the mortgagor of a portion of the mortgaged property to avoid the contract on the ground of undue influence. 40 C L J 67=1925 Cal 94

Agreement void where both parties are under mistake as to matter of fact

20 Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void

*Explanation.*—An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact

### Illustrations

(a) A agrees to sell to B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Notes.—This section is applicable where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. 21 C W N 561, 17 B

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Notes—This section is applicable where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. 21 C W 17

\* S 19 A has been added by the Indian Contract Act A 1899) s 3

A contract can be avoided where both the parties committed a mistake as to an essential matter of fact 18 Bom L R 201=34 Ind Cas 515=40 B 638, 21 C W N 404=25 C L J 459, 81 Ind Cas 81 To avoid a contract on the ground of mistake of fact, the mistake must be between the plaintiff and the defendant 3 Rang 477, 57 Ind Cas 481, 50 C 615=74 Ind Cas 996, 29 C L J 526 This section deals with the case of a common mistake at the time of the transaction "as to a matter of fact essential to the agreement." Perhaps a general principle of frustration depending on construction might be so stated as to cover that. 26 C W N 573 A contract can not be avoided where the mistake is not essential 47 Ind Cas 783=12 S L R 11, see also 40 Ind Cas 205 As regard effect of unilateral mistake vide A I R 1931 Mad 785=61 M L J 437 When contract is void for mutual mistake, vendor can claim consideration for purchase money, but not interest or damages 1930 A I J 327 Where a mining lease was executed for a plot of 102 bighas but the plot was actually less than 100 bighas, there was no common mistake 119 Ind Cas 205 Where subject matter of sale substantially obtained by purchaser, this section does not apply 100 Ind Cas 327 Where terms of contract are understood by parties in two different senses, contract is void and unenforceable under this section 95 Ind Cas 614

21 A contract is not voidable because it was caused by a mistake as to any law in force in British India, but a mistake as to a law not in force in British India has the same effect as a mistake of fact

### Illustrations

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation The contract is not voidable \*

Notes --Where the parties honestly believed that the plaintiff had lost his right to the occupancy rights of her husband by reason of her second marriage, and there was no fraud or misrepresentation by the defendant Zamindar, and the plaintiff agreed to take the land on the increase rate of rent under a lease held that the lease could not be set aside as it was a contract entered into between the parties by reason of an innocent mistake on a point of law shared by all the parties *Sahinjan Bibi v Madoho Lal* 4 A L J 575=A W N (1987) 197 Under this section, error of law does not vitiate a contract much less will it annul a conveyance after the lapse of many years unless there has been fraud and misrepresentation and an absence of negligence 11 B 174 23 Bom L R 939 See also 21 Bom L R 939

Contract caused by mistake of one party as to matter of fact 22 A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact

is only voidable and Ind Cas 591, 44 B of fact, it cannot be 7, 16 B 561 Under al mistake plea that i what he ct written in language not known to him, he cannot plead ignorance of terms 106 Ind Cas 565

What considerations and objects are lawful, and what not 23 The consideration or object of an agreement is lawful, unless—

it is forbidden by law, or  
is of such a nature that, if permitted, it would defeat the provisions of any law, or  
is fraudulent; or

involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

### Illustrations

(a) A agrees to sell his house to B for 10 000 rupees. Here B's promise to pay the sum of 10 000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10 000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1 000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B, and C, enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void as the consideration for it is unlawful.

... for money without the know-  
elongs to his principal. The  
ud by concealment by A on

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

... under the provisions of an Act of the  
B upon  
estate to  
s void, as  
so defeat

the object of the law

(j) A, who is B's mukhtar, promises to exercise his influence as such with B in favour of C and C promises to pay 1 000 rupees to A. The agreement is void because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the Indian Penal Code.

... that if per-  
lid A I R  
ed upon any  
L R 250=

A I R 1931 Bom 269 A promise to give favourable evidence in a suit cannot be enforced as the consideration is vicious. 4 M H C 7, see also 20 W R 235, 2 M H C 243. An agreement between two members of a *patil* family that they are to off-  
policy 6 B H C A C 743  
carrying on litigation again  
out of spite and ill feelin  
and a suit cannot lie on it, 10

Money advanced for getting a divorce from a woman's husband cannot be recovered on her failure to obtain the divorce. 10 B 152. See also A I R Nag

(1925) 111 Where a promissory note is executed on a consideration for getting rid

Where the defendant in consideration of a certain sum, promised to give his minor daughter in marriage to the plaintiff, the latter can sue to recover the money so paid on the defendant's failure to fulfil his part of the contract 10 C 1034, see also 13 M 83, 22 B 638, 16 B 673 But an agreement to assist a Hindu for reward in procuring a wife is void 17 M 9

An assignment of mortgage bond is valid 13 B 42, see also 2 C W N 575 A compoundable offence can be compounded for consideration. 3 C W N 5 An agreement entered into in violation of the rule of excise department is opposed to public policy 1 Mys L J 90 Contracts by way of wagering and gaming are void but not illegal 27 C W N 442

If illegal contract is totally unperformed a party can recover money paid thereunder 84 Ind Cas 295 Where a bond is executed as part and parcel of an illegal transaction the bond cannot be enforced 77 Ind Cas 46

The strict rule of English law as to marriage brokerage contracts cannot be applied in India in its entirety A I R (1926) P 582 A transfer of the occupancy and ordinary tenants rights being voidable and not absolutely void it is not unlawful within the meaning of this section 45 Ind Cas 669 A lease to a person not licensed under the Madras Abkari Act for tapping trees for the purpose of drawing toddy is not illegal, and can be enforced 61 Ind Cas 537 As to champertous contract when void, vide 59 Ind Cas 10, 61 Ind Cas 884 A contract directly involving any of the mischiefs contemplated by s 12 of the Madras Abkari Act 1886 is tainted with illegality 61 Ind Cas 537 The rule in *pari delicto melior est conditio possidentis* debars a plaintiff from succeeding, unless he can show that the illegal purpose to which both parties were privies did not go beyond the stage of intention 16 N L R 129, 33 C 967, 4 N L R 26

Defeat the provision of law—A contract entered into for the purpose or with the necessary effect of defeating a Statute will not be enforced or recognised by the Courts at any rate where both parties stand in *pari delicto* 12 B 422 There is nothing necessarily unlawful in two or more persons agreeing not to bid against one another in an auction sale 18 B 342 A bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence can not be given effect to 3 N W P 166, see also 4 M H C 14, 2 M H C 187, 11 W R 313, 17 W R 84, 11 B 566, 1923 Cal 292, 45 M L J 59, 74 Ind Cas 843, O & A L R 631, 73 Ind Cas 663, 89 Ind Cas 434, 29 C W N 855, 29 C W N 1029, 2 O W N 791 Every contract made for or about any matter or thing which is prohibited and made unlawful by Statute is void contract 3 B L R A C 44=11 W R 39, A fair agreement to supply funds to carry on a suit in consideration of having a share of the property if recovered, ought not to be regarded as being *per se* opposed to public policy 1923 Sind 50, 1923 Nag 214, 2 Bur L J 177 Money lending by a pleader is not opposed to public policy 72 Ind Cas 877 Where a person has taken money under an illegal L R 4 A 67 Rev The taking of a bond by W N 430 A contract infringing Abkari law is void to marry or to adopt in consideration of being opposed to public policy 83 Ind Cas 86 In a suit for illegality under this section the burden lies

on the defendant to show clearly that it was intended to effect the purpose by illegal means 3 Rang 275 Where a contract is made in cash and further undertook to convey property for charitable purposes in the event of cash being held, that such an agreement was not void 89 Ind 229, 43 Ind Cas 74, 47 Ind Cas 563

is partly a debt due and partly an agreement criminal proceeding is not invalid for In India *champerty* or maintenance is 93 Ind Cas 959, 56 Ind Cas 272, 4 Lah

**Public policy**—It is contrary to public policy to induce public officers for  
 — — — — — in and influence to procure  
 — — — — — a nuptial agreement between  
 — — — — — 19 A L J 675=63 Ind.  
 — — — — — against public policy in enfor  
 — — — — — cing a contract arising out of the composition of a compoundable offence 62 Ind  
 — — — — — Contract 62 Ind Cas  
 — — — — — y Judges  
 — — — — — Contract  
 — — — — — yernment  
 — — — — — d against  
 — — — — — Ind Cas

**Involves or implies injury, etc.**—When the plaintiff can not make out his case except through an immoral transaction to which he was a party he must fail 10 Bom L R 318=32 B 581, 5 B 295, 18 M L J 456=4 M L T 102, 23 A 995 A bond for future adulterous intercourse is void 45 M L J 551, 240, 47 A 619 But when it is for past co habitation it is valid 15 Bom L R 89 Ind Cas 573, 82 Ind Cas 14, *contra* 44 B 542 Express agreement to indemnify a joint tort feisor for commission of a tort is void A I R 1932 Mad 1

is not unduly

rule of equity that a person who has transferred a property to another for an illegal or immoral purpose can not get it annulled if the intended purpose has been carried out 44 M 329 The Courts in India will not assist a party to recover back his money paid in respect of a contract which is tainted with criminality or immorality, even though the contract has not been performed 51 Ind Cas 280=4 Pat L T. 542, 48 C 115, 1 C L J 261

Miscellaneous—A trial of an offence  
an agreement for stifling a prosecution in  
purpose of section 23 of the Contract Act  
Payment for procuring exercise of privy

not opposed to public policy 42 Ind Cas 122=3 Pat L W 302=(1918) Pat 39  
 An agreement to abstain from bidding at an excise auction is not void under this  
 section as being against public policy 44 Ind Cas 223 18 B 342; 16 C 194.  
 6 C L J 111, 46 Ind Cas 755 A suit is maintainable for the recovery of the sum  
 actually paid pursuant to an agreement which is opposed to public policy  
 27 C L J 459, 1 C L J 261 A contract to engage dancing boy for a certain  
 price is valid 47 Ind Cas, 138 A reference to arbitration of a non  
 compoundable offence is opposed to public policy 47 Ind Cas 506 See also  
 42 B 389 A purchase made *benami* by a government servant in contraven-  
 tion of government order in respect of it, is void 47 Ind Cas 694 A caste  
 custom which authorises a minor wife to divorce her husband against his will and  
 with or without any assign is not opposed to public policy Court from time to time mu

39 B 538 An agreement is not forbidden by law 40

excisable articles is not illegal 29 Ind Cas 480 A suit is not maintainable for  
 recovering money lent and used for an illegal object as bribe 24 Ind Cas 692  
 Where the parties to a contract are not bona fide traders in goods but mere adjustment of  
*Held*, that the contract being maintainable 74 P L R 1

acquiring property as such 14 A I J 969=19 A 58 A in the name of his mother is not opposed to public policy and a suit on the basis  
 thereof is not maintainable 39 A 51=14 A I J 962 The advancing of money by  
 a pleader to his client, a part of which is meant for the prosecution of the suit in

which the pleader is engaged is a dealing between pleaders and their clients  
 policy 34 Ind Cas 360 A contract of bar 1 F 28=33 Ind Cas 238 (F B 8 N 1 R 97, 53 A 130 A contract of

L J 159 An agreement arrived future separation is void 14 Bom L R 1178 Deposit in connection with  
 illegal contract is recoverable when not based on such contract A I R 1932 Nag 32  
 Where a person applied to the Municipal Committee for sanction to build so as  
 to encroach upon a street and the Municipality having sanctioned the same on  
 condition of his paying certain rent he agreed to the same *Held* that the contract  
 was not illegal and that the Municipality was entitled to recover the rent reserved I  
 R 1931 F 664 A I R 1931 Loh 634

#### *Void Agreements*

24 If any part of a single consideration for one or more objects, or any  
 Agreement void if one or more objects or any part of any one of several considera-  
 tions and objects is unlawful in tions for a single object, is unlawful, the  
 part agreement is void

#### *Illustration*

A promises to superintend on behalf of B a legal manufacture of indigo and an  
 illegal traffic in other articles B promises to pay to A a salary of 10,000 rupees  
 a year The agreement is void, the object of A's promise and the consideration for  
 B's promise, being in part unlawful

Notes—When an agreement is an indivisible agreement and part of a single  
 consideration for an object is unlawful the whole agreement is void under this  
 section 32 B 449=10 Bom L R 553, see also 27 A 266=1 A L J 632 If a  
 person enters into a contract with a public servant in duties which may conflict with  
 the duties he owes to the public such a contract is void 19 C W N 59=1 Ind  
 contract, a stipulation in it, that he might earn  
 " 3 W R 66

This section is not applicable to transfer of immovable property 122 Ind Cas 872 In case of reciprocal agreements one

can not be exposed if the other is void and unenforceable 105 Ind Cas 823 A contract becomes invalid either by the illegality of the object or the consideration it self or by the incapacity of the promisor to enter into such contract But where part is within competence of promisor promisor can enforce the part 122 Ind Cas 872 Without statutory authority a person can not hold to a part of contract and reject the rest 55 C 142=32 C W N 53

Agreement without consideration void, unless—

25. An agreement made without consideration is void unless—

(1) it is expressed in writing, and registered under the law for the time it is in writing and registered, being in force for the registration of documents\*, and is made on account of natural love and affection between parties standing in a near relation to each other, or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be or is a promise to pay a debt barred by limitation law, charged therewith or by his agent generally, or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the limitation of time.

In any of these cases such agreement is a contract.

*Explanation 1*—Nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

*Explanation 2*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

### Illustrations

(a) A promises, for no consideration, to give to B Rs 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B Rs 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse, and gives it to him. B promises to give A Rs 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs 1,000 for Rs 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs 1,000 for Rs 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

**Clause (1)**—An agreement to be valid under subsection (1) must be made on account of natural love and affection. 1 Bom L R 495, A I R 1937 All 174, A I R 1932 P C 34. Where a person undertakes by means of a registered document, out of natural love and affection to discharge the debt due by another and on the former failing to do so, the debtor himself discharges the debt the

\* In s 25 the word 'documents' has been substituted for the word "assurances" by the Repealing and Amending Act (VII of 1891). For the law relating to the registration of documents see the Indian Registration Act (VII of 1908).

† See now the Indian Limitation Act (IX of 1908).

debtor is entitled to recover from such person the amount paid by him to discharge the debt, as the breach of the obligation becomes actionable under this section 13 M L J 428

**Clause (2)**—Where the plaintiff voluntarily expended money for establishing a market to please the District authorities and not at the request of the defendants (shop keepers) or for their benefit, an agreement by the defendants to pay the plaintiffs in consideration of such expenditure a certain commission or articles sold through their agency in such market is one that does not come within the terms of s 2 (d) of the Contract Act, and is void for want of consideration 3 A 221 In order that a promise to grant any annuity to a person for future services be enforceable in law it is incumbent upon the promisee to show that there was some contract for future services on his part which might have been enforced by the maker of the promise 54 Ind Cas 282

**Cases**—54 Ind Cas 436, 2 Lah L J 306, 46 Ind Cas 121

**Clause (3)**—The word 'debt' can be defined as a sum payable in respect of money recoverable A I R 1932 Lah 212 An unsatisfied debt, although barred, is good consideration for a bond, by reason of this clause The word 'debt' in this clause includes judgment debt as well 14 B 390, 3 A 381, 28 C W N 322, 26 A 363 But a Court of Wards by a promise under this clause, has no authority to pay a debt barred by limitation 19 M 255 It is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to 23 M 94 This clause applies only to a case in which there is an express promise to pay and has no application to a case where an implied promise is inferred from a mere acknowledgment 1931 A L J 56, A I R 1931 All 375, 132 Ind Cas 420, 53 A 374, 8 O W N 1210, 130 Ind Cas 702, 129 Ind Cas 281, 124 Ind Cas 243, 123 Ind Cas 820, 123 Ind means limitation of time as prescribed interpretation ought to be put on s 25 create a promise within the meaning of should be an accepted proposal reduced to writing It is enough that the writing expresses an intention to pay wholly or in part the debt referred to in it *Ibid*; 8 B 194, A W N (1881) 95, A I R 1932 All 199, A I R 1932 M 213 The promise to pay refers to a promise to pay despite the consciousness that the debt is barred 20 M L J 656, 33 M 159 Under clause (3) a barred debt is considered a good consideration for a promise to pay the new promise furnishing the measure of the creditors right, the whole of the promise whether free or clogged with a condition gives the cause of action 16 C W N 636, see also 22 P L R 1906, 135 P W R 1910, 102 P R 1903, 8 Ind Cas 811, 5 Ind Cas 418, 102 P. R 1908, 1 B 590 30 A 268, 31 A 495, 8 Bom L R 644, 11 C L R 581, 4 C 500, 6 B 683, 18 C L J 329, 18 C I J 269, 32 M L J 422 F B, 66 P R 1917, 60 Ind Cas 514, 41 M L J 507, L R 3 A 308, 65 Ind Cas 716, 67 Ind Cas 298, 45 M 345 86 Ind Cas 94, A I R 1932 Oudh 49, A I R 1932 All 38

**Explanation (1)**—14 P W R 1918, 46 Ind Cas 974

30 Ind Cas 20

Agreement in restraint of marriage void

26

Every agreement in restraint of the marriage of any person, other than a minor,\* is void

**Notes**—Where it was mutually agreed between the fathers of newly married couple that the girl's father should advance money for the boy's education and the boy's father reimburse all such monies in case the boy took another wife during the life time of the girl, *held* such a conduct was void under this section 24 Ind Cas 777 A provision in a *kadinamah* by which a Mahomedan husband authorises his wife to divorce herself from him in the event of his marrying a second wife is not void under this section 19 C W N 1226 A custom by which a person who marries a girl *sui jure* is bound to pay her relations a sum of money as bride's price is immoral, in restraint of marriage and is opposed to the principle of this section 58 Ind Cas

\* Exceptions 2 and 3 of this section having been repealed by Act IX of 1932 has been omitted



167=1 Lah 157 But a condition imposing a restraint on marriage is valid  
A I R 1932 Oudh 108 Sections 23 26 and 27 do not exhaust all instances or  
agreements contrary to public policy 80 Ind Cas 560

27 Every agreement by which any one is restrained from exercising a  
lawful profession, trade or business of any kind,  
Agreement in restraint of trade void is to that extent void

*Exception I*—One who sells the good will of a business may agree with the  
buyer to refrain from carrying on a similar  
Saving of agreement not to carry on business of which  
good will is sold business within specified local limits so long as  
the buyer, or any person deriving title to the  
good will from him carries on a like business  
therein provided that such limits appear to the Court reasonable, regard  
being had to the nature of the business\*

Notes—Under this section, whether the restraint is general or partial unquali-  
fied or qualified if it is in the nature of a restraint of trade, it is void 13 C W  
N 388=9 C L J 216 The language of this section is wider than the law on the  
subject as laid down in English cases *Ibid* To succeed in the defence under this  
section one must establish that the suit is one to enforce an agreement whereby  
some one is restrained from exercising a lawful profession trade or business of  
any kind 7 Bom L R 107=7 B 107 on appeal from 6 Bom L R 23 see  
also 23 W R 146, 23 B 103, 16 C W N 534 Whether a contract is in  
restraint of trade within the meaning of this section is a question to be deter-  
mined on construction of the contract in each case 13 M 47 The validity  
of a contract is generally determined by the law of the place where it is  
made 1 M 134 For other cases vide 8 C 809 11 C 545 19 C 765  
13 M 475 Note 15 M 79 17 C 320 Under this section an agreement which is  
in restraint of a lawful profession, trade or business is void 16 C W N 534  
A combination amongst the traders of a particular locality to do business only  
amongst their numbers to pay part of the profits to a common fund etc and levying  
of certain penalty for the breach of the conditions does not offend against the  
provisions of ss 23 and 27 and is not actionable *per se* merely because it brings  
profits to them and indirectly hurts a rival in trade 53 A 316 An agreement in  
restraint of trade is only void to the extent to which it restrains trade or business  
and not in its entirety A I R 1931 All 539

Cases—18 Ind Cas 183, 13 A L J 281, 21 C W N 979, 34 Ind Cas 754,  
41 M L J 657=48 I A 503, 48 C 1030, 1 Bur L J 72, 64 Ind Cas 794

28 Every agreement, by which any party thereto, is restricted absolutely  
from enforcing his rights under or in respect  
of any contract, by the usual legal proceedings  
in the ordinary tribunals, or which limits the  
time within which he may thus enforce his rights, is void to that extent  
Agreements in restraint of legal proceedings void

*Exception I*—This section shall not render illegal a contract, by which  
two or more persons agree that any dispute  
which may arise between them in respect of any  
subject or class of subjects shall be referred to  
arbitration, and that only the amount awarded  
in such arbitration shall be recoverable in respect of the dispute so referred  
Saving of contract to refer to arbitration dispute that may arise

When such a contract has been made, a suit may be brought for its specific  
performance, and if a suit, other than for such  
specific performance, or for the recovery of the  
amount so awarded, is brought by one party to such contract against any other  
such party in respect of any subject which they have so agreed to refer, the  
existence of such contract shall be a bar to the suit †

\* Vide foot note on previous page

† In s 28 the italicized clause of exception (1) has been repealed by the Specific  
Relief Act (1 of 1877) throughout British India, except in the scheduled districts in  
which that Act is not in force

debtor is entitled to recover from such person the amount paid by him to discharge the debt, as the breach of the obligation becomes actionable under this section 13 M L J 428

Clause (2)—Where the plaintiff voluntarily expended money for establishing a market to please the District authorities and not at the request of the defendants (shop keepers) or for their benefit, an agreement by the defendants to pay the plaintiffs in consideration of such expenditure a certain commission or articles sold through their agency in such market is one that does not come within the terms of s 2 (d) of the Contract Act, and is void for want of consideration 3 A 221 In order that a promise to grant any annuity to a person for future services be enforceable in law it is incumbent upon the promisee to show that there was some contract for future services on his part which might have been enforced by the maker of the promise 54 Ind Cas 282

Cases—54 Ind Cas 436, 2 Lah L J 306, 46 Ind Cas 121

Clause (3)—The word 'debt' can be defined as a sum payable in respect of money recoverable A I R 1932 Lah 212 An unsatisfied debt, although barred, is good consideration for a bond, by reason of this clause The word 'debt' in this clause includes judgment debt as well 14 B 390; 3 A 381, 28 C W. N 322, 26 A 363 But a Court of Wards by a promise under this clause, has no authority to pay a debt barred by limitation 19 M 255 It is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to 23 M 94 This clause applies only to a case in which there is an express promise to pay and has no application to a case where an implied promise is inferred from a mere acknowledgment 1931 A L J 56 A I R 1931 All 375, 132 Ind Cas 420, 53 A 374, 8 O W N 1210, 130 Ind Cas 702, 129 Ind Cas 281, 124 Ind Cas 243, 123 Ind Cas 820, 123 Ind Cas 90 The word limitation in s 25 (3) means limitation of time as prescribed by the law of limitation in force A liberal interpretation ought to be put on s 25 (3) 129 Ind Cas 545=53 A 374 To create a promise within the meaning of this section it is not necessary that there should be an accepted proposal reduced to writing It is enough that the writing expresses an intention to pay wholly or in part the debt referred to in it *Ibid*; 8 B 194, A W N (1881) 95, A I R 1932 All 199, A I R 1932 M 213 The promise to pay refers to a promise to pay despite the consciousness that the debt is barred 20 M L J 656, 33 M 150 Under clause (3) a barred debt is considered a good consideration for a promise to pay the new promise furnishing the measure of the creditors' right the whole of the promise, whether free or clogged with a condition gives the cause of action 16 C W N 636, see also 22 P L R 1906, 135 P W R 1910 102 P K 1905 8 Ind Cas 811, 5 Ind Cas 418, 102 P R 1908, 1 B 590 30 A 268 31 A 495 8 Bom L R 644, 11 C L R 381 4 C 500, 6 B 683 18 C L J 329, 18 C L J 269, 32 M L J 422 F B, 66 P R 1917, 60 Ind Cas 514, 41 M L J 507, L R 3 A 308, 65 Ind Cas 716, 67 Ind Cas 298, 45 M 345, 86 Ind Cas 942 A I R 1932 Oudh 49, A I R 1932 All 38

Explanation (1)—142 P W R 1918, 46 Ind Cas 974

Agreement in restraint of marriage void

26 Every agreement in restraint of the marriage of any person, other than a minor,\* is void

Notes—Where it was mutually agreed between the fathers of newly married couple that the girl's father should advance money for the boy's education and the boy's

\* Exceptions 2 and 3 of this section having been repealed by Act IX of 1932 has been omitted

167=1 Lah 157 But a condition imposing a restraint on marriage is valid A.I.R. 1932 Oudh 108 Sections 23 26 and 27 do not exhaust all instances or agreements contrary to public policy 80 Ind Cas 560

27 Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, Agreement in restraint of trade void is to that extent void

*Exception 1*—One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the good will from him carries on a like business therein provided that such limits appear to the Court reasonable, regard being had to the nature of the business \*

Notes—Under this section, whether the restraint is general or partial unqualified or qualified if it is in the nature of a restraint of trade, it is void 13 C W N 388=9 C L J 216 The language of this section is wider than the law on the subject as laid down in English cases *Ibid* To succeed in the defence under this section one must establish that the suit is one to enforce an agreement whereby some one is restrained from exercising a lawful profession trade or business of any kind 7 Bom L R 107=29 B 107 on appeal from 6 Bom L R 23, see also 23 W R 146, 23 B 103, 16 C W N 534 Whether a contract is in restraint of trade within the meaning of this section is a question to be determined on construction of the contract in each case 13 M 472 The validity of a contract is generally determined by the law of the place where it is made 1 M 134 For other cases, vide 8 C 809, 11 C 545, 19 C 765, 13 M 475 Note, 15 M 79, 17 C 320 Under this section an agreement which is in restraint of a lawful profession, trade or business is void 16 C W N 534 A combination amongst the traders of a particular locality to do business only amongst their numbers to pay part of the profits to a common fund etc and levying of certain penalty for the breach of the conditions does not offend against the provisions of ss 23 and 27 and is not actionable *per se*, merely because it brings profits to them and indirectly hurts a rival in trade 53 A 316 An agreement in restraint of trade is only void to the extent to which it restrains trade or business and not in its entirety A I R 1931 All 539

Cases—18 Ind Cas 183, 13 A L J 281, 21 C W N 979, 34 Ind Cas 754, 41 M L J 657=48 I A 508, 48 C 1030, 1 Bur L J 72, 64 Ind Cas 794

28 Every agreement, by which any party thereto, is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent

*Exception 1*.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred

*When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit †*

\* Vide foot note on previous page

† In s 28, the italicized clause of exception (2) has been repealed by the Specific Relief Act, (1 of 1877) throughout British India, except in the scheduled districts in which that Act is not in force

**Exception 2.**—Not shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration

**Notes**—This section only refers to contracts, which wholly or partially prohibit the parties absolutely from having recourse to a Court of law 1 C 466, 1 A 267 (F. B.), see also 120 P. R. 1879. Exception where the parties have agreed that no action of amount has been first decided by the Court tends to enact as nearly as may be what the law intends.

1 C 232 This section is no bar to a suit for an agreement being given to satisfy it, section 1 A 267 (F. B.) A R 741; see also 11 Ind.

Cas 756 This section contemplates the suspension permanently or temporarily of the usual remedies for the enforcement of legal rights 15 Bom L. R. 948 A clause in a contract limiting period within which to sue is void A I R 1932 Lah 169; see also A I R 931 Sind 124 This section does not make the whole agreement void but only the portion in the contract which ousts the jurisdiction of the Court 124 Ind. Cas 797 Agreement that another Court to the exclusion of Court having jurisdiction to adjudicate upon the disputes arising under the agreement of the parties is illegal 122 Ind. Cas 488

Agreements void for uncertainty

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void

### Illustrations

(a) A agrees to sell to B a hundred tons of oil. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A who is a dealer in coconut oil only agrees to sell to B one hundred tons of oil. The nature of his trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.

(d) A agrees to sell to B all the grain in my granary at Ramnagar. There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B, my white horse for rupees five hundred or rupees one thousand. There is nothing to show which of the two prices was to be given. The agreement is void.

**Notes** A. I. R. 15 ...

...  
...  
... is impossible to prove the intention of the executant 31 Ind. Cas 632 A covenant that upon expiring of terms of the lease there will be a fresh settlement between the parties is vague and uncertain 33 Ind. Cas 448 Agreement to pay rent in cash without the rate being fixed is void for uncertainty 55 Ind. Cas 482 Where a document is capable of two contrary interpretations, and practically incapable of interpretation at all, it is void for uncertainty 63 Ind. Cas 48 A contract not void merely for that reason 85 price or at a fair rate or at a proper sell at a favourable or concession and Cas 753 Contract to execute a kobala containing necessary stipulation is not vague and indefinite 104 Ind. Cas 527

30 Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made

The section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race

Nothing in this section shall be deemed to legalize any transaction connected with horse racing, to which the provisions of section 294 A of the Indian Penal Code apply

Section 294A of the Indian Penal Code not affected

and, the may for the only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time that is not a commercial transaction, but a wager on the rise or fall of the market 29 C 461=5 C W N 714 P C see also *Strachan* (1896) A C 166 5 Bom L R 503, 7 126, 11 Bom L R 997=

A suit does not actually been lost and paid on a wager 89 P R 1883 A contract for the payment of differences is a wagering contract, and as such is void 17 M 496, 18 M 308 (F B), 17 M, 480 This section does not bar a suit by a commission agent to recover money paid by him on account of bids made in his own name at the request of the defendant 17 C P L R 67, see also 80 P R 1895 Speculation does not necessarily involve a contract by way of wager, to constitute such a contract a common intention to wager is essential 42 B 863=34 M L J 305 The distinction between contracts which are legitimate and genuine trading transactions of a speculative character and contract which are simply gaming and wagering transactions is frequently a narrow one and difficult of determination even after the examination of the parties concerned, the course of the business and the nature of the contracts 53 A 190=35 C W N 841 P C Where there is a perfectly lawful contest in a game of skill the contract should be recoverable is subscribed for by the a contract is a wagering he time of the contract Mere high speculation is not sufficient to render them void as wagering contract 124 Ind Cas 453

## CHAPTER III

### OF CONTINGENT CONTRACTS

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract does or does not happen

#### Illustration

A contracts to pay B, Rs 10,000 if B's house is burnt This is a contingent contract

Notes—This agreement was that R would become a member of a sugar manufacturing company by purchase of shares in case he was appointed the sole agent

of the company for sale of sugar at a certain centre. The company was not manufacturing any sugar at the time of agreement. The terms of the agency were not settled when R signed the application for shares. The company either declined or failed to appoint R their sole agent at the said centre, and the latter went into liquidation. *Held* that there was nothing in law to prevent the company from appointing R their sole agent by settling the terms although sugar was not being

438=23 A L J 608

Enforcement of contracts contingent on an event happening

**32.** Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened

If the event becomes impossible, such contracts become void.

#### Illustrations

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life time.

(b) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

**Notes**—An agreement by a stranger to a suit promising to pay a certain sum to the pleader engaged in that suit in case of his getting a decree cannot be enforced when the case is compromised by the parties to the suit in the absence of the pleader and without his advice. The case is one of a contingent contract within this section and the event having become impossible the contract was void. *Shunker Das v Ludlam* 155 P R 1879. Where parties enter into a contingent contract dependent for its performance on a future event if the future event provided for becomes impossible contract falls through. 34 Ind Cas 461=12 N L R 19. Ante nuptial agreement is contingent contract and becomes enforceable on marriage 117 Ind Cas 242.

**33.** Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced contingent on an event not happening when the happening of that event becomes impossible and not before.

#### Illustrations

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

**Notes**—When acceptance is by telegram with condition that it would be confirmed by post if mistake found in telegram contract is complete subject to possible discovery of mistake. 67 Ind Cas 487.

**34.** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

#### Illustration

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

**Notes**—Vide 34 Ind Cas 46=12 N L R 69.

### 35 Contingent contracts to do or not to do anything if a specified un-

When contracts become void which are contingent on happening of specified event within fixed time

certain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or, if, before the time fixed, such event becomes impossible

### Contingent contracts to do or not to do anything, if a specified uncertain

When contracts may be enforced which are contingent on specified event not happening within fixed time

event does not happen within a fixed time, may be enforced by law when the time fixed, has expired, and such event has not happened, or, before the time fixed has expired if it becomes certain that such event will not happen

#### *Illustrations*

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year

Notes—In contracts under this section the specified event as a rule is independent of will of either party 70 Ind Cas 870 Sale contingent on not paying amount within certain time is contingent contract and becomes void if payment is made within that time 91 Ind Cas 330

### 36 Contingent agreement

Agreements contingent on impossible events void

the agreement at the time when it is made

#### *Illustrations*

(a) A agrees to pay B 1000 rupees if two straight lines should enclose a space. The agreement is void

(b) A agrees to pay B 1000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void

## CHAPTER IV

### OF THE PERFORMANCE OF CONTRACTS

#### *Contracts which must be performed*

### 37 The parties to a contract must either perform, or offer to perform,

Obligation of parties to contracts

their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract

#### *Illustrations*

(a) A promises to deliver goods, to B on a certain day on payment of Rs. 1000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1000 to A's representatives

(b) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B

Notes—Under this section promises bind the representatives of the promisors before performance 4 P. R. 190<sup>2</sup> Rev., see also 106 Ind Cas. 831, 91 Ind. Cas. 390 Contract by joint Hindu family manager personally is not enforceable by other members after his death 77 Ind Cas 378

38 Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract

Effect of refusal to accept offer of performance

Every such offer must fulfil the following conditions —

(1) it must be unconditional ,

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do ,

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver

An offer to one of several joint promisees has the same legal consequences as an offer to all of them

### Illustration

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality In order to make an offer of a performance with the effect stated in this section A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for and that there are 100 bales

Notes—A reasonable opportunity afforded for the examination is a reasonable limit alike for the vendor and purchaser 6 B 69 The payment of the mortgage debt to one of several co mortgagees without the concurrence of the others is not a valid discharge thereof 23 Ind Cas 8 Where the due date falls on a Sunday the custom is for the delivery to be completed on Saturday 24 Ind Cas 883-7 S L R 141 When a condition in a contract that notice should be given of the arrival of the goods by a particular ship is not an essential part of the contract failure to give such notice or a mistake in the notice given is not a breach of contract entitling one party to avoid it for that reason, nor can that notice itself be deemed to be an offer of performance within the meaning of this section 29 Ind Cas 712 The tender under this section without notice is not a discharge from the running mortgage

R 1917

before

top the

running or interest 1931 M W N 1220 A conditional tender could not amount to a valid tender 130 Ind Cas 817 = A I R 1931 Nag 91 Refusal of cheque on the ground that it is not accompanied by deposit in Court 1930 Oudh 208 , but see A I R 624 Interest 1 Ind Cas 637 refused 90 16 Ind Cas 844 Generally, the vendor is under no obligation to see that the purchaser takes delivery within time all that he has to do is to offer delivery assistance to the purchaser in taking delivery the promisee an offer or performance of a at the proper time and place and when the performance, the offer must be to perform at the place named in the contract 46 Ind Cas 497

39 When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly



*Illustrations*

(a) A, singer, enters into a contract with B the manager of a theatre, to sing at his theatre two nights in every week during the next two months and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer enters into a contract with B the manager of a theatre to sing at his theatre two nights in every week during the next two months and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now signify his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

**Notes**—This section confers on the party to a contract the right to put an end to the contract in case of default on the part of the other party to the contract to perform his promise in its entirety but the person aggrieved in such a case may choose not to avail himself of the right. But if he does not avail himself of the right, there is nothing in the law which says that the contract must still be treated as having been cancelled. 9 M L T 479, see also 35 P L R 593, 90 Ind Cas 52. As to the meaning of refusal, vide 3 C L J 249=33 C 477. This section does not apply to a transaction which is not a contract based on mutual promises or an agreement to convey, but is an actual conveyance of immovable property. 2 B 547. This section only enacts what was the law in England and the law of India, before the Act was passed. 4 C 75. see also 34 B 197—11 Bom L R 335=2 Ind Cas 475.

*By whom contracts must be performed*

**40** If it appears from the nature of the case that it was the intention of the parties to any contract that any promise Person by whom promise is to be performed contained in it should be performed by the promisor himself such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

*Illustrations*

(a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another, and if A dies before the time appointed for payment his representatives must perform the promise or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

**Notes**—Specific performance requiring contract for purchase of immovable property can be claimed against legal representative and the remedy does not die with the party who agrees to purchase. 120 Ind Cas 240.

Effect of accepting performance from third person

**41** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

**Notes**—Under this section the plaintiff's lien for the unpaid purchase money cannot be enforced when the lien was satisfied by payment made by a third party. 17 Ind Cas 288, see also 39 A 178 P C, 112 Ind Cas 491.

**42** When two or more persons have made a joint promise, then, Devolution of joint liabilities (unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death, of any of them, his representative jointly with the survivor or survivors and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

**Notes**—Rule of survivorship among joint tenants is modified by ss 42 and 45 122 Ind Cas 404. On misappropriation of public trust by manager or her members are jointly and severally liable to repay with interest amount used in family business 85 Ind Cas 2.

38 Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract

Effect of refusal to accept offer of performance

Every such offer must fulfil the following conditions —

(1) it must be unconditional,

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do,

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver

An offer to one of several joint promisees has the same legal consequences as an offer to all of them

#### Illustration

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section A must bring the cotton to B's warehouse, on the appointed day under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for and that there are 100 bales

Notes—A reasonable opportunity afforded for the examination is a reasonable limit alike for the vendor and purchaser 6 B 692 The payment of the mortgage debt to one of several co mortgagees without the concurrence of the others is not a valid discharge thereof 3 Ind Cas 8 Where the due date falls on a Sunday the custom is for the delivery to be completed on Saturday 24 Ind Cas 883 7 S L R 141 When a condition in a contract that notice should be given of the arrival of the goods by a particular ship is not an essential part of the contract failure to give such notice or a mistake in the notice given is not a breach of the contract nor can it at once be taken as a repudiation of the contract meaning of this section payment of interest 38 Ind Cas 461 Mortgagees could not be compelled to accept of a tender of the principal and interest by a mortgagor 10 Ind Cas 461

C 624 Interest ceases to run when valid tender is improperly refused 55 Ind Cas 637 Tender by cheque if not refused is valid 116 Ind Cas 844 Generally, the vendor is under no obligation to see that the purchaser takes delivery within time, all that he has to do is to offer delivery at the proper time and place, and when the performance, the offer must be to perform at the place named in the contract 46 Ind Cas 497

39 When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly

**44** Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors

**Notes**—The section means, generally, that a release to one of several contractors does not discharge the co contractors and applies as well to a discharge after breach, as to a release before breach 4 C 336=3 C L R 546 A joint promisor, whose liability to the promise was kept alive beyond three years from the date of the promissory note, and who was consequently compelled to pay a decree of the Court more than his proportion of the debt to the promisee, can sue another joint promisor for contribution, though the decree exonerated that other joint promisor from payment, on the ground that the debt against him was barred by limitation 16 M L T 569 Although under certain circumstances one of the several joint tenants may be made liable for the whole rent, yet when the claim for the arrear of rent against some of the heirs of the original tenants is barred the remaining heirs can not be made separately liable for the entire rent 48 Ind Cas 536 It is doubtful if a discharge by one of two joint payees is valid and binding on the other 36 M 544

**45** When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract the right to claim performance rests, as between him and them with them during their joint lives and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors and, after the death of the last survivor, with the representatives of all jointly

#### *Illustration*

A, in consideration of 5000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified B dies The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly

**Notes**—An objection by the defendant that one of the several joint promisees cannot sue alone to enforce a payment of a debt due to them jointly is valid 156 P R (1839) F B One of several joint mortgagees cannot give a valid discharge without the consent of the others 81 Ind Cas 416 The representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt, which one of the deceased 10 P R 1906, 1 Cas 586 One joint creditor can, discharge of the claims of himself 42 Ind Cas 408, see also 44 Ind Cas 627, 54 Ind Cas 273, but see 41 M 437, 56 Ind Cas 463, 55 Ind Cas 841, 63 Ind Cas 745, 63 Ind Cas 87, 3 Lah L J 502, 4 Lah L J 23, 71 Ind Cas 951

#### *Time and Place for Performance*

**46.** Where, by the contract, a promisor is to perform his promise, without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time

**Explanation**—The question, "what is a reasonable time?" is in each particular case, a question of fact

**Notes**—The question as to what is reasonable time is one of fact 10 M L T 496 Ordinarily in agreements for sale of property time is not of the essence of the contract but it is open to a party if it was not originally of the essence to make it of such essence, by service of notice 95 Ind Cas 614=A I R (1925) Nag 43,

**43** When two or more persons make a joint promise, the promisee may,

Any one of joint promisors may be compelled to perform in the absence of express agreement to the contrary, compel any one 'or more'\* of such joint promisors to perform the whole of the promise

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract

Each promisor may compel contribution

Sharing of loss by default in contribution

If any one of two or more joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares

**Explanation** — Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal

### Illustrations

(a) A, B and C jointly promise to pay D 3000 rupees D may compel either A or B or C to pay him 3000 rupees

(b) A, B and C jointly promise to pay D the sum of 3000 rupees C is compelled to pay the whole A is insolvent but his assets are sufficient to pay one half of his debts C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B

(c) A, B and C are under a joint promise to pay D 3000 rupees C is unable to pay anything and A is compelled to pay the whole A is entitled to receive 1,500 rupees from B

(d) A, B and C are under a joint promise to pay D 3000 rupees A and B being only sureties for C C fails to pay A and B are compelled to pay the whole sum They are entitled to recover it from C

**Notes** — Under this section which deals with the substantive law, the creditor gets a right to proceed against any one of his joint debtors and such right must be exercised before the creditor brings his suit 53 P R 1896 Under this sec

a joint debtor has no right to have his co-contractors joined as defendants so far as the liability under a contract is concerned the section makes all joint contracts joint and several 22 A 307 = A W N 1900 73 The principle of this section applies to the case of the members of a partnership firm being sued on a contract of the firm 6 B 700 A promissory note can in no way prove

independent of  
is unaffected by  
several one at  
persons jointly

ce of any agreement to the  
it is open to the plaintiff  
release of a joint debtor does

his co-judgment  
judgment Full  
hand v Alwar  
liberty to realise  
he cannot bind  
dues from the

other debtors 57 Ind Cas 844 The mere fact, that a suit could lie against one of the two joint promisors, could alter the fact that the original liability of them was incurred not on his own account only, but jointly with another and so one of result in the nature of the dealings taken as a whole being altered 45 Bom 129

\* Substituted by XII of 1891

**44** Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors

**Notes**—The section means, generally, that a release to one of several contractors does not discharge the co contractors and applies as well to a discharge after breach, as to a release before breach 4 C 336=3 C L R 546 A joint promisor, whose liability to the promise was kept alive beyond three years from the date of the promissory note, and who was consequently compelled to pay a decree of the Court more than his proportion of the debt to the promisee, can sue another joint promisor for contribution, though the decree exonerated that other joint promisor from payment, on the ground that the debt against him was barred by limitation 16 M L T 569 Although under certain circumstances one of the several joint tenants may be made liable for the whole rent, yet when the claim for the arrear of rent against some of the heirs of the original tenants is barred the remaining heirs can not be made separately liable for the entire rent 48 Ind Cas 536 It is doubtful if a discharge by one of two joint payees is valid and binding on the other 36 M 544

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#### Illustration

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#### Time and Place for Performance.

**46.** Where, by the contract, a promisor is to perform his promise, without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time

**Time for performance of promise, where no application is to be made, and no time is specified**

**Explanation**—The question, 'what is a reasonable time?' is, in each particular case, a question of fact

**Notes**—The question as to what is reasonable time is one of fact 10 M L T 496 Ordinarily in agreements for sale of property time is not of the essence of the contract but it is open to a party if it was no, to make it of the essence, by service of notice 95 Ind C 12 (1926) Nag 43,

**47** When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

*Illustration*

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

*Notes*—18 Bom L R 96=32 Ind Cas 948=40 B 517; A I R 1931 Lah 696

**48** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

*Explanation*—The question, "what is a proper time and place?" is, in each particular case, a question of fact.

**49** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

*Illustration.*

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

*Notes*—Where no specific contract exists as to the place where the payment of the debt is to be made it is clear that it is the duty of the debtor to make the payment where he receives it. 6 Bom L R 1938=30 B 167, see also 7 Bom L R 993. The Indian Contract Act makes no provision for the place of performance when no time or place is fixed and where there is no provision to perform without application. 9 Bom L R 223. Under this section the promisee has not to make any application for performance where no place is fixed. The promisee has the right of naming the place but the promisor is bound to apply to the promisee to appoint a reasonable place. 24 C 8=23 I A 119. Where in an agreement, no place is fixed for payment, a creditor has the right to fix a reasonable place. 6 S L R 181.

**50.** The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

*Illustrations*

(a) B owes A, 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B who also banks with C orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively of the sums which they owed to each other.

(c) A owes B, 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B who owes him Rs 100, to send him a note for Rs 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Notes—Reading this section along with Rule 61 of the Bengal *Touzi* Manual, where land revenue is sent to the Collector through Post office by means of a Revenue Money Order before the last day it is payable, it is a valid payment 78 Ind Cas 668=51 C 776

### *Performance of Reciprocal Promises*

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

51 When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise

#### *Illustrations*

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery

B need not pay for the goods, unless A is ready and willing to deliver them on payment

delivery

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment

Notes—A plaintiff in making a demand for the fulfilment of a contract on the but it is enough if he ly in hand in case W N 25 A vendor ready and willing to e the strict law as is a contract to the ds were to be paid payment is guilty of default 1923 Lah 363 As to the meaning of readiness and willingness vide 94

52 Where the order in which reciprocal promises are to be performed is expressly fixed by the contract they shall be performed in that order, and where the order is not expressly fixed by the contract they shall be performed in that order which the nature of the transaction requires

#### *Illustrations*

(a) A and B contract that A shall build a house for B at a fixed price A's promise to build the house must be performed before B's promise to pay for it

(b) A and B contract that A shall make over his stock in trade to B at a fixed price and B promises to give security for the payment of the money A's promise need not be performed until the security is given for the nature of the transaction requires that A should have security before he delivers up his stock

Note—In a contract consisting of reciprocal promises the failure of one party to perform his promise is a sufficient ground for the other party avoiding his 17 P R 1898 (F B)

53 When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at option of the party so prevented, and he is entitled to compensation from the other party for Liability of party preventing event on which contract is to take effect

loss which he may sustain in consequence of the non performance of the contract

### Illustration

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to do it. The contract is entitled to recover non performance. B is doing it by its

Notes—If a person makes performance of a contract impossible, he can not claim damages on the basis of a breach of contract. See Ind Cas 949

54 When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation, to the other party to the contract for any loss which such other party may sustain by the non performance of the contract

### Illustrations

(a) A hires B's ship to take in and convey, from Calcutta to the Mauritius a cargo to be provided by A. B receiving a certain freight for his conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for the loss which B sustains by the non performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work and B is bound to make compensation to A for any loss caused to him by the non performance of the contract.

(c) A contracts with B to deliver to him at a specified price, certain merchandises on board a ship which cannot arrive for a month. B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day. B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed and A must make compensation.

Notes—Where the suit is on the *hundi* alone and it is shown that the consideration for the *hundi* failed, this section requires the Court to dismiss the suit. 3 M L J 403. Where on a contract for sale of goods the seller agrees to give the buyer a delivery telegram for the goods sold the provision as to the delivery telegram is a condition of the contract and if for any reason it is broken the buyer is entitled to rescind the contract and sue the seller in damages. 43 M L J 199. In case of failure of promisor to perform part of the contract whether promisee can rescind the contract vide 30 C W N 145 P C.

55 When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract the contract does not become voidable by the failure to do such thing at or before the specified time, but the promisee is entitled

Effect of such failure when time is not essential



to compensation from the promisor for any loss occasioned to him by such failure

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so

**Notes**—This section contains certain provision as to the legal rights of parties to contracts when time is of the essence of the contract, and when it is not so, but neither in that section nor in any other legislative provision any light is thrown as to when time is to be regarded as of the essence of a contract. The doctrine connected with the subject emanates from the decisions of the English Courts of Equity 2 L B R 99 This section applies to cases where the property in the goods passed by the contract as much as to contract where the property did not pass 6 C 64=6 C L R 582 This section is intended to protect the promisee 22 M L J 477, the vendor is within the time the part of the

**56. An agreement to do and act impossible in itself is void**

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee, for any loss which such promisee sustains through the non-performance of the promise.

#### Illustrations

- (a) A agrees with B to discover treasure by magic. The agreement is void
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non performance of his promise
- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared
- (e) A contracts to act at a theatre for six months in consideration of a sum, paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void

**Notes**—According to English law, a contract to do an act which becomes impossible in law after the contract is made becomes void when the Act becomes impossible, but a contract to do an act which becomes impossible in fact does not become void, unless according to the true intention of the parties, the

8 Ind Cas 565 But this section does not apply to a case in which although the consideration of the contract is lost the performance of promise on the other side is still possible 2 M 187 Before a contract can be broken on the ground that the acts to be done have become impossible the Court must be very sure that they are physically impossible The physical impossibility must go much further than mere difficulty or need to pay exorbitant prices 17 Bom L R 1087 Mere difficulty in performing a contract or the need to pay exorbitant prices does not bring a case under this section 57 Ind Cas 636 Mere difficulty in the performance of a contract or the need to pay exorbitant prices in order to perform it does not amount to impossibility within the meaning of this section and would not excuse the performance of the contract 62 Ind Cas 815 Impossibility as an excuse for to the ability and circumstances mere economic unprofitable Ind Cas 267, 21 C W N

573, see also 130 Ind Cas 772

57 Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement

Reciprocal promise to do things legal and also other things illegal

#### Illustrations

A and B agree that A shall sell to B a house for 10,000 rupees, but that, if B uses it as a gambling house he shall pay A 50,000 rupees for it

The first set of reciprocal promises namely, to sell the house and to pay 10,000 rupees for it is a contract

The second set is for an unlawful object namely that B may use the house as a gambling house and is a void agreement

Alternative promise one branch being legal one branch being illegal 58 In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced

#### Illustration

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium

This is a valid contract to deliver rice, and a void agreement as to the opium.

Notes—Vide A I R 1931 All 589

#### Appropriation of payments.

59 Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly

#### Illustrations

(a) A owes B, among other debts 1,000 rupees upon a promissory note which falls due on the 1st June He owes B no other debt of that amount On the 1st June A pays to B 1,000 rupees The payment is to be applied to the discharge of the promissory note

(d) A owes to B among other debts the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated. The creditor is entitled to make the appropriation at all times up to the time of the trial. 92 Ind Cas 947.

60 Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Notes—The Indian Contract Act follows the ordinary rule of law in providing that when a debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. 1 A 179=2 C W N 633. The creditor after a suit by the debtor had been obtained by him a decree for the payment of the sum of Rs. 1000. The debtor had deposited with a creditor for a special purpose cannot be regarded as a repayment which the debtor can subsequently claim to have appropriated towards any other debt. 59 Ind Cas 121.

61 Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing the payment shall be applied in discharge of each proportionably.

Notes—An appropriation of payment must be made by the debtor at the time of paying and by the creditor at the time of receiving the money. If neither of them makes the appropriation the law appropriates the payment to the earliest debt. 13 A L J 908=37 A 649=30 Ind Cas 91. If a creditor has credited certain payments towards arrears of rents it is for him to show that arrears were due and what they amounted to and in the absence of evidence on these points it must be held that he was not entitled to do so. (1922) P 446. Under the section where neither party makes any appropriation payments are to be applied in the discharge of debts in order of time. 78 Ind Cas 910. A creditor can appropriate a payment made by the debtor towards payment of his debts in the absence of presumed or express intention of debtor. 1924 S 137.

Cases—41 Ind Cas 491, 84 Ind Cas 672.

8 Ind Cas 565. But this section does not apply to a case in which although the consideration of the contract is lost the performance of promise on the other side is still possible. 2 M 187. Before a contract can be broken on the ground that the acts to be done have become impossible the Court must be very sure that they are physically impossible. The physical impossibility must go much further than mere difficulty or need to pay exorbitant prices. 17 Bom L R 1037. Mere difficulty in performing a contract or the need to pay exorbitant prices does not bring a case under this section. 57 Ind Cas 636. Mere difficulty in the performance of a contract or the need to pay exorbitant prices in order to perform it does not amount to impossibility within the meaning of this section and would not excuse the performance of the contract. 62 Ind Cas 815. Impossibility is an excuse for non performance of a contract must as a general rule be a physical or legal impossibility and not merely an impossibility with reference to the ability and circumstances of the promisor, but the Courts will not regard mere economic unprofitableness as equivalent to impossibility of performance. 63 Ind Cas 267, 21 C W N 573, see also 130 Ind Cas 772.

**57** Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Reciprocal promise to do things legal and also other things illegal

#### *Illustrations*

A and B agree that A shall sell a B a house for 10 000 rupees, but that, if B uses it as a gambling house, he shall pay A 50 000 rupees for it.

The first set of reciprocal promises namely, to sell the house and to pay 10 000 rupees for it is a contract.

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**58** In the case of an alternative promise, one branch of which is legal and the other illegal the legal branch alone can be enforced.

Alternative promise one branch being illegal

#### *Illustration*

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Notes—Vide A I R 1931 All 589

### *Appropriation of payments.*

**59** Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated

#### *Illustrations*

(a) A owes B among other debts 1 000 rupees upon a promissory note which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1 000 rupees. The payment is to be applied to the discharge of the promissory note.

(d) A owes to B, among other debts the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

**Notes.**—A debt is not to be paid in discharge of a debt which has been compounded with interest, on the mortgage of property, unless the debtor has expressed his intention that his payments should be applied to the discharge of the debt. 2 C W N 633. It is hardly possible for a creditor to appropriate a payment of principal amount which was due and payable to him from the debtor, if the debtor has expressed his intention that his payments should be applied to the discharge of the debt. 26 Ind Cas 346, see also 53 Ind Cas 901=(1921) M W N 411=14 L W 391, 19 A L J 465. The debtor's intimation must synchronise with the payment but the creditor is entitled to make the appropriation at all times up to the time of the trial. 92 Ind Cas 947.

**60** Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt, actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

**Notes.**—The Indian Contract Act follows the ordinary rule of law in providing that when a debtor has omitted to indicate and there are no circumstances indicating to which of several debts a payment is to be applied, the creditor might apply it to any debt actually due and payable to him from the debtor. 26 C 39 (P C)—25 I A 179=2 C W N 633. 13 C 164. Where money was paid by a debtor to his creditor after a suit by the latter on two bonds had been dismissed and after a decree had been obtained by him on a third bond the creditor was not at liberty under this section to appropriate the payment to the satisfaction of the claim under the two bonds as there was no lawful debt actually due and payable to him from the debtor upon those bonds. 7 C P L R 57. Where both principal and interest are payable under a contract or a decree, in the absence of provision in the contract or decree and of appropriation by the debtor the creditor has the right to pay himself the interest first. 21 C W N 1055. SS 60 and 61 of the Contract Act provide a very simple code of procedure analogous in all particulars to the law of appropriation that prevails in England. 1 Par L J 474=35 Ind Cas 375. Where payments are made in liquidation of a debt and the amount due on account of interest largely exceeds the amount paid the creditor is justified in appropriating such payments towards interest. 23 C W N 534=29 C L J 305=51 Ind Cas 88. An amount deposited with a creditor for a special purpose cannot be regarded as a repayment which the debtor can subsequently claim to have appropriated towards any other debt. 59 Ind Cas 121.

**61** Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

**Notes.**—An appropriation of payment must be made by the debtor at the time of paying and by the creditor at the time of receiving the money. If neither of them makes the appropriation the law appropriates the payment to the earliest debt. 13 A L J 908=37 A 649=30 Ind Cas 9. If a creditor has credited certain payments towards arrears of rents it is for him to show that arrears were due and what they amounted to and in the absence of evidence on these points it must be held that he was not entitled to do so. (1922) P 446. Under the section where neither party makes any appropriation payments are to be applied in the discharge of debts in order of time. 78 Ind Cas 910. A creditor can appropriate a payment made by the debtor towards payment of his debts in the absence of presumed or express intention of debtor. 1924 S 137.

**Cases.**—41 Ind Cas 491, 84 Ind Cas 672.

*Contracts which need not be performed*

**Effect of novation, rescission and alteration of contract** 62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed

*Illustrations*

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his A's estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees and no new contract has been entered into.

**Notes**—This section is but a legislative expression of the common law; and its provisions do not apply if there has been a novation of the contract. The parties may make a new contract in substitution of the old, or may rescind or alter the old contract, and if they do so, the original contract need not be performed. 15 C 319. If a party to a new contract refuses to perform his promise thereunder, or if there is no completed contract, the other party is entitled to rescind it and to revert to the former consideration under the old contract. 65 P R 1888. A novation consists in the extinguishment of a former condition of indebtedness and the substitution of another and different agreement. A W N (1843) 254. This section requires the concurrence of both parties, while s. 63 refers only to unliteral acts. 29 M L J 125=2; Ind Cas 449=(1915) M W N 408. In cases of novation where the contemplated substituted security itself fails, the parties could not be taken to have intended that the liability under the original contract would also cease. 10 L W 466.

**63** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it, any satisfaction which he thinks fit.

**Promisee may dispense with or remit performance of promise**

*Illustrations*

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B and B accepts, in satisfaction of the debt, 1,000 rupees and B accepts them, in

of the whole claim  
amount of which has not  
B, and B, in satisfaction  
of the whole debt,

ed to other creditors. A makes an  
pay them, a composition \* of eight,  
Payment to B of 1,000 rupees is

**Notes**—This section not only modifies but is in direct antagonism to the law in England. 15 C 319. The section is intended to apply not to cases where the whole contract has been supplanted by a new one but to cases where the old contract subsists but there is a voluntary remission of performance of some promise in it. For example, a remission of part of the debt at the time when it becomes payable. Section 63 will not cover a case of a binding promise to

\* The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII) of 1891.

dispense with or remit performance in the future unless that waiver is made the subject of a fresh contract because then s 93 of the Evidence Act will stand in the way 54 M 889=61 M L J 556=A I R 1931 Mad 636 There can be a dispensation or remission within the meaning of this section by means of a promise alone there must be a proposal of the dispensation or remission which is accepted 5 Bom L R 684=28 B 66 This section enables the parties to a contract to dispense with or remit performance of the promise and the parties may extend the time for performance by agreement. This section does not entitle a promisee to extend the time without the consent of the promisor, with a view to claim heavier damages 18 M L T 301=(1912) M W N 436 An agreement to extend the time for the performance of a promise is one which falls under this section and is binding though without consideration 19 M 396 Under this section no consideration is necessary for agreeing to forego a portion of the rent payable 16 M L T 84 This section enables the parties to a contract to dispense with or remit performance of the promise, and the parties may extend the time of performance by agreement 27 M L J 413

64 When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise contained therein in which he is promisor.

Consequences of rescission of voidable contract

The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received

Notes—The terms 'person' and 'party' in this section, are interchangeable terms. They have reference to such a person as is mentioned in s 11 of the Act, i.e. a "person competent to contract." "Voidable contracts mentioned in this section seem to refer to such contracts as are spoken of as voidable in section 19 of the Act 26 C 381=3 C W N 463 Ss 64 and 65 of Contract Act are based on there being a contract between competent parties and are inapplicable to a case where there is not, and could not have been any contract at all 18 Ind Cas 485=98 P L R 1913 Where the defendant admitted the contract and offered to pay a certain sum in settlement of the plaintiff's claim, the plaintiff is entitled to recover that sum as the defendant has had the benefit of the same without receiving return of it under ss 64 and 65 of the Contract Act 28 Ind Cas 57 Words 'when contract becomes void' are wide enough to cover case of voidable contract avoided A I R 1932 P C 89

65 When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it

Obligation of person who has received advantage under void agreement or contract that becomes void

### Illustrations

(a) A pays B, 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise the agreement is void but B must repay A the 1,000 rupees

(b) A contracts with B, to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them

(c) A, a singer contracts with B, the manager of a theatre to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre and B in consequence rescinds the contract. B must pay A for the five nights on which she had sung

(d) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing but must refund to B the 1,000 rupees paid in advance

Notes—This section like section 64 starts from the basis of there being an agreement or contract between competent parties, and has no application to a case in

*Contracts which need not be performed*

Effect of novation, rescission and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed

*Illustrations*

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees and no new contract has been entered into.

Notes—This section is but a legislative expression of the common law; and its provisions do not apply after there has been a breach of the original contract. The parties may make a new contract in substitution of the old contract or may rescind or alter the old contract, and if they do so while the original contract is subsisting and unbroken the original contract need not be performed. 15 C 319. If a party to a new contract refuses to perform his promise thereunder, or if there is no completed 'contract' the other party is entitled to rescind it and to revert to the former consideration under the old contract. 66 P. R. 1888. A novation consists in the extinguishment of a former contract and the substitution of another and different agreement. The concurrence of both parties is necessary. 125 = 29 Ind. Cas. 449 = (1911) 11 All. 100. The substituted security must be intended that the liability under the

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63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept, instead of it, any satisfaction which he thinks fit.

*Illustrations*

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound.

(e) A owes B, 2,000 rupees, and is in an arrangement with his creditors, including annas in the rupee upon their respective demands, for a discharge of B's demand.

Notes—This section not only modifies but is in direct antagonism to the law in England. 15 C 319. The section is intended to apply not to cases where the whole contract has been supplanted by a new one but to cases where the old contract subsists but there is a voluntary remission of performance of some promise in it for example's a remission of part of the debt at the time when it becomes payable. Section 63 will not cover a case of a binding promise to

\* The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII) of 1891.



dispense with or remit performance in the future unless that waiver is made the subject will stand in the way in be a dispensation or of a promise alone there accepted 5 Bom L R contract to dispense with or remit performance of the promise and the parties may extend the time for performance by agreement This section does not entitle a promisee to extend the time without the consent of the promisor, with a view to claim heavier damages 18 M L T 301=(1912) M W N 436 An agreement to extend the time for the performance of a promise is one which falls under this section and is binding though without consideration 19 M 396 Under this section no consideration is necessary for agreeing to forego a portion of the rent payable 16 M L T 84 This section enables the parties to a contract to dispense with or remit performance of the promise, and the parties may extend the time of performance by agreement 27 M L J 413

**64** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.

Consequences of rescission of voidable contract

The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received

**Notes**—The terms "person" and "party" in this section are interchangeable terms They have reference to such a person as is mentioned in s 11 of the Act, i.e., a person competent to contract Voidable contracts mentioned in this section seem to refer to such contracts as are spoken of as voidable in section 19 of the Act 26 C 381=3 C W N 468 Ss 64 and 65 of Contract Act are based on there being a contract between competent parties and are inapplicable to a case where there is not, and could not have been any contract at all 18 Ind Cas 485=98 P L R 1913 Where the defendant admitted the contract and offered to pay a certain sum in settlement of the plaintiff's claim, the plaintiffs are entitled to recover that sum as the defendant has had the benefit of the same without receiving return of it under ss 64 and 65 of the Contract Act 28 Ind Cas 57 Words "when contract becomes void" are wide enough to cover case of voidable contract avoided A I R 1932 P C 89

**65** When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it

Obligation of person who has received advantage under void agreement or contract that becomes void

### Illustrations

(a) A pays B, 1,000 rupees in consideration of B's promising to marry C, A's daughter C is dead at the time of the promise, the agreement is void, but B must repay A the 1,000 rupees

(b) A contracts with B, to deliver to him 250 maunds of rice before the first of May A delivers 130 maunds only before that day, and none after B retains the 130 maunds after the 1st of May He is bound to pay A for them

(c) A, a singer, contracts with B, the manager of a theatre to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a

**Notes**—This section like section 64 starts from the basis of a contract between competent parties, and his

ing an agree  
to a case in

which there never was and never could have been any contract § Bom L R 421 This section provides for the restitution of any advantage received under an agreement or contract. The first branch includes not only agreements which are discovered to be void but also those which are void *ab initio* by reason of a principle of law 33 B 411=3 Ind Cas 748. The relief contemplated by this section is that the party prejudiced by mistake should be relieved from the consequences thereof 14 M L J 443, 11 A 47 P C, 2 A 173. A contract which is not in accordance with statutory requirements is no contract at all, and does not become void and is not discovered to be void in the sense of this section 46 Ind Cas 326, 35 M L J 561=44 Ind Cas 319. This section has no application where the contract embodies a purpose known to be illegal to which both sides are parties 54 Ind Cas 794.

Mode of communicating or revoking rescission of voidable contract

66 The rescission of a voidable contract, may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

67 If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non performance caused thereby.

Effect of neglect of promisee to afford promisor reasonable facilities for performance

#### Illustrations

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non performance of the contract if it is caused by such neglect or refusal.

Notes.—Where a legal practitioner is ready and willing to conduct in court the legal business of his client but is prevented from doing so, by an act or omission of his client the latter is not entitled to claim refund of the fee from the former on account of his not appearing in the case 22 P W R 1007=42 P L R 1907.

Case—26 B 504.

### CHAPTER V

#### OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

\*68 If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account

#### Illustrations

(a) A supplies B a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Notes.—(1) This section is not controlled by s 31 of the C government ward is not exempt from liability C P L R 57, but now see C P Act 1 of under an obligation to provide out of the family property the funds necessary for performing the marriage of his sister in a manner suitable to the social position of the family and its pecuniary resources. The provision made for such a purpose is necessary within the meaning of this section.

\* This section has been amended in C P by C P Act 1 of 1915

61 Ind Cas 279 This section does not apply to a case of mortgage made by the father of certain minors. When there is any thing to show it was for supplying necessaries to the minors. 81 Ind Cas 1041

Cases—31 A 325, 20 B 61, 10 O C 38, 21 C 872, 22 M 314, 50 Ind Cas 324, 64 Ind Cas 851, 9, Ind Cas 548

Re-imbursement of person paying money due by another, in payment of which he is interested 69. Person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other

### Illustration

B holds land in Bengal, on lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Notes—This section applies where one person pays money which another is bound to pay. 17 M L J 337=2 M L T 320=30 M 375. This section only applies to payments made *bonafide* for the protection of one's own interest. Though a person may be interested in the payment yet if in making the payment, he is not actuated by the

interest of the person lending the money must be such as would be recognised by law. 61 Ind Cas 278

70 Where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

### Illustrations

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

Notes—The principle enunciated by this section recognizes what may said to be a rule of conscience namely, that where one man has paid money on behalf of another, not intending to do so gratuitously and the other accepts the benefit

the sum paid by (188,) 219, A W to justify the offer, or to impose be charged did not wish to have rendered. 17 C P L R 4. If there is no agreement between a pleader and his client, the pleader can claim reasonable fees. 160 P R 1888. A person accepting the benefit when 375, (1912) M W N 936, 25 M L J 433. There is no warrant for introducing into the section the necessity of declining or accepting the benefit. 28 M L J 384=28 Ind Cas 307=2 I W 379, 40 B 646, 34 Ind Cas 54, 30 Ind Cas 223. This section does not apply to cases

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(a) A supplies B a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

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Notes.—(1) A contract Act, is not controlled by s 31 of the Contract Act, is not exempt from liability for the family property the funds necessary for the maintenance of the family in a manner suitable to the social position of the family. The provision made for such a purpose is necessary within the meaning of this section.

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61 Ind Cas 279. This section does not apply to a case of mortgage made by the father of certain minors. When there is any thing to show it was for supplying necessities to the minors. 81 Ind Cas 1041

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69. Person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other

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B holds land in Bengal, on lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Notes—This section applies where one person pays money which another is bound to pay. 17 M L J 337=2 M L T 320=30 M 375. This section only applies to payments made *bonafide* for the protection of one's own interest. Though a person may be interested in the payment yet if in making the payment, he is not actuated by the motive of protecting his own interest he cannot recover under this section. 12 C 213, 11 A 234.

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the patta for arrears under the patta is legal and s 915) M W N 643. This section does not apply to a 639 To establish liability under this section the money must be such as would be recognised

by law. 61 Ind Cas 278

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of nongratuitous act

### Illustrations

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

Notes—The principle enunciated by this section recognizes what may said to be a rule of conscience, namely, that where one man has paid money on behalf of another, not intending to do so gratuitously, and the other accepts the benefit

1001 N 1000. A person accepting the benefit when 375, (1912) M W N 936, the section the necessity of accepting the benefit. 17 M L J 384=20 Ind Cas 309=1 I W 379, 40 B 646, 34 Ind Cas 54, 30 Ind Cas 223. This section does not apply to cases

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51 Ind Cas 8,7

Responsibility of finder of  
goods

Liability of person to whom  
money is paid, or thing deli-  
vered, by mistake or under  
coercion

71 A person who finds goods belonging to  
another, and takes them into his custody, is  
subject to the same responsibility as a bailee.

72 A person to whom money has been  
paid, or anything delivered, by mistake or under  
coercion, must repay or return it

### Illustrations

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C,  
and B not knowing this fact, pays 100 rupees over again to C. C is bound to repay  
the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee,  
except upon the payment of an illegal charge for carriage. The consignee, pays the  
sum charged in order to obtain the goods. He is entitled to recover so much of the  
charge as was illegally excessive.

Notes—It is not necessary that there should be an express agreement to refund  
the money, which has been clearly paid under a mistake. 113 P R 1906, 7 C 573.  
This section in laying down that a person whom money has been paid by mistake  
or under coercion must repay it implies that the money was not really due to the  
person to whom it was paid. 43 A 272=19 A L J 41=60 Ind Cas 881.

## CHAPTER VI

### OF THE CONSEQUENCES OF BREACH OF CONTRACT

73 When a contract has been broken, the party who suffers by such  
breach is entitled to receive, from the party who  
has broken the contract compensation for any  
loss or damage caused to him thereby, which  
naturally arose in the usual course of things from  
such breach or which the parties knew when they made the contract, to be  
likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or  
damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred,  
and has not been discharged, any person injured  
by the failure to discharge it is entitled to receive  
the same compensation from the party in default  
as if such person had contracted to discharge it  
and had broken his contract.

*Explanation*—In estimating the loss or damage arising from a breach of  
contract, the means which existed of remedying the inconvenience caused by  
the non performance of the contract must be taken into account.

### Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price  
to be paid on delivery. A breaks his promise. B is entitled to receive from A, by  
way of compensation the sum if any by which the contract price falls short of the  
price for which B might have obtained 50 maunds of saltpetre of like quality at the  
time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board on the first of  
January, a cargo which A is to provide and to bring it to Calcutta the freight to be  
paid when earned. B's ship does not go to Bombay, but A has opportunities of

procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A by way of compensation, the amount if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees but breaks his promise. A must pay to B, by way of compensation, the excess if any of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat contracts with B to take a cargo of jute to Mirzapur for sale at that place, starting on a specified day. The boat owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market-price at the time when it actually arrived.

and receives payment in  
B is entitled to recover

(g) A contracts to let his ship to B for a year from the first of January for a certain price. Freight rises, and, on the first of January the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A who cannot procure other iron and B in consequence rescinds the contract. C must pay to A 20,000 rupees being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified  
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communicated to A) and is compelled to make  
compensation for breach of that contract. A must pay to B, by way of compensation,  
the difference between the contract price of the piece of machinery and the sum paid  
by B for another, but not the sum paid by B to the third person by way of compen-  
sation.

of January, in  
has contracted  
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it by B, who,  
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tion to B for the cost of rebuilding the house for the rent lost and for the compensation made to C

(m) A sells certain goods to B, in reliance upon the quality of the goods, and B, in reliance upon the quality of the goods, prove to be not a sum of money by way of compensation. A is not liable to pay the sum of money by way of compensation.

(n) A contracts to pay B the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A business A breaks his promise, and A is not responsible to B for the loss.

(q) A contracts to sell and deliver to B on the first of January certain cloth which B intends to manufacture into caps of a particular kind for which there is no demand except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation the difference between the contract price of the cloth and its market price at the time of delivery but not the profits which he expected to obtain by making caps nor the expenses which he has been put to in making preparation for the manufacture.

(r) A a ship owner contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January and B pays to A by way of deposit, one half of his passage money. The ship does not sail on the 1st of January, and B after being, in consequence detained in Calcutta for sometime and thereby put to some expense proceeds to Sydney in another vessel and in consequence arriving too late in Sydney loses a sum of money. A is liable to repay to B his deposit with interest and the expense to which he is put by his detention in Calcutta and the excess if any of the passage money paid for the second ship over that agreed upon for the first but not the sum of money which B lost by arriving in Sydney too late.

Notes.—This section not only confines the right of relief to the party who suffers but provides how his loss is to be measured what it is to include and what to exclude and what circumstances the Court must take into account in estimating the loss. Hence in cases of breach of contract it is not permissible to the aggrieved party to file a suit to recover the price of goods in dispute. Under the Indian Contract Act the aggrieved party must sell the refused goods and then seek to recover the loss if any occurring on such sale. 11 Bom L R 335, 10 Bom L R 1113, 4 Bom L R 818, 5 M L T 215, 4 Bom L R 814. The rule in *Flureau v Thornhill* and *Bain v Fothergill* that purchaser of real estate cannot recover

not the law in this country. In India in cases of breach of contract for sale of immoveable property through inability on vendor's part to make a good

medying the inconvenience caused he damages the facts of the case

the case of the amount as his wife distinction marketable, and in the latter case the price of the goods is the measure of damages

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A. I R 1931 Lah 742 Where a servant who is paid periodically leaves service suddenly without notice the matter can claim compensation for breach of contract of service 132 Ind Cas 577=A I R 1931 Lah 133 Repudiation is an absolute refusal to perform a contract A I R 1931 Rang 126

**74.\*** When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or, as the case may be, the penalty stipulated for.

*Explanation:—A stipulation for increased interest from the date of default may be a stipulation by way of penalty*

*Exception:—*When any person enters into any bail bond, recognizance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he, shall be liable, upon breach of the condition of any such instrument to pay the whole sum mentioned therein

*Explanation:—*A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested

#### *Illustrations*

(a) A contracts with B to pay B Rs 1000 if he fails to pay B Rs 500 on a given day A fails to pay B, Rs 500 on that day B is entitled to recover from A such compensation, not exceeding Rs 1000, as the Court considers reasonable

(b) A contracts with B that if A practises as a surgeon within Calcutta he will pay B, Rs 5,000 A practises as a surgeon in Calcutta B is entitled to such compensation, not exceeding Rs 5000, as the Court considers reasonable

(c) A gives a recognizance binding him in a penalty of Rs 500 to appear in Court on a certain day He forfeits his recognizance He is liable to pay the whole penalty

(d) A gives B a bond for the payment of Rs 1000 with interest at 12 per cent at the end of six months with a stipulation that, in case of default interest shall be payable at the rate of 75 per cent from the date of default This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable †

(e) A, who owes money to B, a money lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach †

(f) A undertakes to repay B a loan of Rs 1000 by five equal monthly instalments

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**Notes**—In cases of breach of contract covered by this section, the question is one of intention, and consideration is to be had as to whether the parties have ascertained the compensation due on a breach of the obligation contained therein, and as to whether the sum to be paid is "the sum named" in the contract as payable in case of breach. 16 P. R. 1887. The question whether the provision as to a higher rate of interest is to be treated as liquidated damages or as a penalty is a question of fact to be decided on a consideration of the whole instrument in each case. 51 P. R. 1879, 25 P. R. 1879. In the case of the breach of a penal contract the plaintiff is entitled under this section to reasonable compensation and not to the full amount fixed or agreed upon. 3 P. R. 1875. The question whether any provision in a document is a penalty or not is one for the Court to determine. 36 M. 229 (F. B.). Although this section was originally framed to deal with the doctrine of penalty and liquidated damages as understood in the law of England, it is in its present form comprehensive enough to include cases where there is a stipulation for payment of interest at a specified rate, if the principal or part thereof is not paid on the due date, because it covers all cases where the contract contains any stipulation by way of penalty. 21 C. L. J. 79=19 C. W. N. 775. A stipulation in the Kabuliyaat

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court should award some compensation for default at a reasonable rate. 130 Ind. Cas. 569=A. I. R. 1931 Mad. 137.

Party rightfully rescinding contract entitled to compensation

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non fulfilment of the contract.

#### *Illustration*

A a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non fulfilment of the contract.

**Notes**—If after a voidable contract has been fulfilled, one of the parties discovers facts which if known earlier would entitle him to rescind the same without legal proceedings, he is not bound to sue for a formal rescission of the same before he can claim damages. 60 P. R. 1882. An offer to settle a claim at a certain amount could not be treated as a promise to pay the amount. 42 A. 300=18 A. L. J. 377.

### CHAPTER VII.

#### SALE OF GOODS

Sections 76 to 123 have been repealed by Act 32 of 1930.

### CHAPTER VIII

#### OF INDEMNITY AND GUARANTEE

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

#### *Illustration*

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

**Notes**—The Contract Act draws a distinction between contracts of indemnity and contracts of suretyship. So far as the contract of indemnity is concerned the person who indemnifies can, on payment or discharge of the obligation sue, but the suit in the absence of any assignment can only be in the name of the promisee. In such a case there is no direct right of action on the original contract to the person

who indemnifies against the person whose contract has caused loss 49 M 156=95

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a principal debtor and a guarantor or surety, who makes himself liable for the liability of the principal debtor. The relationship may be established by an agreement between the principal debtor and the surety to which the creditor is a party. This is the contract coming under s 126. It may also be established by an agreement to which the creditor is not a party where there is a collateral contract between the

indemnity within this section of the Contract Act 46 Ind Cas 27=3 Pat L J 396=4 Pat L W. 437, see also (1902) 1 K B 778 (1894) 2 Q B 885

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover Rights of indemnity, holder from the promisor—when sued

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies

in any such suit if, in bringing

rs of the promisor, and acted

in absence of any contract

bring or defend the suit,

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Notes—Promisee can recover costs properly incurred in resisting or ascertaining the claim to which indemnity relates. Promisor can not impeach a decree passed against promisee 22 N L R 49=A I R 1926 Nag 109. In the case of a contract of indemnity, a decree passed against a promisee cannot be impeached by the promisor. Costs reasonably incurred in resisting or reducing or ascertaining the claim the assess either under e of the suit

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in "Contract of guarantee," case of his default. The person who gives the "surety," "principal debtor" guarantee is called the "surety," the person in and "creditor" respect of whose default the guarantee is given is called "the principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written

Notes—A mere recommendation by C that A should buy goods of B will not entail on C the consequences that might flow from his guaranteeing that A will not suffer any loss if he takes up B's offer of sale 97 Ind Cas 866. This section makes the word "liability" in and if that liability does 444=20 Bom L R 447=46 Ind Cas 122. A contract of guarantee can be either oral or written or again be A. L. J 1217. A rate of interest become a surety

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee

#### Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for 1 year and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards without consideration agrees to pay for them in default of B. The agreement is void.

Notes—A promise to withdraw an order of arrest against the principal debtor issued under circumstances in which nobody could cause his arrest under the order was held not to amount to a promise made for his benefit within the meaning of this section. U B R (1897—1901) Vol II 335.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

#### Illustrations

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill, but also for any interest and charges which may have become due on it.

Notes—In the absence of any contract to the contrary the liability of a surety is co-extensive with that of the principal debtor. 16 C P L R 76. In spite of the co-extensiveness laid down in this section the same legislature which there

of a mortgage debt is liable to pay interest up to the date of redemption. 78 Ind Cas 868. Under this section the death of the principal debtor does not discharge the surety from his obligation. 69 Ind Cas 557. This section only explains the quantum of a surety's obligation when the terms of the contract do not limit it and has no reference to the nature of the obligations of the principal. 63 Ind Cas 454, 19 B 697, 54 P R 1916. Anything done or any promise made for the benefit of the principal may be sufficient consideration to the surety for giving a guarantee. 23 C W N 545=50 Ind Cas 651. The liability of a surety is co-extensive with that of the principal. 53 Ind Cas 999. A creditor is not bound to exhaust his remedy against the principal before suing the surety and a suit may be maintained against the surety though the principal has not been sued. 98 P R 1919=50 Ind Cas 583. That the liability of the surety is co-extensive with that of the principal debtor. 27 Ind Cas 30.

against the principal debtor. A I R 1931 Lah 691, see also 35 C W N 986 P C, 1931 A L J 631.

Continuing guarantee

129. A guarantee which extends to a series of transactions is called a "continuing guarantee."

*Illustrations*

(a) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible to the amount of 5000 rupees for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea dealer, to the amount of £100 for any tea he may, from time to time supply to C. B supplies C with tea to the value of £100 and C pays for it to B. C with tea to the value of £100 is a continuing guarantee.

Afterwards B delivers four sacks to C which C does not pay for. The guarantee given by A was not a continuing guarantee and accordingly he is not liable for the price of the four sacks.

**Notes**—As to whether liability of surety for administrator is a continuing one, vide 31 A 56=A L J 19=1 Ind Cas 143. A license to sell liquor for a period of three years was granted to a person on the faith of a guarantee. The license was granted as a single act done once for all. The guarantee guaranteed payment of eleven instalments. *Held*, that it was not a continuing guarantee as there was no series of transactions. 96 Ind Cas 248=28 Bom L R 662=A I R 1926 Bom 46. A continuing guarantee must refer to series of transactions some of which are unknown at the time. A I R 1925 Nag 7. A continuing guarantee must refer to a series of transactions of which, when the guarantee is given some are unknown and indefinite or not certain to come into existence. The fact that the amount was payable by instalments does not make it a continuing guarantee. 1925 Nag 7. The guarantee of fidelity in a place of trust as for instance the post of Khazanchi of a bank for a fixed or determined period is not a continuing guarantee.

Ind Cas 897

Revocation of continuing guarantee

130 A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

*Illustrations*

(a) A, in consideration of B's discounting at A's request bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5000 rupees. B discounts bills for C to the extent of 2000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2000 rupees on default of C.

(b) A guarantees to B, to the extent of 10000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

**Notes**—Where a surety merely derives his liability for the purposes of pleading in suit against him such denial cannot be regarded as a notice putting an end to his liability. 30 G W N 260=A I R 1906 (P C) 32=(1926) M W N 493, A I R 1931 All 243. This section does not apply to the special contract of suretyship which is entered into by a surety to an administration bond. The fact that letters of administration have not been issued does not affect the matter. 36 Ind Cas 1000. Administration bonds under section 78 of the Probate and Administration Act is not a continuing guarantee. 4 U B R 22.

**131** The death of the surety operates, in the absence of any contract to the contrary as a revocation of a continuing guarantee, so far as regards future transactions,

Revocation of continuing guarantee by surety's death

standing or continuing does not enure to the P L R 136 Surety decree holder increases R 1925 Lah 552=91 heirs are also liable Cas 138=43 A 132

In the case of a continuing guarantee the guarantee is not revoked by the death of the guarantor 32 C I J 223 (P C), 18 A L J 976

**132.** Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of his existence

Liability of two persons primarily liable not affected by arrangement between them that one shall be surety on other's default

contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of his existence

#### Illustration

A and B make a joint and several promissory note to C. A makes it in fact as surety for B and C knows this at the time when the note is made. The fact, that A, to the knowledge of C, made the note as surety for B is no answer to a suit by C against A upon the note.

**Notes**—Upon the first of these points the Judge in the Court below has decided the case in favour of the plaintiffs. He considers that the liability upon which the drawer and acceptor of these bills have undertaken is a joint liability and that as the 132nd section of Contract Act provides that under such circumstances the plaintiffs are not to be affected by any relation of principal and surety which may exist as between the drawer and acceptor of the bills the acceptor cannot get up that relation for the purpose of discharging himself from liability more especially as by law the acceptor is liable on the bills.

in the bills, difficulty in we are of 3 C 175 at the promisor's position

**133** Any variance, made without the surety's consent, in the terms of the contract between the principal, debtor,\* and the creditor, discharges the surety as to transactions subsequent to the variance

Discharge of surety by variance in terms of contract

#### Illustrations

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract without A's consent that B's salary shall be raised and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office in which B is appointed by C and of a subsequent act the misconduct himself. A guarantees though the later A is

\* This word within quotations have been inserted by Act 24 of 1917

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3000 rupees for any oil supplied by C to B on credit. Afterwards, P the — — — — — the knowledge of A, B and C contract that for ready money, and that the payment shall between B and C. A is not liable on his guarant

A guarantees repay-  
discharged from his  
B for the money

**Notes**—For cases where there was no variation in the terms of the contract, vide 1 A L J 38, 36 C 326=1 Ind Cas 715. A surety for a stay of execution is not discharged from liability by the decree holder and judgment debtors entering into an agreement without surety's consent increasing the rate of interest and extending the time of payment. A I R 1925 Lah 552=7 Lah L J 343. As regards what amounts to variance in contract, which justifies the discharge of surety, vide A I R 1934 Lah 211. As regards what amounts to variance, vide 73 Ind Cas 353, 71 Ind Cas 783. The general clause of indemnity under which the surety waived all rights under the statute could not be read as implying any consent to the variation within this section or as entitling the plaintiffs to enforce the liability against the surety even though according to law he was discharged from such liability. 45 B 157=22 Bom L R 659. The general clause in the letter of indemnity under which the surety waived all rights under the statute could not be read as implying any consent to the variation within this section. 22 Bom L R 659=58 Ind Cas 184, see also 22 Bom L R 711. In order to determine the liability of the surety it is necessary to examine the nature and import of the recitals contained in the surety bond. 134 Ind Cas 1077. This section contemplates contracts consisting of series of transactions. When the original contract is varied the surety and not the Court is to judge whether surety will take on him burden of new contract. A I R 1932 Bom 168, see also 112 Ind Cas 843.

**134** The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.\*

#### *Illustrations*

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land, and to deliver it to C. A's performance of this contract B diverts a irrigation of A's land, and thereby, prevents B from being liable on his guarantee. C agrees to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

\* See ss 39, 53, 55, 62, 63, 66, 118, 120, *supra*

tions should therefore be read together and the omission of the creditor to sue the surety till the claim against the principal had become barred, could not have the effect of discharging the surety from his liability as such 7 B 146, U B R (1892 1896) Vol II 308, 11 A 310=A W N 1889 94, 20 N L R 140, 20 M L J 633=33 M 308=8 M L T 311=7 Ind Cas 893, 24 A 504=A W N (1902) 166 A surety is discharged if a consent decree is passed without his knowledge and consent 30 C W N 540=95 Ind Cas 409=A I R 1926 Cal 812 Where the principal debtor was expressly told by the creditor that he shall not be absolved from liability but that the amount would not be recovered from him but would be recovered from the surety the surety would not be discharged 96 Ind Cas 248=28 Bom L R 662 Surety's liability ceases after preliminary decree A I R 1925 Sind 184 A surety

of relationship  
discharging it  
entitled to contrib

ments 38 M L J 131=54 Ind Cas 750 which  
principal under O r 5 of C P Code the surety is  
discharged 44 Ind Cas 693 Where creditor allows his remedy against the principal  
to be barred surety is discharged 122 Ind Cas 189, but see 116 Ind Cas 421, 100  
Ind Cas 481

Discharge of surety when  
creditor compounds with gives  
time to or agrees not to sue  
principal debtor

135 A contract between the creditor and  
the principal debtor, by which the creditor makes  
a composition with, or promises to give time to,  
or not to sue, the principal debtor, discharges  
the surety, unless the surety assents to such con  
tract

Notes—A mere agreement between the creditor and the principal debtor, by  
which the creditor promises to give time to the principal debtor does not discharge  
the surety under this section, unless the agreement amounts to a contract 12  
unless the agreement is one enforceable by law at the instance of the debtors 22 A  
351 Where time is given without the surety's consent, the surety is not liable  
13 M 172 This section does not apply to claims, which have been decreed 9 O  
C 28 A principal debtor and his two sureties jointly and severally covenanted with  
the creditor the respondent bank that the principal debtor should repay the prin  
cipal and interest in defin  
and the sureties the latter  
principal debtor yet as be  
on the other the sureties  
so that the said sureties their heirs administrators or either of them  
shall not be discharged or exonerated by any dealings between the said  
principal debtor his heirs, executors or administrators and the said Bank  
ordered as principal debtors to the said Bank  
said principal debtor 'would have been so  
e sureties were not liable to the Bank while  
talment and that they were not in any way  
their knowledge or concurrence 5 C W N  
Bom L R 967 A mere forbearance or  
delay in suing the principal or pressing him for payment does not discharge the  
surety 55 Ind Cas 610=2 Lah L J 316 Mere forbearance on the part of a creditor  
to sue the principal debtor or to enforce any other remedy against him does not  
in the absence of any provision in the guarantee to the contrary, discharge the  
surety 23 C W N 845=50 Ind Cas 651 (P C) A surety is not exonerated from  
liability if the creditor gives time to the principal debtor in consideration of part  
payment of the debt by the latter 24 Ind Cas 864, see also A I R 1931 Lah  
617 But surety is discharged b  
T 114 The general rule that a  
in the contract between the creditor  
surety applies to a surety who is  
documents 55 B 67 The liability of a surety for judgment debtor is not discharged  
by bona fide compromise 55 B 97=32 Bom L R 1394

Surety not discharged when  
agreement made with third  
person to give time to prin  
cipal debtor

136 Where a contract to give time to  
the principal debtor is made by the creditor  
with a third person, and not with the principal  
debtor, the surety is not discharged



*Illustration*

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Notes—Vide 17 C W N 695=18 Ind Cas 876

**137** Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety

*Illustration*

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Notes—The term "mere forbearance" in this section read with section 131 means such forbearance, the legal consequence of which is not to discharge the debt becomes due

The forbearance period allowed by

, U B R (1892

9 94, 20 M L J

forbearance on the

ety 78 Ind Cas

000 The abatement of an appeal as against the principal debtor does not necessarily imply that the debt payable by him is extinguished or discharged, and in such a case liability of surety continues in spite of the abatement 54 Ind Cas. 105

**138.** Where there are co sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties.

Release of one co surety does not discharge others

Notes—Vide s 44 *supra*. The principle of this section is the same as in s 44

**139.** If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy

*Illustrations*

(a) B contracts to build a ship for C for a given sum to be paid by instalments. B becomes insolvent before the ship is completed. C for B's due performance of B the last two instal

"veral promissory note with a bill of sale of ure and apply the s the furniture, but, price is realized A

"to B for M's fidelity make up the cash A is not liable to B on

his guarantee

Notes—When it is found that the creditor has done acts which are inconsistent with the rights of the surety and has also omitted to do certain acts which his duty to the surety requires him to do and as a result of these acts and omissions the

s impaired, the surety is that he is deprived from the creditor 58 P L, tor vide, A. I R.

All 5 The liability of the surety being co-extensive with that of the principal debtor, the fact that the latter may not have sufficient means to pay interest is not an adequate ground for relieving the surety from liability 4 Lah L J 183=1922 Lah 89 A surety for several defendants in respect of any decree which may be passed against them is discharged if the plaintiff with the leave of the Court proceeds against one defendant alone exonerating the remaining defendants 60 Ind Cas 144=12 L W 539 By mere omission to sue the debtor, the surety is not discharged 1927 Lah 396

140 Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor

“ — — — — — ”

141 A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not, and, if the creditor loses or, without the consent of the surety, parts with such security the surety is discharged to the extent of the value of the security

#### Illustrations

(a) C advances to B his tenant 2000 rupees on the guarantee of A. C has also a further security for the 2000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C a creditor whose advance to B is secured by a decree receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree and then without the knowledge of A withdraws the execution. A is discharged.

(c) A as surety for B makes a bond jointly with B to C to secure a loan from C to B. Afterwards C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Notes—A mortgagee is not at liberty to appropriate the mortgaged property to the discharge of another debt due to him without the consent of the person who had stood surety for the mortgaged debt and if he does so he is bound to credit the surety with the value of the property 2 C P L R 193

142 Any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction, is invalid

Notes—Innocent misrepresentation which brings about a contract is now a ground for setting the contract aside and this rule applies to contract of every description *Ansot on Contract* p 168. According to the decisions of Courts of Equity it is not necessary, in order to set aside a contract obtained by material false representation, to prove that the party who obtained it knew at the time that the representation was made that it was false. *Per Jessel M R in Redgrave v Herd*, 20 Ch D 12, see also 33 C 178

143 Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid

Guarantee obtained by concealment invalid

*Illustrations*

(a) A engages B as clerk to collect money for him B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting C gives his guarantee for B's duly accounting A does not acquaint C with B's previous conduct B afterwards makes default The guarantee is invalid

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt This agreement is concealed from A A is not liable as a surety

**Notes**—“This law in India relating to contracts of guarantee is to be found in Chapter VIII of the Indian Contract Act of 1872 and the mistakes, which invalidate such contracts, are specified in sections 142 and 143 These mistakes must be occasioned either (a) by means of a representation made by the creditor or with his knowledge and assent concerning a material part of the transaction, or (b) by the creditor keeping silence as to a material circumstance” *Per Girdl J* in 32 C 713 at p 757, see also 15 B 585, 6 M 406

**144** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety the guarantee is not valid if that other person does not join

Guarantee on contract that creditor shall not act on it until co-surety joins

**145** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully

Implied promise to indemnify surety

*Illustrations*

(a) B is indebted to C, and A is surety for the debt C demands payment from A and on his refusal sues him for the amount A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs He can recover from B the amount paid by him for costs as well as the principal debt

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount C, the holder of the bill,

not the sum paid for costs, as there was no real ground for defending the action

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied A cannot recover from B more than the price of the rice actually supplied

**Notes**—The expression ‘whatever sum he has rightfully paid’ occurring in this section, includes not only coin, but also property of whatever kind which is parted with in lieu of money, but not the mere incurring of a pecuniary obligation to the creditor in lieu of discharge of the debt owing him 26 M 322 Even where the suit is dismissed against the principal debtor but decreed against the surety the latter can recover the decretal amount from the former  
Ind Cas 65 The act of the surety of interests within time is not such of the decree obtained against him by the creditor wrongfully within the meaning of the section 49 B 202=86 Ind Cas 883 Payment in this section means a payment in money or by transfer of property and not merely the incurring of a pecuniary obligation in shape of a bond, promissory note or acknowledgment of liability

All 5 The liability of the surety being co-extensive with that of the principal debtor, the fact that the latter may not have sufficient means to pay interest is not an adequate ground for relieving the surety from liability 4 Lah L J 183=1922 Lah 89 A surety for several defendants in respect of any decree which may be passed against them is discharged if the plaintiff with the leave of the Court proceeds against one defendant alone exonerating the remaining defendants 60 Ind Cas 144=12 L W 539 By mere omission to sue the debtor, the surety is not discharged 1927 Lah 396

140 Where a guaranteed debt has become due or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor

Notes—The word ‘invested’ dispenses with necessity of assignment 94 Ind Cas 575=A I R 1925 Bom 447 A surety paying off a debt is entitled to all the rights which the creditor had against the principal debtor

141 A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not, and, if the creditor loses or, without the consent of the surety, parts with such security the surety is discharged to the extent of the value of the security

#### Illustrations

(a) C has also C cancels discharged

(b) C a creditor whose advance to B is secured by a decree receives also a guarantee for that advance from A C afterwards takes B's goods in execution under the decree and then without the knowledge of A withdraws the execution A is discharged

(c) A as surety for B makes a bond jointly with B to C to secure a loan from C to B Afterwards C obtains from B a further security for the same debt Subsequently C gives up the further security A is not discharged

Notes—A mortgagee is not at liberty to appropriate the mortgaged property to the discharge of another debt due to him without the consent of the person who had stood surety for the mortgaged debt and if he does so he is bound to credit the surety with the value of the property 2 C P L R 193

142 Any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction, is invalid

Notes—Innocent misrepresentation which brings about a contract is not a ground for setting the contract aside and this rule applies to contract of every description Anson on Contract p 168 According to the decisions of Courts of Equity it is not necessary that the representation be material false representation, to the time that the representation was made Redgrave v Herd, 20 Ch D 12, see also 110

143 Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid

### Illustrations

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(A) A guarantee to Government for loan to be repaid by B to the amount of five rupees per ton of an old debt.

Not to say "The language is not a real one" is to say "The language is not a real one."

**144** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety the guarantee is not valid if that other person does not join

Guarantee on contract that creditor shall not act on it until co-surety joins

shall not act upon it until another person has joined in it as co-surety the guarantee is not valid if that other person does not join

145 In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety

principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully no sums which he has paid wrongfully.

### Illustrations

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs as well as the principal debt.

(b) C lends B exchange drawn by E demands payment c A, not having reason amount of the bill, not the sum paid for

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Notes — The expression 'whatever sum he has rightfully paid' occurring in this case is to be construed as referring to the 'whatever kind which is parted with by the obligor' and not to the 'pecuniary obligation to the obligee' as in the case of a surety. See 26 M 322. Even where the obligation is not a surety, the obligor is not bound to pay the sum of the debt against the surety, the obligor is bound to pay the sum of the debt against the obligee.

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Ind C15 65 The act of the suret  
of interests within time is not suc  
of the decree obtained against  
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ment in money or by transfer of property and not merely the incurring of a pecuniary obligation in shape of a bond, promissory note or acknowledgment of liability

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of 4

policy because such a course would tend to render the surety callous and the whole object of demanding the bond would be defeated 32 P L R 739, 127 Ind Cas 774

146. Where two or more persons are co sureties for the same debt or duty, either jointly or severally, and whether Co sureties liable to contribute equally under the same or different contracts and whether with or without the knowledge of each other, the co sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it, which remains unpaid by the principal debtor

Illustrations

(a) A, B and C are sureties to D for the sum of 3 000 rupees lent to E E makes default in payment A B and C are liable, as between themselves, to pay 1,000 rupees each

(b) A B and C are sureties to D for the sum of 1,000 rupees lent to E and there is a contract between A B and C that A is to be responsible to the extent of one quarter B to the extent of one quarter and C to the extent of one half E makes default in payment As between the sureties A is liable to pay 250 rupees, B 250 rupees and C 500 rupees

Notes —It is not essential to the accrual of the right of contribution that the whole of the debt in respect of the payment of which contribution is claimed should have been satisfied A right to contribution arises when the payment made by claimant for contribution or the amount realised by the sale of his property exceeds the amount of the net on liability

Derin 153 are bound by the same instrument is a suit on an implied contract 4 B 321, 10 B H C R 21

147 Co sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit

Illustrations

(a) A B and C as sureties for D enter into three several bonds each in a different penalty namely, A in the penalty of 10 000 rupees, B in that of 20 000 rupees C in that of 40 000 rupees conditioned for D's duly accounting to E D makes default to the extent of 30 000 rupees A B and C are each liable to pay 10 000 rupees

(b) A B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10 000 rupees, B in that of 20 000 rupees, C in that of 40 000 rupees conditioned for D's duly accounting to E D makes default to the extent of 40 000 rupees A is liable to pay 10 000 rupees, and B and C 15 000 rupees each

(c) A B and C as sureties for D enter into three several bonds each in a different penalty, namely, A in the penalty of 10 000 rupees, B in that of 20 000 rupees C in that of 40 000 conditioned for D's duly accounting to E D makes default to the extent of 70 000 rupees A B and C have to pay each the full penalty of his bond

Notes —According to the law of England a claim for contribution is grounded on principles of natural justice and not on mutual contract express or implied and s 146 and 147 of the Indian Contract Act

there is such a promise by one co surety to the other' 4 B 321

## CHAPTER IV.

## OF BAILMENT

**148** A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

*Explanation*—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

**Notes**—It is the pawner, and not an assignee from him that can give directions to the direction  
65 Ind Cas 6  
in a reasonable  
and decree his

**149.** The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf

**Notes**—The mere fact that the loading clerk of Railway filled up what is called the serial number in the forwarding note without doing any further would not amount to the delivery of goods to the railway by the consignor 45 A 235=1 R 4 A 97=28 A L J 474 Mere acceptance of consignment notes is not equivalent to acceptance of goods by the bailee 117 Ind Cas 311=A J R 1929 Pat 296

**150** The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks, and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

*Illustrations*

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

**151.** In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as he takes of his own goods of the same bulk, quality and value, in the same circumstances, take of his own goods of the same bulk, quality and value, in the same circumstances, as the goods bailed.

**Notes**—Where articles bailed were actually stolen from the bailor, notwithstanding he had taken care referred to in this section, he is not liable for the loss 90 P R 1900. Where a contract to carry goods by a foreign company in Calcutta, they were bound by the provisions of the Act 6 C 227=7 C L R 49. The burden of proving that the accident was unavoidable is upon the bailee. L J 121

Vol II p 337, U B R (1908) 1st Qr. Contract p 11 It is doubtful whether this section applies to carriers by rail 10 C 210=12 C L R 122 Pressure of work or avoidable accident cannot help to avoid liability 85 Ind Cas 786=A I R 1925 Cal 737 The liability of the Railway administration for the loss or destruction or deterioration of goods delivered to the administration to be carried on by railway is that of an ordinary bailee 2 Pat 442=72 Ind Cas 440 The liability of a hotel keeper to his guests is governed by this section and his liability is

discharge the plaintiff from proving want of due diligence, or (expressing it other wise) negligence on the part of the bailee or his servants 20 Bom L R 735=27 C I J 615=46 Ind Cas 319=23 M L T 376 (P C), see also A I R 1932 Cal 257, 108 Ind Cas 691 The liability of a steamer company in respect of goods delivered for carriage is that of an insurer If therefore there was shortage in weight, the steamer company would be liable 41 Ind Cas 387 Plaintiff had deposited certain money with the defendant for safe custody The defendant put his money into a bank in his own name The bank having failed plaintiff sued to recover the money from the defendant There was no evidence to show that the defendant had any doubt as to the solvency of the bank at the time he made the deposit His own money was in the same bank Held that the defendant's conduct showed that he took exactly the same care of the plaintiff's money as he did of his own It could not be said that the defendant used or intended to use the money for his own purposes Therefore the plaintiff was not entitled to recover the amount from the defendant 36 Ind Cas 31 Where plaintiff entrusted defendant with money which the latter placed along with his own money in a box which was left unlocked and on the money being lost the plaintiff sued for recovery Held that the defendant was liable as he did not take that amount of care as a man of ordinary prudence would have taken of his own money 25 Ind Cas 939 The duties and liabilities of a common carrier by sea are governed in India by principles of the English law on that subject and that notwithstanding some general expression in the chapter of bailments a common carrier's responsibility is not within the Contract Act A I R 1931 Sind 124 Railway is not liable if the requirements of s 151 Contract Act are fulfilled 112 Ind Cas 197 Where the omission to take precautions is deliberate and such as a man of ordinary prudence would take the company is liable 111 Ind Cas 792 A ship owner can protect himself by express contract from liability for the negligence of himself or his servants 106 Ind Cas 470

**152** The bailee, in the absence of any special contract, is not responsible

Bailee when not liable for  
loss, &c of thing bailed

erioration of the  
amount of care

**Notes**—When goods entrusted to Railway for carriage are lost the burden of proving that loss of such goods is not due to negligence of Railway lies on the Railway 91 Ind Cas 963 A common carrier by sea can according to the law of India, contract out of his common law liability for the negligence of himself or of his  
indition must be expressed in clear, express  
378 The word "loss" is used in the section  
of the goods as distinct from any loss to the  
is not liable for non delivery if he takes  
the care of a prudent man 112 Ind Cas 736

Termination of bailment by  
bailee's act inconsistent with  
conditions

**153** A contract or bailment is voidable  
at the option of the bailor, if the bailee does  
any act with regard to the goods bailed, inconsis-  
tent with the conditions of the bailment

#### Illustration

A lets to B, for hire, a horse for his own riding B drives the horse in his carriage  
This is, at the option of A, a termination of the bailment



**Notes**—Where a pledgee, having power to sell for default, takes over as if upon a sale to himself, the property pledged without the authority of the pledgor but crediting its value in account with him this act, though an authorized conversion does not put an end to the contract of pledge, so as to entitle the pledgor to have the property back without payment 19 C 373 (P C)

**Liability of bailee making unauthorised use of goods bailed** 154 If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them

### *Illustrations*

(a) A lends a horse to B for his own riding only B allows C, a member of his family, to ride the horse C rides with care but the horse accidentally falls and is injured B is liable to make compensation to A for the injury done to the horse

(b) A hires a horse in Calcutta from B expressly to march to Benares A rides with due care but marches to Cuttack instead The horse accidentally falls, and is injured. A is liable to make compensation to B for the injury to the horse

**Effect of mixture, with bailor's consent of his goods with bailee's** 155 If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced

156 If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture

### *Illustration*

A bails 100 bales of cotton marked with a particular mark to B B without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark A is entitled to have his 100 bales returned and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods

### *Illustration*

A bails a barrel of Cape flour worth Rs 45 to B B without A's consent mixes the flour with country flour of his own worth only Rs 25 a barrel B must compensate A for the loss of his flour

158 Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment

**Repayment by bailor of necessary expenses** 159 The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose But, if, on the faith of such loan made for a specified time

**Restoration of goods lent gratuitously**

or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

**160.** It is the duty of the bailee to return or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished

Return of goods bailed on expiration of time or accomplishment of purpose

**Notes**—If the bailee has not returned or delivered according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished, the bailee is bound to return or deliver the goods as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. If an article is hired for a particular purpose and there is a breach of warranty there is no liability to pay the hire, the bailee can leave the article where it is and gives notice to the bailor that there is a breach of warranty. He is not bound to return it to the bailor. 45 B 1017=25 Bom L R 403. The bailee or his representative after his death is bound to return the goods bailed on expiry of the term of the bailment, and would be liable for conversion of the goods from the time when he refuses to return them on a proper demand by the bailor. 34 Ind Cas 297, see also 83 Ind Cas 151. Under section 160 it is the duty of the bailee to return or deliver the goods according to the reasonable directions also to directions by consignee if his name is on the bill of lading. J 1169.

**161** If, by the default of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time

Bailee's responsibility when goods are not duly returned

**Notes**—If by the default of the bailee the goods are not returned, delivered or tendered at the proper time he is responsible to the bailor for loss, destruction or deterioration of the goods from the time. 28 C W N 1041. The responsibility of the commissioners of the Rangoon port for the goods in their possession is that of a bailee as defined by ss 151, 152 and 161 of the Contract Act. 132 Ind Cas 545=A I R 1931 Rang 9. The responsibility of a railway administration in India is no less than it would be in England and as regards delivery, the liability of a railway company is expressly governed by s 161. 27 N L R 230=A I R 1931 Nag 29.

**162** A gratuitous bailment is terminated by the death either of the bailor or of the bailee

Termination of gratuitous bailment by death

**Notes**—The Contract Act is not an exhaustive Code with reference to the law of bailments. Bailments are of two kinds voluntary and involuntary. Where a depository dies and the subject of the deposit passes into the hands of his heir the latter becomes an involuntary bailee. 26 C W N 772. On death of bailee his estate is liable for loss caused to bailor in respect of goods bailed and the heir is a constructive trustee. 127 Ind Cas 867.

**163** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

Bailor entitled to increase or profit from goods bailed

### Illustration

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

**Notes**—Where shares in a company, were pledged the company issued fresh shares and allotted them to the old share holder taking the call money from

the yearly dividend payable on the old shares, on which they had resolved to pay a fixed interest of 6 per cent per annum *Held* that the new shares were "increase of profit" within this section and the pledgee must return them to pledgor along with the old shares 49 B 223=86 Ind Cas 363 P C

**164** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them

Bailor's responsibility to bailee:

**165** If several joint owners of goods bail them the bailee may deliver them back to, or according to the directions of one joint owner without the consent of all, in the absence of any agreement to the contrary

Bailment by several joint owners

**166** If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery

Bailee not responsible on re delivery to bailor without title

**Notes**—Where one L who was both a warehouseman and a cotton merchant used to be financed in the latter business by the defendant bank which did not know that he was a warehouseman (though this fact was known to a man in their employ whose duty it was to obtain information for the bank with regard to their customers, and who appeared to have been in partnership with L or in collusion with him) and L was in the habit of pledging cotton with the bank to secure his account for cash advances and cash credits and of with drawing parcels of cotton so pledged when and as he disposed of them in the course of his business either having an account sufficient to cover his liability to the Bank or else substituting other cotton for the cotton withdrawn, and some cotton deposited by plaintiff with L as warehouseman was pledged by L with the Bank, and the cotton after being in the Bank's custody for some time was sold by L and passed out to him or to his order no claim having been made by the plaintiff to the cotton in the interval *Held* in a suit by the plaintiff that the fact that the Bank parted with the cotton deposited with them to or to the order of the person by whom it was deposited, without notice of any claim by any other person afforded a complete defence to the suit 17 C W N 358=24 M L J 176=40 I A 1=37 B 122 P C

**167.** If a person, other than the owner, bails goods to another person, the bailor is not responsible to the owner for any loss which the owner may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them

Right of third person claiming goods bailed

**168** The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he may retain the goods against the owner until he receives such compensation, and where the owner has offered a specific reward for the return of goods lost the finder may sue for such reward, and may retain the goods until he receives it

Right of finder of goods,

owner, but he may retain the goods

May sue for specific reward offered

the goods until he receives it

**169** When a thing which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value

**170** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

### Illustrations

(a) A delivers a rough diamond to B a jeweller, to be cut and polished which is accordingly done, B is entitled to retain the stone till he is paid for the services he has rendered

(b) A gives cloth to B, a tailor, to make into a coat B promises A to deliver the coat as soon as it is finished and to give A three months' credit for the price B is not entitled to retain the coat until he is paid

**Notes**—If the custody of goods does not involve the exercise of any labour or skill, a bailee will not in the absence of any express agreement be entitled to retain the goods till paid for his custody 60 P R 1885

**171** Bankers factors, wharfingers, attorneys of a High Court, and policy brokers, in respect of goods bailed to them in accordance with a contract to the balance but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect

**Notes**—The lien of bankers is only in respect of general balance of accounts 33 M 53=5 Ind Cas 845=8 M L T 83 Liens are of two kinds general or particular A general lien is the right to retain the property for a general balance of accounts A particular lien is a right to retain property for a charge on account of labour employed or expenses bestowed upon the identical property detained Only bankers, factors wharfingers attorneys or policy brokers can claim a general lien under this section 13 B 314 The word factor in India as in England means an agent entrusted with the possession of goods for the purpose of selling them for his principal 92 Ind Cas 724=A I R 1926 Oudh 202=27 Cr L J 328 Money in hands of Bank can be subject of banker's lien 95 Ind Cas 358 A *Nattakast chetty* in the Madras Presidency is a banker within this section and is, 39 M L J 135=59 Ind Cas 475 sale and who had made advances as consent of the owners 55 Ind Cas 1 rights of creditor indicated—one is mere right of retention in the other specific property in the chattel is created 1927 Lah 408 In the absence of a contract to the contrary a bailee cannot sell the goods pledged and if he sells, he loses his lien A I R 1930 Sind 36=122 Ind Cas 388

### Bailments of Pledges

**172** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" The bailor in this case is called the "pawnor" The bailee is called the "pawnee"

**Notes**—The mere taking of goods as security for money lent would not make the lender a pawn broker To show that a person comes within the definition of pawn broker it must be proved that he carries on the business of lending money he holds himself out to lend money 50 4 L B R 8=6 Cr L J 118 charge vide 50 B 547=96 Ind 118 provided by this section for by only method for creating security thereon, transferring their possession In such cases where there was an intention to create a security a security, equity gives effect to it 22 Cr L J 201=131 Ind Cas 723 The pawn is

is not an equitable mortgage. It is a security intermediate between a simple loan and a mortgage which wholly passes the property in the thing conveyed. 33 Ind Cas 891, see also *Carter v Wake* (1876) 4 Ch D 60, = 46 L J Ch 841, *Backhouse v Charlton* (1878) 8 Ch D 449, *In re Richardson Shillito v Hobson* (1885) 30 Ch D 396, *Halliday v Holgate* (1867) 3 Ez 299

**173** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but the pawnee's right of retainer for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

**Notes.**—A pawn is not an equitable mortgage. It is a security intermediate between a simple loan and a mortgage which only passes the property in thing conveyed. 33 Ind Cas 891. It is essential to the contract of pawn that the thing pledged should be actually or constructively delivered to the pawnee. The pawnee acquires a special property in the thing pledged. 33 Ind Cas 891.

**174** The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

**Notes.**—It is an implied term of every contract of bailment or deposit that the goods bailed or deposited shall be returned on demand and the failure to return them is a breach of contract. If a demand for the return of the goods is not complied with the possession of the bailee or deposittee becomes unlawful and the owner may sue in detinue but it is also open to them to sue in contract or in tort. 55 Ind Cas 45.

Pawnee's right as to extra ordinary expenses incurred

**175** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

**176.** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

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should be arranged before law and that due notice of all details should be given to the pawnor, all that the law intends is that the pawnee should give the pawnor a reasonable time within which to exercise his right of redemption and proceed to sell if the property be not redeemed. His right is analogous to that of a seller's right to resell the goods sold and the two rights must be exercised in more or less the same method. 40 All 522 = 16 A L J 390 = 45 Ind Cas 462. This section gives a clear right to the pawnee to institute a suit independently of the pawn. 33 Ind Cas 891. To effect a pledge of government securities, it is necessary to endorse them, as mere delivery without endorsement gives no property in them for purposes of negotiation or sale. 33 Ind Cas 891.

pawnee wishes to exercise  
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- ssarily mean that a sale

**170** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

### Illustrations

(a) A delivers a rough diamond to B a jeweller, to be cut and polished which is accordingly done, B is entitled to retain the stone till he is paid for the services he has rendered

(b) A gives cloth to B, a tailor to make into a coat B promises A to deliver the coat as soon as it is finished and to give A three months' credit for the price B is not entitled to retain the coat until he is paid

**Notes**—If the custody of goods does not involve the exercise of any labour or skill a bailee will not in the absence of any express agreement be entitled to retain the goods till paid for his custody 60 P R 1835

**171** Bankers factors, wharfingers, attorneys of a High Court, and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain as a security for such balance, goods bailed to them unless there is an express contract to that effect

**Notes**—The lien of bankers is only in respect of general balance of accounts 33 M 53=5 Ind Cas 845=8 M L T 83 Liens are of two kinds, general or particular A general lien is the right to retain the property for a general balance of accounts A particular lien is a right to retain property for a particular balance of account factors or expenses bestowed upon the identical goods 33 M 53=5 Ind Cas 845=8 M L T 83 The word factor in India means a person entrusted with the possession of goods for the purpose of selling them 33 M 53=5 Ind Cas 845=8 M L T 83 Money in hands of Bank can be subject of banker's lien 95 Ind Cas 358 A banker within this section and is entitled to retain goods bailed to him for a general balance of account 39 M L J 135=59 Ind Cas 475 sale and who had made advances as a condition of the loan 55 Ind Cas 100 rights of creditor indicated—one is a right of retention in the other specific property in the chattel is created 1927 Lah 408 In the absence of a contract to the contrary a bailee cannot sell the goods pledged and if he sells he loses his lien A I R 1930 Sind 36=122 Ind Cas 388

### Bailments of Pledges

**172** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" The bailor is in this case called the "pawnor" The bailee is called the "pawnee"

**Pledge** 'pawnor and pawnee defined

**Notes**—The mere taking of goods as security for money lent would not make the lender a pawn broker To show that a person comes within the definition of pawn broker it must be proved that he carries on his business as a pawn broker on the security of goods pledged 1927 Lah 408 As regards difference between pledge and mortgage 417=A I R 1926 I 100 The hypothecation of loose chattels is the only method for creating security thereon They may be hypothecated without transferring their possession In such cases the only question that arises is whether there was an intention to create a security and if there was an intention to create a security equity gives effect to it 22 C W N 758=44 Ind Cas 211 An oral or written hypothecation is permitted under the law in India A I R 1931 Rang 201=131 Ind Cas 723 The pawn is

is not an equitable mortgage. It is a security intermediate between a simple loan and a mortgage which wholly passes the property in the thing conveyed. 33 Ind Cas 891, see also *Carter v Wake* (1876) 4 Ch D 605=46 L J Ch 841, *Backhouse v Charlton* (1878) 8 Ch D 449, *Inre Richardson, Shillito v Hobson* (1885) 30 Ch D 396, *Halliday v Holgate* (1867) 3 Ez 299.

**173.** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

**Notes**—A pawn is not an equitable mortgage. It is a security intermediate between a simple loan and a mortgage which only passes the property in thing conveyed. 33 Ind Cas 891. It is essential to the contract of pawn that the thing pledged should be actually or constructively delivered to the pawnee. The pawnee acquires a special property in the thing pledged. 33 Ind Cas 891.

**174.** The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

**Notes**—It is an implied term of every contract of bailment or deposit that the goods bailed or deposited shall be returned on demand and the failure to return them is a breach of contract. If a demand for the return of the goods is not complied with, the possession of the bailee or depositee becomes unlawful and the owner may sue in detinue but it is also open to them to sue in contract or in tort. 55 Ind Cas 45.

Pawnee's right as to extraordinary expenses incurred

**175.** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

**176.** If the pawnor makes default in payment of the debt, or performance, Pawnee's right where pawnor makes default

... may sell the thing it due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

**Notes**—This section requires a notice only when the pawnee wishes to exercise to bring a suit upon the debt as 970. This section does not information of the actual date "notice of the sale" means an t necessarily mean that a sale should be arranged before law and that due notice of all details should be given to the pawnor, all that the law intends is that the pawnee should give the pawnor a reasonable time within which to exercise his right of redemption and proceed to sell if the property be not redeemed. His right is analogous to that of a seller's right to resell the goods sold and the two rights must be exercised in more or less the same method. 40 All 522=16 A L J 390=45 Ind Cas 462. This section gives a clear right to the pawnee to institute a suit independently of the pawn. 33 Ind Cas 891. To effect a pledge of government securities, it is necessary to endorse them, as mere delivery without endorsement gives no property in them for purposes of negotiation or sale. 33 Ind Cas 891.

**170** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

### Illustrations

(a) A delivers a rough diamond to B a jeweller, to be cut and polished which is accordingly done, B is entitled to retain the stone till he is paid for the services he has rendered

(b) A gives cloth to B, a tailor, to make into a coat B promises A to deliver the coat as soon as it is finished and to give A three months credit for the price B is not entitled to retain the coat until he is paid

**Notes**—If the custody of goods does not involve the exercise of any labour or skill a bailee will not in the absence of any express agreement be entitled to retain the goods till paid for his custody 60 P R 1885

**171** Bankers factors, wharfingers, attorneys of a High Court, and policy brokers may in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain, as a security for such balance, goods bailed to them unless there is an express contract to that effect

**Notes**—The lien of bankers is only in respect of general balance of accounts 33 M 53=5 Ind Cas 845=8 M L T 83 Liens are of two kinds, general or particular A general lien is the right to retain a particular lien is a right to retain employed or expenses bestowed upon factors wharfingers attorneys or in this section 13 B 314 The work entrusted with the possession of his principal 92 Ind Cas 724 Money in hands of Bank can *Nattakkatt chetty* in the Madras therefore entitled to a bankers lien 43 M 747=39 M L J 135=59 Ind Cas 475 A factor to whom goods had been consigned for sale and who had made advances as against them is not entitled to sell without the assent of the owner 66 Ind Cas 671=11 L W 1 Distinction between lien and mere right of retention in the other specific Lah 408 In the absence of a contract to the contrary pledged and if he sells he loses his lien A I

### Bailments of Pledges

**172** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" The Pledge "pawnee" and bailor is in this case called the "pawnee" The pawnee defined bailee is called the pawnee

**Notes**—The mere taking of goods as security for money lent would not make the lender a pawn broker To show that a person comes within the definition of pawn broker it must be proved that he carries on that business on the security of goods pledged on such security and is

As regards difference between

Cas 417=A I R 1926 hypothecation of loose chattels is not the only method for creating security thereon They may be hypothecated without transferring their possession In such cases the only question that arises is whether there was an intention to create a security and if there was an intention to create a security equity gives effect to it 22 C W N 758=44 Ind Cas 211 An oral or written hypothecation is permitted under the law in India A I R 1931 Rang 201=131 Ind Cas 723 The pawn is



## CHAPTER X

## AGENCY

*Appointment and authority of agents*

**182** An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'.

**Notes**—Agency need not be created expressly by any written document and can be inferred from the circumstances and the conduct of the parties. A I R 1931 All 372. There is no relation of principal and agent between two sub-contractors. A I R 1930 Lah 1062. Where evidence of witnesses showed that the contract was not simply for the purchase of grain by the plaintiffs for the defendant but a contract to purchase the goods and they hold them for the defendant and sell them upon his instructions at such times and in such lots as he might think fit. *Held* the transactions may be properly regarded as a contract of agency carrying with it the rights to indemnity. Cas 143=1923 Lah 1. of goods and who is principal for the his employment.

Bank as agent the other branches do not become agent 1927 Lah 592

**183** Any person who is of the age majority according to the law to which he is subject and who is of sound mind; may employ an agent.

**Notes**—A person who appoints a minor as agent can not repudiate the agency on the ground of minority of the agent.

**184** As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

**Notes**—When a minor, who was a member of a firm consisting of himself and his father applied for shares in a Bank and paid an advance with the application whereupon shares were duly allotted to the firm by the Bank. *Held* that under this section the minor was competent to act on behalf of the firm and that it accordingly became liable on the shares. 17 P L R 1918=38 P W R 1918=45 Ind Cas 17. A minor agent is not responsible for loss caused by the negligence of his guardian. An infant cannot be made liable for a tort arising out of a contract where the contract is not binding upon him and where the so called tort consists merely in negligence on the part of his guardian. 43 Ind Cas 923.

**185** No consideration is necessary to create an agency.

**Notes**—114 Ind Cas 321

Agent's authority may be expressed or implied. **186** The authority of an agent may be expressed or implied.

**Notes**—By mere direction by C to A to pay money to B B is not necessarily agent of C. A I R 1925 Cal 541. Where an agent endowed with the widest powers and authorised to buy and sell property to deal with government and to pay the latter did not repudiate that the principal was bound by the loan. 39 Ind Cas 225=116 Ind Cas 618.

**187** An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

\* But see the Indian Registration Act (XVI) of 1908 and the Code of Procedure (Act V of 1908)

*Illustration*

A owns a shop in Serampur, living himself in Calcutta and visiting the shop occasionally. He has the habit of ordering goods from C in the name of A's funds with the understanding of paying for them out from C in the name of A.

**Notes**—In order to make the husband liable for the goods supplied to the wife, it is necessary to prove that the relationship of principal and agent existed between them or that the conduct of the husband was such as to make him liable.

It does not relieve him of the liability. 4 C 110 Ind Cas 817, 99 Ind Cas 748

**188.** An agent having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

**Extent of agent's authority**—An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

*Illustrations*

(a) A is employed by B residing in London to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purposes of recovering the debt and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials and hire workmen, for the purposes of carrying on the business.

**Notes**—Where an agent has authority to make contract for the purchase of goods, he has authority to make contract for the sale of the goods so purchased, if it is necessary for the purpose of the contract. It is as useful to the principal as it has an implied authority to enter into transactions which are necessary or reasonable for the protection and preservation of the interest of the heirs of the deceased and such authority continues till it is revoked by the heirs. 60 Ind Cas 739=3 Lah L J 265. The general rule is that an agent has no authority to borrow money on account of principal so as to render the latter responsible to the lender unless he has been expressly authorised or it can be proved that the principal has previously sanctioned such a course of dealing on the part of the agent or has subsequently adopted and ratified the loan. 36 Ind Cas 968. An agent to process purchaser has no authority to enter into a contract of sale. 77 Ind Cas 558.

**189.** An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

**Agent's authority in an emergency**

purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

*Illustrations*

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

**Notes**—Power of attorney—Construction of—Authority of manager. 10 Ind Cas 895, 13 Ind Cas 705=39 C 568. Where an agent borrows for business of principal

and the business is benefited thereby the principal is bound to pay the debt 1927 Oudh 44 Where the principal does not send money in time, nor instructs the agent, the agent has authority to settle at market price 1927 Lah 493

### *Sub Agents*

190 An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade When agent cannot delegate a sub agent may, or, from the nature of the agency, a sub agent must be employed

Notes—Agent for sale—Appointment of sub agent—Contract—Right to implement—Lien of agent—Retainer 1923 Rang 84 see also 39 M 365 42 Ch D 424, 1911 A C 105, 1912 A C 673

191 A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business 'Sub agent' defined of the agency

Notes—Authority to appoint sub agent may be presumed from facts and the nature of the agency 77 Ind Cas 920

192 Where a sub-agent is properly appointed, the principal is, so far as regards third persons represented by the sub agent and is bound by, and responsible for his acts as if he were an agent originally appointed by the principal Representation of principal by sub agent properly appointed

Agent's responsibility for sub-agent The agent is responsible to the principal for the acts of the sub agent

The sub agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong Sub agent's responsibility

Notes—Where the defendants are sub agents of A & Co who are the agents of the plaintiffs under this section there is no privity of contract between the defendants and the plaintiffs 27 M L J 501, 26 Ind Cas 822 The liability of an agent to the principal extends to sub agent's fraud 43 Ind Cas 699=19 Bom L R 948, 127 Ind Cas 529, 126 Ind Cas 473

193. Where an agent, without having authority to do so, has appointed a person to act as a sub agent, the agent stands towards such person in the relation of a principal to an agent and is responsible for his acts both to the principal and to third persons, the principal is not represented by, or responsible for the acts of the persons so employed, nor is that person responsible to the principal Agent's responsibility for sub-agent appointed without authority

Notes—Where an agent is employed to conduct business and the custom of the trade empowers him in the conduct of such business to employ a sub agent or where the nature of the business is such that he must employ a sub agent, he has authority to do so 43 Ind Cas 699=19 Bom L R 948

194 Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency has named another person accordingly such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him Relation between principal and person duly appointed by agent to act in business of agency

### *Illustrations*

(a) A directs B his solicitor to sell his estate by auction, and to employ an auctioneer for the purpose B names C, an auctioneer to conduct the sale C is not a sub-agent, but is A's agent for the conduct of the sale

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent but is solicitor for A.

Notes—63 P. R. 1874; 43 Ind. Cas. 692 (703)=19 Bom. L. R. 948; 1927 Lah. 562; 120 Ind. Cas. 284; 121 Ind. Cas. 536

**195** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

#### *Illustrations*

(a) A instructs B a merchant, to buy a ship for him. B employs a shipbroker, who makes the choice of a ship. The ship is lost; B is not, but the broker is, responsible. B, in this course, employs an auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

#### *Ratification.*

**196** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Notes—The rule, which is recognised in this section is that ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier. 10 Bom. L. R. 230=12 C. W. N. 393. This power of ratification is confined in cases where the agent acts on behalf of the principal and not on his own behalf. 34 Ind. Cas. 760=30 M. L. J. 497, see also 16 Ind. Cas. 950, 68 Ind. Cas. 787, 28 Ind. Cas. 145, 35 I. A. 48, 48 Ind. Cas. 759, 3 A. 832. For a valid ratification, knowledge of the facts of the transaction is necessary.

Ratification may be express or implied.

#### *Illustrations*

(a) A, who has no authority, contracts with B on his own account.  
(b) A, who has no authority, contracts with B on the name of A.

Notes—This section lays down that a ratification may be express or implied from the conduct of the person on whose behalf the act is done.

Knowledge requisite to valid ratification.

**198.** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Notes—For a valid ratification it must be proved that the principal and knowledge of all the essential facts of the transaction. 19 C. W. N. 56=25 Ind. Cas. 56,

A I R 1930 P C 278, 127 Ind Cas 868 A ratification implies an intention to ratify 1927 Mad 478 A ratification is different from consent 100 Ind Cas 855

Effect of ratifying unauthorized act forming part of a transaction 199 A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Notes—A principal cannot ratify a transaction in part and repudiate it in part 19 C W N 56=25 Ind Cas 274

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

#### Illustrations

(a) A, not being authorized thereto by C, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by A, so as to make C, liable for damages for his refusal to deliver

(b) A holds a lease from A terminable on three months' notice. C an unauthorized person gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A

Notes—Where the only objection to the grant of a *melchurth* is that it was granted without proper authority it can be subsequently ratified by the person who has power to grant it 73 Ind Cas 376

#### Revocation of Authority

201 An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed;—  
 Termination of agency by the agent renouncing the business of the agency, or by the business of the agency being completed;—  
 complete mind; of any unsound provisions

Notes—Where the special business for which the agency had been created was completed as soon as the agency then is ship comes to an end agency is terminated by the agent renouncing the business of the agency or by the business of the agency being completed 28 M L J 140=26 Ind Cas 740 Where there is revocation of authority or any renunciation of the business of agency by the agent there is no termination of the agency A I R 1931 All 372

202 Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest

#### Illustrations

(a) A gives authority to B to sell A's land and to pay himself out of the proceeds, the debts due to him from A. A cannot revoke this authority nor can it be terminated by his insanity or death

(b) A consigns 1000 bales of cotton to B who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority nor is it terminated by his insanity or death

Notes.—An agency for sale of goods does not terminate on receipt of the price by the agent, inasmuch as under s 218 there is a subsequent

(b) A authorizes B a merchant in Calcutta to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent but is solicitor for A.

Notes—63 P. R. 1874, 43 Ind. Cas. 699 (703)=19 Bom. L. R. 948, 1927 Lah. 562, 120 Ind. Cas. 284, 121 Ind. Cas. 536.

195 In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

#### Illustrations

(a) A instructs B a merchant, to buy a ship for him. B employs a ship-surveyor to make the choice. The ship is lost, B is not, but the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

#### Ratification.

196 Where acts are done by one person on behalf of another, but with out his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Notes—The rule which is recognised in this section is that ratification in the proper sense of the term is used with reference to the law of agency is applicable only to acts done on behalf of the ratifier. 10 Bom. L. R. 230=12 C. W. N. 393. This power of ratification is confined in cases where the agent acts on behalf of the principal and not on his own behalf. 34 Ind. Cas. 760=30 M. L. J. 497 see also 16 Ind. Cas. 950, 68 Ind. Cas. 787, 28 Ind. Cas. 145, 35 I. A. 48, 48 Ind. Cas. 759, 3 A. 83. For a valid ratification, knowledge

Ratification may be expressed or implied.

197 Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

#### Illustrations

(a) A, owner of a ship, employs B, a merchant, to charter a ship for his own use. B, without A's knowledge, employs C, a merchant, to charter a ship for his own use.

(b) If B, in the above case, employs C, a merchant, to charter a ship for his own use, B's conduct implies a ratification of the loan.

Notes—This section lays down that a ratification may be express or implied from the conduct of the person on whose behalf the act is done. The acts relied upon as proving ratification however must be clearly inconsistent with a denial of liability. 48 Ind. Cas. 959. There is no inference of ratification where the unauthorised act is not repudiated. 52 Ind. Cas. 414 but see 31 Ind. Cas. 216=21 M. L. J. 551. Communication to the other party completes the ratification. 38 M. 997.

Knowledge requisite to valid ratification.

198 No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Notes—For a valid ratification it must be proved that the principal and knowledge of all the essential facts of the transaction. 19 C. W. N. 56=25 Ind. Cas. 56,

A I R 1930 P C 278, 127 Ind Cas 868 A ratification implies an intention to ratify 197 Mad 478 A ratification is different from consent 100 Ind Cas 855

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Notes—A principal cannot ratify a transaction in part and repudiate it in part 19 C W N 56=25 Ind Cas 274

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#### Illustrations

(a) A not being authorized thereto by C, demands, on behalf of B the delivery of a chattel, the property of B, from C, who is in possession of it This demand cannot be ratified by A, so as to make C, liable for damages for his refusal to deliver

(b) A holds a lease from A, terminable on three months notice C an unauthorized person gives notice of termination to A The notice cannot be ratified by B, so as to be binding on A

Notes—Where the only objection to the grant of a *melcharth* is that it was granted without proper authority it can be subsequently ratified by the person who has power to grant it 73 Ind Cas 376

#### Revocation of Authority

201 An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed; or by the expiration of the time for which it was constituted; or by the death of either party, or by the insanity or death of the agent; or by the bankruptcy of the agent.

Notes—Where the special business for which the agency had been created was completed as soon as the drafts were despatched in accordance with the instructions, the agency then is *ipso facto* terminated under this section and the fiduciary relationship comes to an end 79 P R 1916=171 P W R 1915 Under this section an agency is terminated among other ways by the principal revoking his authority or by the agent renouncing the business of the agency or by the business of the agency being completed 28 M L J 140=26 Ind Cas 740 Where there is revocation of authority or any renunciation of the business of agency by the agent there is no termination of the agency A I R 1931 All 372

202 Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest

#### Illustrations

(a) A gives authority to B to sell A's land and to pay himself out of the proceeds, the debts due to him from A A cannot revoke this authority, nor can it be terminated by his insanity or death

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances A cannot revoke this authority nor is it terminated by his insanity or death

Notes—An agency for sale of goods does not terminate on receipt of the price by the agent, inasmuch as under s 218 there is a subsequent

obligation on the part of the agent to account for the sums and to pay them to the principal nor does it terminate when the principal obtains knowledge of the agent's breach of duty 12 A 541 As to when a revocation can be made under this section see 24 B 403 = 2 Bom. L. R. 778 Where the mortgagor puts the mortgage into possession with power to appropriate profits towards interest, such authority being given to the mortgagee in consideration of the loan to the mortgagor the authority could not be terminated under this section *Shev Lon v Hlo Gye*, 9 L. B. R. 172 = 47 Ind. Cas. 133 An agent selling cloth and entitled to retain part of price as remuneration, has no interest in cloth unsold within the meaning of this section A I R 1932 Nag. 31 Cancellation of power of attorney not complying with terms mentioned therein is illegal A I R 1932 Mad. 70

**203.** The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal

**Notes**—Where authority is conferred on an agent by two or more principals jointly the authority may be revoked by one and it is sufficient if the notice of revocation is given by one of the principals 18 C I J 621, *Bristow v Taylor* 2 Stark 50, see also 24 B 403, 17 B 542

**204** The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency

#### *Illustrations*

(a) A authorizes B to buy 1,000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands B buys 1,000 bales of cotton in his own name so as to make himself personally liable for the price A cannot revoke B's authority so far as regards payment for the cotton

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price A can revoke B's authority to pay for the cotton

**Notes**—A revocation of the authority of an agent may take effect in so far as third persons are concerned at a point of time when the agent himself takes effect with regard to agent himself takes effect from the time when it is so made until revocation is so made known it is proper

**205** Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause

**Notes**—Under this section, in the absence of any express contract the period of time to be implied depends on the particular circumstances of the cases 8 C W N 831 Where for proper reasons the contract of agency is terminated by the agent who agreed to buy goods in his own name deliverable at a future date, the principal is entitled to credit for the price of the goods on the date when the agency is terminated The promise of indemnity is an implied term of the contract of agency Where the principal's conduct amounts to a refusal to indemnify, the agent is justified in rescinding the agency under ss 39 and 205 of the Contract Act 9 S. L. R. 77

**206** Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to one by the other



**Notes**—A revocation is made by the principal and renunciation can be effected by an agent. Where an agent sets up an adverse title when he abandons his employment there is an implied renunciation on his part 30 C 609. What this section means is that when there is not express or implied contract that an agency should continue for any fixed period, reasonable notice must be given of the revocation or renunciation of the agency etc. 35 C W N 36.

Revocation and renunciation may be expressed or implied. **207** Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

### *Illustration*

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

**Notes**—Vide notes under section 206.

**208** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

### *Illustrations*

(a) A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards by letter revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100 rupees.

in a warehouse and directs B to sell the goods. B enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money with which B absconds. C's payment is good as against A.

(c) A directs B his agent to pay certain money to C. A dies and D takes out probate to his will. B after A's death, but before hearing of it, pays the money to C. The payment is good as against D the executor.

**Notes**—Where a person appoints an agent to admit execution of a document and revokes the authority before registration, a document registered under such circumstances is valid if the revocation is not known either to the guarantee of the document or to the registering officer 30 C 265=7 C W N 229. This section provides that the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him and so far as regards third persons, before it becomes known to them. Consequently in the view taken by the Legislature, the revocation of the authority of an agent may take effect at a point of time different from the moment when it takes effect with regard to agent himself. 22 Ind Cas 90=18 C L J 621.

**209** When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

**Notes**—Even after the death of the principal, the agent of a business man has authority to enter into transactions which are necessary or reasonable for the protection and preservation of the interest of the heirs of the deceased, and such authority continues till it is revoked by the heirs. 60 Ind Cas 739, see also 60 Ind Cas 736.

**210** The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

*Agent's duty to Principal*

211. An agent is bound to conduct the business of his principal according to the instructions of the principal in the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained he must make it good to his principal, and, if any profit accrues, he must account for it.

*Illustrations*

- (a) A an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand omits to make such investment. A must make good to B the interest usually obtained by such investments.
- (b) B a broker, in whose business it is not the custom to sell on credit sells goods of A on credit to C, whose credit at the time was very high. C, before payment becomes insolvent. B must make good the loss to A.

Notes—An agent is bound to carry out the instructions of his principal. 86 Ind Cas 567=7 Lah L J 84. Where an agent has caused loss to the principal by not following his directions the agent is bound to make good the loss to his principal. If the agent has supplied goods so supplied he must never place him and his own interest agent appoints a sub-agent an ordinary prudent

212. An agent is bound to conduct the business of the agency with as much skill and diligence as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses, and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

*Illustrations*

- (a) A a merchant in Calcutta has an agent B in London to whom a sum of money is sent for a business. B becomes insolvent and the money ought to have been sent as £ 8, by variation of rate of exchange—but not further.
- (b) A, an agent, for the sale of goods having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

the agency to send him 100 bales of cotton by a certain ship. B having it in his power to send the cotton omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Notes—In India the work of the person engaged to supervise a building is not to be measured by the standard applied to architects and engineers in England.

43 C L J 479=97 Ind Cas 200 Measure of reasonableness between commission agent and principal is not that laid down in s 91 A I R 1915 Mad 46=47 M L J 31\*

Agent's account

213 An agent is bound to render proper accounts to his principal on demand

Notes—This section lays down that the agent is bound to render accounts to his principal but it is nowhere laid down in the Act that it is the duty of the principal to render accounts to agent to keep account self from the duty of accounts without att<sup>o</sup> which the items of disbursements are supported 52 C 766=90 Ind Cas 944 6 C 754, 32 C 719, 43 C 248, but see 13 C W N 696 24 C W N 110 Under this section, an agent is under a statutory obligation to render accounts to his principal but not *vice versa*. The mere fact that the principal has kept accounts does not entitle the agent to ask for accounts 78 Ind Cas 959 120 Ind Cas 100

214 It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions

Agent's duty to communicate with principal

Notes—An agent specially authorised to buy or sell at the best rate cannot defer carrying out an order until he has communicated the rate of the day to his principal 50 Ind Cas 146

215 If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him

Right of principal when agent deals on his own account in business of agency without principal's consent

### Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A on discovering that B has bought the estate for himself may repudiate the sale if he can show that B has dishonestly concealed any material fact or that the sale has been disadvantageous to him

(b) A directs B to sell A's estate. B on looking over the estate before selling it finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A on discovering that B knew of the mine at the time he bought the estate may either repudiate or adopt the sale at his option

sell his principal's goods for a fixed price, previous consent of the latter it is complete the transaction under the circumstances Bom L. R. 779=34 B 792=3 Ind Cas

contract is void at the option of the principal 119 Ind Cas 837 Purchase or sale by without disclosing the fact is not *ipso facto*

216 If an agent, without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction

Principal's right to benefit gained by agent dealing on his own account in business of agency

### Illustrations

A directs B, his agent to buy a certain house for him. B tells A, it cannot be bought, and buys the house for himself. A may on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

**Notes**—This section is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business relates. Where the agent, without the knowledge of the principal, has dealt with the business on his own account instead of on account of the former, the principal is free to exercise that right or no. 34 B 292=3 Ind Cas 801=1 Bom L R 779 see also 16 M 238.

**217** An agent may retain out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

**Notes**—T  
account of his  
due to him

'business' in this section means a continuing business or the same business as that for which the agent had been agent before. 49 P R 1835. In case of insolvency of the principal the agent can retain the money which he has deposited with the principal. 15 L W 201 (P C). The agent is entitled to a lien or retainer upon money of his principal which are in his hands, for all expenses properly incurred. 77 Ind Cas 970.

**218** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal

**Notes**—Under this section the agent is no doubt bound to pay the principal the sums received on his account but it cannot be said that, until he does so, the agency is not determined because the business of agency is not completed. 28 M L J 140=26 Ind Cas 740. The principal can sue for accounts the sub agent appointed by him for collecting rents though the sub agent was to pay over the collections to the agent. 104 Ind Cas 704.

**219** In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act, but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold or although the sale may not be actually complete.

When agent's remuneration becomes due

**Notes**—Where an agent is employed for an agreed commission to sell certain property at a given price and the agent succeeds in finding a purchaser at the stipulated price, but the principal declines to sell the agent is entitled to reasonable remuneration for his work and labour. 14 Ind Cas 981=15 C L J 315, *Prickett v Badger* 7 C B (N S) 296, *Grogan v Smith* 7 T L R 132. If the person proposing to negotiate a loan brings the principals together and if nothing remains for him to do he is entitled to his commission. *Green v Lucas* 31 L T 731, *Prickett v Bridger* 7 C B (N S) 296, *Fisher v Drewett*, 48 L J Ex 32, see also 75 Ind Cas 193. 124 Ind Cas 35, but see *Fuller v Eames* 8 T L R 278, 16 C W N 753=11 Ind Cas 820=15 C L J 40.

Agent not entitled to remuneration for business misconducted

**220** An agent, who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

### Illustrations

(a) A employs B to recover 1,00,000 rupees from C and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security.

erty but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2000 rupees B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees and he must make good the 2000 rupees to B.

(b) A employs B to recover 1000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

**Notes**—A broker employed to sell will be entitled to his commission only when the vendor realises the price. 79 Ind Cas 750.

**221** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property whether movable or immovable of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him.

**Notes**—In the absence of any thing in the agreement between a company and its agent to exclude the operation of this section, in so far as the expenditure incurred before a winding up order came within this section, the agent is entitled to a lien, and s 149 of the Companies Act does not authorise the Court to deprive a secured creditor of possession of his security. 31 M 123. As regards lien of commission-agent, vide A I R 1926 Lah 94, 89 Ind Cas 409. An agent when he has spent monies on principal's behalf can sell his goods without his authority to realise his monies though a simple agent can not sell without such authority. 112 Ind Cas 652. An agent's lien to commission is restricted to certain specific property or things. 110 Ind Cas 23.

#### *Principal's Duty to Agent*

**222** The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

#### *Illustrations*

(a) B, at Singapur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b) B, a broker at Calcutta by the orders of A a merchant there contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

**Notes**—A suit by a commission agent against his principal is governed by Art 83 of the Limitation Act. 59 P L R 1918=46 Ind Cas 541. A broker is an agent to find a contracting party and as long as he adheres strictly to his position as broker, his contract is one of employment between him and the person who employs him and not a contract of sale or purchase with the party whom he in the course of such employment finds. 19 C W N 623=42 C 1050.

**223** Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

#### *Illustrations*

(a) A a decree holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods representing them to be the goods of B. The

officer seizes the goods and is sued by C the true owner of the goods A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions

(b) B, at the request of A, sells goods in the possession of A but which A had no right to dispose of B does not know this, and hands over the proceeds of the sale to A Afterwards C, the true owner of the goods sues B and recovers the value of the goods and costs A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses

Notes—Where money is authorizedly sent for unlawful purposes an agent can claim reduction for money  
 R 1926 Sind 40 An agent's accounts A is liable against unlawful acts which are not criminal without knowledge that such acts are unlawful 88 Ind. Cas 980. An agent cannot settle the principal's transactions when he has not been asked to make any such settlement, nor can the agent charge against principal, monies paid by him in that respect 112 Ind Cas 29

224 Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either Non liability of employer of agent to do a criminal act upon an express or an implied promise, to indemnify him against consequences of that act

#### Illustrations

(a) A employs B to beat C and agrees to indemnify him against all consequences of the act B thereupon beats C and has to pay damages to C for so doing A is not liable to indemnify B for those damages

(b) B, the proprietor of a newspaper publishes at A's request, a libel upon C in the paper and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof B is sued by C, and has to pay damages and also incurs expenses A is not liable to B upon the indemnity

Notes—It is doubtful whether this section applies to a crime committed by means of an innocent agent and which is of a nature where the presumption that the agent had a guilty knowledge either does not arise or is rebutted 88 Ind Cas 980

225 The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill  
 Compensation to agent for injury caused by principal's neglect

#### Illustration

A employs B as a bricklayer in building a house and puts up the scaffolding himself The scaffolding is unskilfully put up and B is in consequence hurt A must make compensation to B

Notes—Vide Acts XIII of 1855 and VIII of 1923

#### Effect of Agency on Contracts with Third Persons

226 Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done by the principal in person  
 Enforcement and consequences of agent's contracts

#### Illustrations

(a) A buys goods from B knowing that he is an agent for their sale but not knowing who is the principal B's principal is the person entitled to claim from A the price of the goods and A cannot in a suit by the principal set off against that claim a debt due to himself from B

(b) A being B's agent with authority to receive money on his behalf receives from C a sum of money due to B C is discharged of his obligation to pay the sum in question to B

Notes—Under the English Law where an exclusive credit is given to the agent the principal cannot be treated as in any way a party to the contract although he

may have authorised it or may be entitled to the benefit of it (1891) 1 Q B D 370 (372), 19 Q B D 110, 22 Q B D 722 Under the Indian Contract Act the principal's right to enforce a contract entered into by his agent rests on s 226 A er this sec e being no agreement

unless the relation of the defendants to the firm was that of sub agents in which case there would clearly be no priority of contract between the plaintiffs and defendants 27 M L J 501 When the third party enters into a contract with an agent in his own name for an undisclosed principal either the principal or the agent can sue upon it 130 Ind Cas 548

**227.** When an agent does more than he is authorized to do, and when the Principal how far bound, when agent exceeds authority part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal

#### *Illustration*

A, being owner of a ship and cargo authorizes B to procure an insurance for 4,000 rupees on the ship B procures a policy for 4,000 rupees on the ship and another for the like sum on the cargo A is bound to pay the premium for the policy on the ship but not the premium for the policy on the cargo

**Notes**—If an agent exceeds his authority then if the part of what he does which is within his authority can be separated from the part which is beyond his authority so much only of what he does as is within his authority is binding as between him and his principal Where the excess of the agent's authority cannot be so separated then the principal is not bound by the transaction 2 C P L R 103

**228.** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority can Principal not bound when excess of agent's authority is not separable not be separated from what is within it, the principal is not bound to recognize the transaction.

#### *Illustration*

A authorizes B to buy 500 sheep for him B buys 500 sheep and 200 lambs for one sum of 6,000 rupees A may repudiate the whole transaction

**Cases**—43 All 623, 36 Ind Cas 968

**229** Any notice given to, or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal

#### *Illustrations*

A ——— B ——— C ——— D ——— E ——— F ——— G ——— H ——— I ——— J ——— K ——— L ——— M ——— N ——— O ——— P ——— Q ——— R ——— S ——— T ——— U ——— V ——— W ——— X ——— Y ——— Z ———

from C

**Notes**—of his busin parties have the client 832 Any

employment as such would not amount to information of the fact obtained by the agent in the course of the business transacted by him as agent 89 Ind Cas 625 Knowledge of agent to the interest of principal disclosure of facts was not 3, 119 Ind Cas 23 A notice to agent is a notice 7, 125 Ind Cas 365, 119 Ind Cas 754

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal

230 In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary

Such a contract shall be presumed to exist in the following cases —

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad

(2) Where the agent does not disclose the name of his principal

(3) Where the principal, though disclosed cannot be sued

Notes—Where an agent enters into a contract as such if he has interest in the contract, he may sue in his own name 24 M 134 An auctioneer is entitled to sue for recovery of the price of goods sold against a purchaser at auction 86 P R 1884 The liability of an agent is not personal 5 C 71 The managing partner of an ancestral trading firm can alone sue 2 A L J 3=27 A 361

231 If an agent makes a contract with a person who neither knows, nor his reason to suspect, that he is an agent, his principal may require the performance of the contract, but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal he would not have entered into the contract

Notes—This section deals with the rights (a) of the principal and (b) of the third party in cases when the contract is entered into by the agent without disclosing his principal. The third party's right to repudiate the contract arises only when the principal himself makes the disclosure, it cannot arise when the disclosure is made by some other person or the information reaches him from some other source 6 Bom L R 731 The principal can sue where the Railway receipt is given in the name of agent 92 Ind Cas 1007 Partnership is not liable for partner's own debt A I R 1925 Cal 29, see also 28 C W N 824

232 Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract

#### Illustration

A, who owes 500 rupees to B sells 1000 rupees worth of rice to B. A is acting as agent for C in the transaction but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

Right of person dealing with agent personally liable



*Illustration*

A enters into a contract with B to sell him 100 bales of cotton and afterwards discovers that B was acting as agent for C. A may sue either B or C or both for the price of the cotton.

**Notes**—The liability of a principal and his agent is not joint but alternative. According to this section a person at his election may sue either or he may sue both.

1900 Cal 41, 90 Ind Cas 407, 19 Bom L R 370=40 Ind Cas 194. In a suit for hundred defendant who had signed it cannot plead that he was in reality acting for a principal though he may have added to this signature managing proprietor of so and so 115 Ind Cas 403.

**234.** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**235.** A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent is liable if his alleged employer does not ratify his acts to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

**Notes**—There is no distinction in principal between the case of a man who represents that he has authority from another when he has no authority whatever and the case of a man who represents that he has certain authority from another when the authority is of another description. 9 A L J 8. A bargain is lost in dealing with such an agent 160 P R 1882. In case of repudiation the agent is personally liable 72 Ind Cas 1011. A person who borrows representing himself to be the agent is bound to recoup the creditor if it turns out that he had no such authority to borrow 121 Ind Cas 153.

**236.** A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent but on his own account.

**Notes**—A broker acting as principal without the knowledge of the party cannot sue the plaintiff his agent, he could sue also 17 C 449, 42 C 950, 18 Q B D 708, 39 C 802, 13 Ind Cas 94=34 A 168.

**237.** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

*Illustrations*

(a) A consigns goods to B for sale and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

**Notes**—The rule that whenever one of two innocent parties must suffer by the act of a third person, he who has enabled such person to occasion the loss

sustain it' must be restricted to this that the neglect must be in the transaction itself and be the proximate and direct cause that led to the loss complained of 6 C W N 429 Where agent has borrowed but principal refuses to ratify, then creditor can sue the latter to the extent to which the money was applied to pay his legal debts, as if principal himself had originally borrowed 122 Ind Cas 444.

**238** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made or frauds committed, by agents, in matters, which do not fall within their authority, do not affect their principals

#### Illustrations

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make The contract is voidable, as between B and C, at the option of C

(b) A the captain of B's ship signs bills of lading without having received on board the goods mentioned therein The bills of lading are void as between B and the pretended consignor

**Notes**—There is nothing in this section to show that in order to render the principal liable the fraud must be committed for the benefit of the principal It is enough if the fraud is committed by the agent in the course of his business for the principal: *e* in matters falling within the scope of his authority 50, C 258=1923 Cal 157

## CHAPTER XI \*

### SCHEDULE—ENACTMENTS REPEALED *Statutes*

| No and year of Statute      | TITLE                                                                   | Extent of repeal         |
|-----------------------------|-------------------------------------------------------------------------|--------------------------|
| Stat 29 Car II, cap 3 †     | An Act prevention of Frauds and Perjuries                               | Sections 1 2 3, 4 and 17 |
| Stat 11 and 12 Vict cap 21‡ | To consolidate and amend the law relating to insolvent debtors in India | Section 42               |

#### *Acts*

| No and year of Act | TITLE                                                                                                                                                                                                                                              | Extent of repeal |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Act XIII of 1840   | An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company in cases governed by English law the provisions of the Stat 4 Geo IV, Chap 83 as altered and amended by the Stat 6 Geo IV Chap 94 | The whole        |

\* This chapter has been repealed by Act IX of 1932

† Short title 'The Statute of Frauds'—See the Short Titles Act 1896 (59 and 60 Vict c 14)

‡ The Indian Insolvency Act 1848

| No and year of Act  | TITLE                                                                                                                                                                                                                                                            | Extent of repeal |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Act XIV<br>1840     | An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat 9 Geo IV, Chap 14                | The whole,       |
| Act XX of<br>1844   | An Act to amend the law relating to Advances <i>Bonafide</i> made to Agents entrusted with goods by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat 5 & 6 Vict, c 39 as altered by this Act | The whole        |
| Act XXI, of<br>1848 | An Act for avoiding Wagers                                                                                                                                                                                                                                       | The whole        |
| Act V of 1866*      | An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India                                                                                                                                 | Sections 9 & 10  |
| Act XV of 1866      | An Act to amend the law of partnership in India                                                                                                                                                                                                                  | The whole        |
| Act VIII of 1867    | An Act to amend the law relating to Horse racing in India                                                                                                                                                                                                        | The whole        |

## THE CO-OPERATIVE SOCIETIES ACT, 1912†

### ACT NO 11 OF 1912

PASSED BY GOVERNOR GENERAL IN COUNCIL

*Received the assent of the Governor-General on the 1st March,  
1912.*

*An Act to amend the law relating to Co-operative Societies*

WHEREAS it is expedient further to facilitate the formation of Co operative Societies for the promotion of thrift and self help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law, relating to Co operative Societies, It is hereby enacted as follows —

**Object of the Legislation**—*Legislation is called for not only in order to lay down the fundamental conditions which must be observed but also with a view to giving Co operative Societies a corporate existence without resort to the elaborate* *before been drawn so as to deal* *der to be essential and its* *l terms, a wide rule making*

\* Short title, "The Policies of Insurance (Marine and Fire) Assignment Act, 1866—See the Indian Short Titles Act (XIV of 1897)

† This Act has been repealed in its application to Bombay by Bombay Act VII of 1925 in its application to Burma by Burma Act VI of 1927

power being reserved to Local Governments so that what is left to be of the nature of an experiment may be tried in each province or part of province on such lines as seem to afford most promise of success—*Statement and Objects of Reasons*

**Defects of Co-operative Societies Act of 1904**—(i) The Act of 1904 applied to societies for the purpose of Co-operation to Co-operative Societies of other distribution has led to and it is advisable that Act as now revised

(ii) In the Act of 1904 Societies were classified according as they were "Urban" or "Rural" and the principle was laid down that as a general rule rural societies should be of unlimited liability. This basis for distinction was adopted mainly because it presented a classification which has already been recommended and put in force in the institution of Co-operative Credit Societies in certain parts of India but even at the time it was criticised as unsuitable by experts, and it has in practice been found artificial and inconvenient. The real distinction is between Societies with limited and those with unlimited liability and it is proposed in the new Bill to maintain this distinction only while retaining the principle that Agricultural Credit Society must as a general rule be with unlimited liability.

(iii) The act of 1904 did not contemplate that Societies with unlimited liability should distribute profits. It is still felt that such Societies do not represent the best form of Co-operation for agricultural communities but this form of society has, in practice, been for some time in existence in several provinces, and Societies of the character though not of the orthodox type, are recognised to be capable of useful work. Although therefore it is not intended to give them undue encouragement it is proposed to legalise their existence and to permit unlimited society, with the sanction of the Local Government to distribute profits.

(iv) A cardinal principle which is observed in the organization of Co-operative Societies in Europe is the grouping of such Societies into unions and then financing by means of central Banks. This stage of Co-operation has not been fully realised or provided for in the Act of 1904 but such grouping of Societies has already been found possible in most provinces and it is now considered desirable to legalise the formation of Co-operative Credit Societies of which the members shall be other Co-operative Credit Societies—*Statements of Objects and Reasons*

### *Preliminary*

Short title and extent 1 (1) The Act may be called the Co-operative Societies Act, 1912, and  
(2) It extends to the whole of British India

**Object of the Act**—The object of the Co-operative Societies Act is to encourage thrift, self help and co-operation among the agriculturists artisans and persons of limited means and it would be impossible to attain these objects if these people for the settlement of their disputes have necessarily to undergo all the troubles and worry of an extensive and protracted litigation. In the case of a dispute between a society and member the substitutional remedy provided under the rules in the shape of a reference to the Registrar must be available and the common law remedy by an action in a Civil Court must by necessary application be deemed to have been taken away. 71 Ind. Cas. 722

### **Definitions**

2 In this Act, unless there is anything repugnant in the subject or context,—

- (a) 'by laws' means the registered by laws for the time being in force, and includes a registered amendment of the by laws  
(b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted

- (c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by laws and any rules
- (d) "officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the by laws to give directions in regard to the business of the society
- (e) "registered society" means a society registered or deemed to be registered under this Act
- (f) "registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and
- (g) "rules" means rules made under this Act

**Notes**—The definitions of some of the terms are taken from the Friendly Societies Acts, 1896, and 1908 (56 & 60 Vict c 25)

### Registration

**3** The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province or of any

The Registrar portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act

**Notes**—In this section provision has been made for investing in persons, other than Registrars the power of a Registrar—*Vile Statement of Objects and Reasons*

**4** Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability

Provided that unless the Local Government by general or special order otherwise directs—

- (1) the liability of a society of which a member is a registered society shall be limited,
- (2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited

**Notes**—Under the Indian Companies Act a foreign corporation cannot be registered *Bulkeley v Schull*, L R 3 C P 764 *Bulman v Service* (1881) A C 386

Restrictions on interest of member of society with limited liability and a share capital

**5** Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

- (a) hold more than such portion of the share capital of the society, subject to a maximum of one fifth as may be prescribed by the rules, or
- (b) have or claim any interest in the shares of the society exceeding one thousand rupees

**6** (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

- (a) reside in the same town or village or in the same group of villages, or,

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation

(2) The word 'limited' shall be the last word in the name of every society with limited liability registered under this Act

**Notes**—In this section provision is made to maintain the existing restrictions as to residence or class obligatory before registration in the case of Credit Societies and to render the existence of ten members obligatory before registration in the case of all kinds of Co-operative Societies other than those, all the members of which are themselves registered Societies. The Registrar is further given the power of decision as to the residence qualifications and to place persons of the same occupation on the same footing as persons of the same tribe or class—*Statement of Objects and Reasons*

**7** When any question arises whether for the purposes of this Act a person is an agriculturist or a non agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final

**Notes**—In these matters the decisions of the Registrar is final and on suit lies in a civil court against his decision

**Application for Registration** **8** (1) For purposes of registration an application to register shall be made to the Registrar

(2) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1), and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies by ten other members, or, when there are less than ten other members by all of them

(3) The application shall be accompanied by a copy of the proposed laws of the society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require

**Notes**—This section corresponds to section 9 of the Friendly Societies Act 1896

**9** If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by laws are not contrary to the Act, or to the rules, he may, if he thinks fit, register the society and its by laws

**Notes**—This section giving conclusive authority to the Registrar's certificate of registration as new—*Statement of Objects and Reasons*

**10** A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled

**Notes**—In *Oakes v Terquand* L R 2 H L 323 Lord Chelmsford said 'I think that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by some persons and that it is conclusive that all previous requisition have been complied with' See also (1897) A C 22, *Peel's Case*, (1867) 2 Ch 674

11. (1) No amendment of the by laws of a registered society shall be valid

Amendment of the by laws until the same has been registered under this  
of a registered society Act, for which purpose a copy of the amendment  
shall be forwarded to the Registrar

(2) If the Registrar is satisfied that any amendment of the by laws is not  
contrary to this Act or to the rules, he may, if he thinks fit, register the  
amendment

(3) When the Registrar registers an amendment of the by laws of a registered  
society, he shall issue to the society, a copy of the amendment certified by  
him, which shall be conclusive evidence that the same is duly registered

Notes.—By this section it is provided that no amendment of a rule shall be valid  
until it has been registered. In connection with a similar provision in the English  
Friendly Societies Act, in *Batley v Townrow* (1814) 4 Camp 5, Lord Ellenborough,  
observed: "The section which permits an alteration of rules, provides that such  
alteration should be subject to the review of the justices and shall have no force or  
effect until confirmed by them." So where the altered rules were never enrolled,  
the rules as altered cannot legally be acted upon *R v Godolphin*, 8 A & E 388,  
see also *R v Cotton* 15 Q B 569, *Meredith v Wittingham* 1 C B N S 216,  
*Dewhurst v Clarkson*, 3 El & Bl 194, *Smith v Galloway*, (1898) 1 Q B 71

### *Rights and liabilities of members.*

12 No member of a registered society shall exercise the rights of a

Members not to exercise member unless or until he has made such pay  
rights till due payment made ment to the society in respect of membership  
or acquired such interest in the society, as may  
be prescribed by the rules or by laws

13 (1) Where the liability of the members of a registered society

Votes of members is not limited by shares, each member shall  
notwithstanding the amount of his interest in  
the capital, have one vote only as a member in the affairs of the society

(2) Where the liability of the members of a registered society is limited  
by shares, each member shall have as many votes as may be prescribed by the  
by laws

(3) A registered society which has invested any part of its funds in the  
shares of any other registered society may appoint as its proxy, for the purpose  
of voting in the affairs of such other registered society, any one of its members

Notes.—In the absence of any regulations  
vote only whether on a show of hands or at a poll  
of a member's right to vote at a general meeting  
A shareholder's vote is a right of property which he  
propriety or impropriety of the motive is immaterial *Pender v Lushington, Ibid*  
*Prima facie*, there is no right to vote by proxy for the common law does not recog  
nize any such mode of voting But where such power is given by the Act or by the  
law a vote by proxy is allowed—*Vide Palmer's Company Law* p 172

14 (1) The transfer or charge of the share or interest of a member in

Restrictions on transfer of the capital of a registered society, shall be subject  
share or interest to such conditions as to maximum holding as  
may be prescribed by this Act or by the rules

(2) In case of society registered with unlimited liability a member shall not  
transfer any share held by him or his interest in the capital of the society or  
any part thereof unless—

a) he has held such share or interest for not less than one year, and

(b) the transfer or charge is made to the society or to a member of the  
society.

Notes.—In *Bennett v Slater*, (1899) 1 Q B C A in connection with the Friendly  
Societies Act 1875 *Vaughan Williams L J* said "In this case the question  
really raised is whether or not a policy issued by a Friendly Society governed by the

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation

(2) The word 'limited' shall be the last word in the name of every society with limited liability registered under this Act

Notes—In this section provision is made to maintain the existing restrictions as to residence or class, caste or occupation in the case of Credit Societies and to render the registration in the case of all kinds of Co-operative Societies the members of which are themselves registered, subject to the power of decision as to the residence qualifications and to place persons of the same occupation on the same footing as persons of the same tribe or class—*Statement of Objects and Reasons*

7 When any question arises whether for the purposes of this Act a person

Power of Registrar to decide certain questions

shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final

Notes—In these matters the decisions of the Registrar is final and on suit lies in a civil court against his decision

Application for Registration 8 (1) For purposes of registration an application to register shall be made to the Registrar

(a) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1), and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies by ten other members, or, when there are less than ten other members by all of them

(3) The application shall be accompanied by a copy of the proposed by laws of the society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require

Notes—This section corresponds to section 9 of the Friendly Societies Act 1896

9 If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by laws are not contrary to the Act, or to the rules, he may, if he thinks fit, register the society and its by laws

Notes—This section giving conclusive authority to the Registrar's certificate of registration as new—*Statement of Objects and Reasons*

10 A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled

Notes—L. R. 2 H. L. 323 Lord Chelmsford said "I recur to prior matters essential to registration of a memorandum of association by some of which all previous requisition have been complied with"  
*cf. Case, (1867) 2 Ch 674*



11. (1) No amendment of the by laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar

(2) If the Registrar is satisfied that any amendment of the by laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment

(3) When the Registrar registers an amendment of the by laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered

*Notes*—A rule shall be valid in the English Lord Ellenborough, es, provides that such shall have no force or effect unless they were never enrolled, *dolphin* 8 A & E 388, *ham* 1 C B N S 216, *Dewhurst v Clarkson* 3 El & Bl 194, *Smith v Galleway* (1898) 1 Q B 71

### *Rights and liabilities of members*

12 No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules or by laws

13 (1) Where the liability of the members of a registered society is not limited by shares each member shall notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by laws

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members

*Notes*—In the absence of any regulations vote only whether on a show of hands or at a poll of a member's right to vote at a general meeting A shareholder's vote is a right of property which he propriety or impropriety of the motive is immaterial *Pender v Lushington* *Ibid* *Prima facie*, there is no right to vote by proxy for the common law does not recognize any such mode of voting But where such power is given by the Act or by the law a vote by proxy is allowed—*Vide Palmer's Company Law* p 172

14 (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules

(2) In case of society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

- a) he has held such share or interest for not less than one year, and
- (b) the transfer or charge is made to the society or to a member of the society.

*Notes*—In *Bennett v Slater*, (1899) 1 Q B C A in connection with the Friendly Societies Act 1875 *Vaughan Williams L J* said "In this case the question really raised is whether or not a policy issued by a Friendly Society governed by



Notes—The Chairman of a Co operative Credit Society has no right to institute a suit against a member of the society under the Co operative Credit Societies Act in his own name. The suit should be one by the society under s 6 cl 2 of Act X of 1904. A suit in the name of the chairman must fail. 10 Ind Cas 570. A society can bring a suit for defamation. In *Hill v Hurt Davies* (1882) 21 Ch D 798, *Kay J* said "I have no doubt whatever about it. It seems to me that it is perfectly settled that any libel which is calculated to injure another man in his trade or a trading company will be restrained by injunction and although there has been, it is said no reported case which applies that law and practice to a Friendly Society or Joint Stock Company, I have not least doubt that it is as applicable to the case of a Friendly Society or Joint Stock Company as it is to the least knowledge of what goes on. Court of justice must be perfectly report and to false statements than Company and if a libel against an business can be and ought to be *fortiori* that a libel likely to injure restrained by injunction. The effect

of registering a society is to render it a body corporate. The remedy of a creditor in sections 36 and 39 and the exception right of Government under s 44 to have direct recourse against the members demonstrates the general rule to be contrary 12 Pat L T 619—A I R 1931 Part 321 (F B)

19 Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

- (a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan,
- (b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased

Notes—This section extends from one year to 18 months the term of lien on

20 A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt

**Notes**—By an application made under section 73 of the Code of Civil Procedure a registered Co-operative Society cannot enforce its prior claim within the meaning of section 19 against a judgment creditor at whose instance property is going to be sold if they have no decree or charge under section 20 of this Act. Other remedies may still be open to such society. 18 C W N 1140. So long as a Co-operative Society is carrying on business it cannot be held to be precluded from exercising the right of set off mentioned in this section. *In re Gwastry Gwenthy v Industrial and Provident Society, Dwy v. Morgan*, (1901) 2 K B 477.

**21** Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, \* 1909, nor a Receiver under the Provincial Insolvency Act, † 1907 shall be entitled to or have any claim on such share or interest.

**22** (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by laws.

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid,

(ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee heir or legal representative, as the case may be, being qualified in accordance with the rules and by laws for membership of the society or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

**Notes**—According to s 58 of the English Friendly Societies Act, 1896 in default of nomination by a member, a society may distribute any sum not exceeding one hundred pounds on his death intestate, without letters of administration amongst  
 (Or in an industrial and provident society as they may deem

The power of the committee to distribute the property is entirely discretionary, and they cannot be compelled by action to exercise their discretion. *Ewerell v Todmorden Co-operative Society* (1896) 1 Q B 461.

**23.** The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for period of two years from the date of his ceasing to be a member.

**24** The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease

**Notes**—Section 24 cannot be called to aid except in liquidation proceedings under this section. 84 Ind. Cas. 964. The provisions of this section are only operative if there has been liquidation of the registered society under section 42 of the Act. It is not open to a judgment debtor to call in aid the provisions of s. 24 as an answer to the claim of the decree holder to execute the decree. 40 C. L. J. 254.

**25.** Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein—

Register of members

(a) the date at which the name of any person was entered in such register or list as a member,

(b) the date at which any such person ceased to be a member

**Notes**—This section is based on provisions in the English Industrial and Provident Societies Act. It makes the register of members *prima facie* evidence of the date of commencement and cessation of membership. *Statement of Objects and Reasons*

**26** A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding as *prima facie* evidence of the existence of such entry and shall be admitted of the matters transactions and accounts therein recorded in every case where and to the same extent as the original entry itself is admissible

**Notes**—This section is also based on provisions in the English Industrial and Provident Societies Act. It provides for proof of entries in the books of a registered society

Exemption from compulsory registration of instruments relating to shares and debentures of registered society

**27** Nothing in section 17, sub-section (c) clauses (b) and (c) of the Indian Registration Act,\* 1908, shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immovable property, or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or

(3) any endorsement upon or transfer of any debenture issued by any such society

**Notes**—Various facilities are given in this Act to encourage Co-operative Societies

Power to exempt from income tax, stamp-duty and registration fees

**28** (1) The Governor General in Council, by notification in the Gazette of India may, in the case of any registered society or class of registered society remit—

the income tax payable in respect of the profits of the society or of the dividends or other payments received by the members of the society on account of profits,

"(2) The local Government by notification in the local official Gazette, may, in the case of any registered society or class of registered society, remit—

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable, and,
- (b) any fee payable under the law of registration for the time being in force\*.

Notes—By s 33 of the Friendly Societies Act, 1896, societies registered under that act are entitled to certain exemption from stamp duty, see also *Royal Liver Friendly Society* L R 5 Ex 78

### *Property and funds of registered societies*

Restrictions on loans 29 (1) A registered society shall not make a loan to any person other than a member

Provided that with the general or special sanction of the Registrar, a registered society may make loans to another registered society

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of movable property

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any registered society or class of registered societies

Notes—A by law of a Co operative society to the effect that the society shall not sell goods on credit to a non member cannot have the force of law but can be led in defence by vendee balance standing against him by Society to advance monies of money paid it can recover Cas 95

30 A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by laws

Notes—By this section it is made clear that a registered society is not precluded from receiving deposits from non members *Statement of Objects and Reasons*

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules, prescribe

Investment of funds 32 (1) A registered society may invest or deposit its funds—

- (a) in the Government Savings Bank, or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act 1882 or
- (c) in the shares or on the security of any other registered society, or
- (d) with any Bank or person carrying on the business of banking approved for this purpose by the Registrar, or
- (e) in any other mode permitted by the rules

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed

\* The words within quotations have been inserted by Act 38 of 1970

**Notes**—This clause allows registered societies to invest in good securities and validates investments made prior to the amendment of the law now incorporated in this section—*Statement of Objects and Reasons*

**33** No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members.

Provided that after at least one fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by laws.

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

**Notes**—After keeping a reserve of 25 p c of the profit the remainder may be distributed among the members in accordance with the rule of the society.

**34.** Any registered society may, with the sanction of the Registrar, after one fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent of the remaining net profits, to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1800.

**Notes**—This provision allowing contributions to charities is new—*Statement of Objects and Reasons*

### *Inspection of affairs*

**35** (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one third of the members hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(1) All officers and members of the society shall furnish such information in regard to the affairs of the society as the registrar or the person authorized by the Registrar may require.

**Notes**—This section allows a registrar to conduct an enquiry by deputy—*Statement of Objects and Reasons*

**36** (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society.

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

**Notes**—This provision of allowing a creditor to require an inspection is new. It is based on a similar provision in the Companies Act—*vide Statement of Objects and Reasons*

"(2) The local Government by notification in the local official Gazette, may, in the case of any registered society or class of registered society, remit—

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable, and,

(b) any fee payable under the law of registration for the time being in force".<sup>e</sup>

Notes—By s 33 of the Friendly Societies Act, 1896, societies registered under that act are entitled to certain exemption from stamp duty, see also *Royal Liver Friendly Society*, L R 5 Ex 78

### *Property and funds of registered societies*

#### Restrictions on loans

29. (1) A registered society shall not make a loan to any person other than a member.

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of movable-property

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any registered society or class of registered societies

Notes—A by law of a Co-operative society to the effect that the society shall not sell goods on credit to a non member cannot have the force of law but can be led in defence by vendee balance standing against him by Society to advance monies if money paid it can recover  
Cas 95

30 A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by laws

#### Restrictions on borrowing

Notes—By this section it is made clear that a registered society is not precluded from receiving deposits from non members *Statement of Objects and Reasons*

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules, prescribe

#### Restrictions on other transactions with non members

#### Investment of funds

32 (1) A registered society may invest or deposit its funds—

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act 1882, or

(c) in the shares or on the security of any other registered society, or

(d) with any Bank or person carrying on the business of banking, approved for this purpose by the Registrar, or

(e) in any other mode permitted by the rules

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed

\* The words within quotations have been inserted by Act 38 of 1920



Notes—This clause allows registered societies to invest in good securities and validates investments made prior to the amendment of the law now incorporated in this section—*Statement of Objects and Reasons*

**33** No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members.

Funds not to be divided by way of profit

Provided that after at least one fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by laws.

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

Notes—After keeping a reserve of 25 p c of the profit the remainder may be distributed among the members in accordance with the rule of the society.

**34.** Any registered society may, with the sanction of the Registrar, after contribution to charitable purpose one fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent of the remaining net profits, to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1800.

Notes—This provision allowing contributions to charities is new—*Statement of Objects and Reasons*

#### *Inspection of affairs*

**35** (1) The Registrar may of his own motion and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one third of the members hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

Inquiry by Registrar

(1) All officers and members of the society shall furnish such information in regard to the affairs of the society as the registrar or the person authorized by the Registrar may require.

Notes—This section allows a registrar to conduct an enquiry by deputy—*Statement of Objects and Reasons*

**36** (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society.

Inspection of books of indebted society

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

Notes—This provision of allowing a creditor to require an inspection is new. It is based on a similar provision in the Companies Act—*vide Statement of Objects and Reasons*

"(2) The local Government by notification in the local official Gazette, may, in the case of any registered society or class of registered society, remit—

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable, and,

(b) any fee payable under the law of registration for the time being in force."

Notes—By s 33 of the Friendly Societies Act, 1896, societies registered under that act are entitled to certain exemption from stamp duty, see also *Royal Liver Friendly Society*, L R 5 Ex 78

### *Property and funds of registered societies*

Restrictions on loans

29 (1) A registered society shall not

make a loan to any person other than a member

Provided that with the general or special sanction of the Registrar, a registered society may make loans to another registered society

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of movable-property.

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any registered society or class of registered societies

Notes—A by-law of a Co-operative society to the effect that the society shall not sell goods on credit to a non-member cannot have the force of law but can be

led in defence by vendee

balance standing against him

society to advance monies

two months can recover

as money order cancelling the registration of a society, the order shall take effect on the expiry of that period

(4) Where an appeal is presented within two months the order shall not take effect until it is confirmed by the appellate authority

(5) The authority to which appeals under this section shall lie shall be the Local Government

1 Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification

Notes—This section makes provision for the dissolution of a Co-operative Society. The procedure to be adopted before dissolution is also very simple

40 Where it is a condition of the registration of a society that it should

Cancellation of registration of society consist of at least ten members, the registrar may, by order in writing, cancel the registration of the

society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten

Notes—The term member does not include past members or representatives of deceased members or trustees of bankrupt members (1895) 1 Ch 663

Effect of cancellation of registration 41 Where the registration of a society is cancelled, the society shall cease to exist as a

(a)

ns of section

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order

Notes—By registration a society acquires its corporate character and when the registration is cancelled its corporate character goes with it also

42 (1) Where the registration of a society is cancelled under section 39, or section 40, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub section (1) shall have power—

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;
- (c) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants,
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne, and
- (e) to give such directions in regard to the collection and distributions of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers, are necessary for carrying out the purposes of the section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 \*

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules it shall lie to the Court of the District Judge †

(5) ‡ Orders made under this section shall, on application, be enforced as follows —

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court,
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act

Notes—Where the liquidator of a registered society passes an order such as issuing a warrant of attachment the same is not appealable 94 Ind Cas 40=A I R 1926 Nag 379 S 24 cannot be called to aid except in liquidation proceeding under this section 84 Ind Cas 977 Where the liquidator of a Co-operative Society utilizes the money standing in the credit of a member in payment of a debt of another member, the member whose money has been so utilized can sue the other member in a Civil Court for the recovery of the amount under s 42 Cl (b), Co-operative Societies Act, is no bar to such a suit Section 42 (6), of the Co-operative Societies Act, is intended to prevent the litigation in the Civil Courts in regard to the

may be  
42 (b)  
under  
"m for  
Civil

\* "shall be read as if the the case may be"

words  
were

† Act 3 of 1919 and Mad Act 10 of 1920

‡ This sub section has been modified in its application to U P and Madras vide *ibid*

37. Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may apportion the costs or such part of the costs as he may think right, between the society, the member or creditor demanding an inquiry or inspection, and the officers or former officers of the society

Notes—The party at fault should bear the cost. The award of the Registrar is like the order of a Court and can be enforced by an application to a magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business (*Vide section 18 infra*)

38 Any sum awarded by way of costs under section 37 may be recovered, on application to a magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any movable property within the limits of the jurisdiction of such Magistrate belonging to such person

Notes—To encourage Co operative Societies, this summary procedure has been provided

### *Dissolution of society*

39 (1) If the Registrar, after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society

(2) Any member of a society may, within two months from the date of an order made under sub-section (1) appeal from such order

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority

(5) The authority to which appeals under this section shall lie shall be the Local Government

I Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification

Notes—This section makes provision for the dissolution of a Co operative Society. The procedure to be adopted before dissolution is also very simple

40 Where it is a condition of the registration of a society that it should consist of at least ten members, the registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten

Notes—The term *member* does not include past members or representatives of deceased members or trustees of bankrupt members (1895) 1 Ch 663

Effect of cancellation of registration 41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(a) in the case of cancellation in accordance with the provisions of section 39 from the date the order of cancellation takes effect,

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order

Notes—By registration a society acquires its corporate character and when the registration is cancelled its corporate character goes with it also

42 (1) Where the registration of a society is cancelled under section 39, or section 40, the Registrar may appoint a competent person to be liquidator of the society

(2) A liquidator appointed under sub section (1) shall have power—

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;
- (c) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants,
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne, and
- (e) to give such directions in regard to the collection and distributions of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society

(3) Subject to any rules a liquidator appointed under this section shall, in so far as such powers, are necessary for carrying out the purposes of the section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 \*

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules it shall lie to the Court of the District Judge †

(5) ‡ Orders made under this section shall on application be enforced as follows—

- (a) when made by a liquidator by any Civil Court having local jurisdiction in the same manner as a decree of such Court,
- (b) when made by the Court of the District Judge on appeal in the same manner as a decree of such Court made in any suit pending therein

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act

Notes—Where the liquidator of a registered society passes an order such as issuing a warrant of attachment the same is not appealable 94 Ind Cas 40=A I R 1926 Nag 379 S 24 cannot be called to aid except in liquidation proceeding under this section 84 Ind Cas 997 Where the liquidator of a Co-operative Society utilizes the money standing in the credit of a member in payment of a debt of another member the member whose money has been so utilized can sue the other member in a Civil Court for the recovery of the amount under s 47 Cl (b) Co-operative Societies Act is no bar to such a suit Section 47 (6) of the Co-operative

Act regard to the  
t in respect of  
which may be  
Under s 42 (b)

a liquidator made an order declaring certain members of a society registered under the Act jointly and severally liable for the full amount of the debts due by them for which they had given mortgages This order was sought to be enforced by the Civil

\*  
words  
were  
†  
Act 3  
‡  
vide ibid

read as if the  
the case may be

only with D I

1 21 1926

Court having jurisdiction under clause (5) (a) of the  
 1927 Cal 578 Civil suit against purchaser for declara-  
 tion that property sold was not liable to be sold is not barred 1926 Nag 217 A  
 civil suit for refund of money realized from plaintiff under the provisions of s 42 (4)  
 (a) of the Co-operative Societies Act is amended by U P Act 3 of 1919 with s 49  
 of U P Land Revenue Act is barred by the provisions of s 233 (m) of the U P  
 Land Revenue Act A I R 1927 All 532, 19 A 127 The provisions of the  
 Co-operative Societies Act provide stringent safeguards to prevent the society  
 from having dealings with strangers The admission of a member to a society  
 can not be unilateral on th  
 been mentioned explicitly  
 of the membership of the s  
 members of the joint family who are not members of the society 130 Ind Cas  
 820=A I R 1931 Nag 48 If a liquidator's act or orders is shown to be *ultra vires*  
 that is outside the powers conferred on him by law as a liquidator, the Civil  
 Court then intervenes A liquidator of a society has no power to proceed against  
 any body and every body irrespective of the fact that he had ever been a member  
 of the society and section 42 b) can not be so con  
 the Civil Courts in cases where the liquidator  
 who is not a member of the society 130 Ind  
 A liquidator can arrest the heir of a deceased  
 for an arrear due from his deceased father 107 Ind Cas 243=A I R 1928  
 All 128 The order of the liquidator under s 42 is final and the Civil Court in  
 execution of the order can not go behind it If the order is thus enforced there  
 is no error of jurisdiction on the part of the Civil Court and revision to High  
 Court does not lie 129 Ind Cas 908=7 Rang 533=A I R 1930 Rang  
 18 When liquidator directed members of executive committee to make  
 payment the order is final and the civil court has no jurisdiction to entertain a  
 suit by the executive members to recoup themselves the amount from the ordinary  
 members 103 Ind Cas 644=A I R 1927 Cal 578 This section is no bar to a  
 Civil Court by a member of the society against the purchaser for declaration that  
 the property attached and sold for debt due from him was liable to be sold  
 103 Ind Cas 131=23 N L R 66=A I R 1927 Nag 217

### Rules

43. (1) The Local Government may, for the whole or any part of the Pro-  
 Rules vince and for any registered society or class of  
 such societies, make rules to carry out the pur-  
 poses of this Act

(2) In particular and without prejudice to the generality of the foregoing  
 power, such rules may—

(a) subject to the provisions of section 5, prescribe the maximum number  
 of shares or portion of the capital of a society which may be held  
 by a member ;

(b) prescribe the conditions to be complied with  
 the registration of a society and  
 applications ,

- (c) prescribe the matters in respect of which a society may or shall make by laws and for the procedure to be followed in making altering and abrogating by laws and the conditions to be satisfied prior to such making alteration or abrogation ,
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members and the payment to be made and the interests to be acquired before the exercise of the right of membership ,
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ,
- (g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers ,
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society ,
- (i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ,
- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified
- (k) provide for the formation and maintenance of a register of members and where the liability of the members is limited by shares, of a register of shares ,
- (l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and the enforcement of the decisions of the Registrar or the awards of arbitrators ,
- (m) provide for the withdrawal and expulsion of members and for the payments if any to be made to members who withdraw or are expelled and for the liabilities of past members ,
- (n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ,
- (o) prescribe the payments to be made and the conditions to be complied with by members applying for loans the period for which loans may be made, and the amount which may be lent, to an individual member ,
- (p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ,
- (q) prescribe the extent to which a society may limit the number of its members ,
- (r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ,

(f) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals, and

(g) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator

(3) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication

(5) All rules made under this section shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act

Notes—Sub clause 2 (m) and (i) and 3 are new. The two former allow the Local Government to prescribe returns and the procedure on liquidation, and the latter permits of the delegation of the powers of the Local Government—*Vide Statement of Objects and Reasons*. Where a dispute lies between a Co-operative Society and a member who is dead proceedings can be continued or entertained between the society and the legal representatives of the deceased debtor and arbitrators appointed under the rules framed under this section are competent to decide who are the legal representatives of the deceased debtor. If a wrong conclusion is arrived at with regard to a particular person then that person has a remedy under the Act of filing an appeal to the Registrar. The Civil Court has no jurisdiction to interfere. 28 Bom L R 593=96 Ind Cas 30=A I R (1926) Bom 352. An award passed under r 18 (h) framed under s 43 (1) of the Co-operative Societies Act must be executed by the executing Court as a decree passed by itself without going into its validity. In such a case the whole of the C P Code applies and an appeal lies from an order refusing to execute the award. 97 Ind Cas 288 (2)=A I R 1936 Lah 47 (1)=8 Lah L J 310. A dispute as to election of office-bearers of a Co-operative Society registered under the Co-operative Societies Act falls under rules framed by the Government under power given in section 43 of the Act. Among the points on which Government is entitled to make rule is any dispute touching the business of a society between members or past members of the society. Business here is not confined to money business but includes the election of office-bearers. As the rules provide for reference of dispute to the Registrar Civil Courts have no jurisdiction. 23 A L J 129=L R 6 A 208=86 Ind Cas 585=47 A 374=A I R 1925 All 356. Dispute does not include questions of constitution and membership of Central Bank and such questions can be decided by ordinary courts. A I R 1932 Cal 817. On the death of the Secretary of a Co-operative Credit Union, it was found that he had embezzled money from deposits paid by depositors. The Committee

the Registrar

a stranger

of a deceased

against the

tor will be

tion to set

t 575. The

words "touching the business of a society" in s 43 (2) (1) of Act II of 1912 are not



confined to disputes regarding the internal management of the affairs of a society to disputes in regard to principles which would regulate the conduct of business. A dispute between a member who happens to be an officer of a Co-operative Society and the society in regard to sums of money entrusted to the former for purchase of certain articles is within s. 43 (2) of the Act. A dispute between a Co-operative Society on the one hand and the other falls within the words of the section.

W N 222=32 M L T (H C) 321=72  
Mys L J 92

Clause (b)—The direction of the Act is to the reference of dispute has the effect so far as regards such disputes of excluding the jurisdiction of superior Courts. *Christ v Bunbury* (1832) 8 Beag 394, *Timms v Wilmas*, (1842) 3 Q B 413, *Ex parte Paynee* (1849) 5 Dow & L 679. In *Revers v White* (1852) 17 Q B 995, Lord Campbell, C J observed: "Where there may be there must be a reference to arbitrators." In *Armutage v Walker* (1855) 2 K & L -  
e summary manner by the decision of an arbitrator or justices as the parties shall choose and when they have once made their election the power of the justice or of the arbitrator, acting always within the rules of the society is complete, and is not subject to revision by any Court of law or equity. That is the primary matter to necessary to be extremely careful that the set up to control the arbitrators so selected being made out of the abuse of the W R 18, *R v Evans* (1854) 11 & B with the procedure laid down in the rules, Grant 14 Q B D 43. The words "any nly to disputes between the society and the members as members and not in any other capacity they may be placed in *Morison v Glover* (1849) 19 L J Ex 20. In that case the Court observed: "The only

must be referred to arbitration. It appears to us therefore the words 'matter in dispute' must be read 'matter in difference between the society and the members as members, and not in any other capacity'."

#### Miscellaneous.

44 (1) All sums due from a registered society or from an officer or member Recovery of sums due to or past member of a registered society as such Government to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land revenue.

(1) Sums due from a registered society to Government and recoverable under sub section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability, and, thirdly, in the case of other societies, from the members.

Notes—Agriculturist's house is not exempt from sale for debts due to the society. 1927 Nag 217.

45 Notwithstanding any thing contained in this Act, the Local Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

**Notes**—The existing section 29 has been recast with a view to making clear the distinction in the power of exemption of the Local Government before and after registration—*Statement of Objects and Reasons*

**46** The Local Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order

Power to exempt registered societies from provisions of the Act

### *Post Office*

**47** (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co operative" is part without the sanction of the Local Government

Prohibition of the use of the word co operative

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor

**Notes**—The use of the name of co operative is prohibited by this section

Indian Companies Act 1882 not to apply

**48** The provisions of the Indian Companies Act,\* 1882, shall not apply to registered societies

**49** Every society now existing which has been registered under the Co-operative Credit Societies Act,† 1904, shall be deemed to be registered under this Act, and its by laws shall so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded

**Notes**—A bye law under which the heir and successor in interest who is elected a member of the society is given the rights and subjected to the liabilities of a deceased is not *ultra vires* and a person so elected is bound to pay the debts of the deceased though it may exceed the assets left by him 31 Ind Cas 724=18 O C 157

**50** [Repeals—Repealed by Act (XVII of 1914)]

## THE INDIAN COPYRIGHT ACT, 1914

### ACT NO III OF 1914

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

*Received the G G's Assent on the 24th February, 1914*

*An Act to modify and add to the provisions of the Copyright Act, 1911*

WHEREAS it is expedient to modify and add to the provisions of the Copyright Act, 1911, in its application to British India, it is hereby enacted as follows—

**Notes**—The question of the amendment of the Indian Copyright Act (XX of 1847) has been considered on several occasions since 1864 on the ground that the Act was incomplete and did not provide among other matters for the prohibition of copy right in photographs translations newspapers, telegrams etc Legislation however, has been postponed in view of possibility of an amendment of the English Acts

\* Act VI of 1882 Sec now Act VII of 1913 by which the former Act has been repealed

† Act X of 1904

on the subject of Copy right In 1908 a conference and convention to which Great Britain was a party was held in Berlin with the object of bringing the domestic laws of all countries concerned into harmony with one another so as to obtain unification of that convention involved questions were examined by a strong deputation of Trade which come to the unanimous conclusion accepted by Great Britain with as few reservations as possible

An imperial copy right conference was subsequently convened in 1910 containing representatives of the self governing dominions and of the India office, Colonial office etc. It endorsed the recommendation of the Board of Trade Committee and recommended that an Act dealing with the essentials of Imperial Copy right law should be passed by the Imperial Parliament and that this Act should be expressed to extend to all British possessions subject to the rights of self governing dominions and possessions to modify or add to its provisions by legislation in certain cases affecting only procedure and remedies

A Draft Bill was approved by the conference and eventually passed into law as the Copyright Act 1911 (1 & 2 Geo V c 46) which came into operation in the

registration of copyright

right from 42 years to one of life and 50

years subject to certain conditions

(iii) The extension of the scope of copyright

(iv) The substitution of one Act for several on the subject of copyright

The Government of India considered that the early introduction of the Act into India was desirable both for imperial and international as well as domestic reasons and consulted Local Governments in regard to the modifications and additions referred to in section 27 of the Act that might be necessary to suit the special conditions. On account of having regard to the serious objections on the English authors the Government of India on 31st January 1911 issued a notification of modification or additions to the news of the Local Governments. These are in substantial agreement with those of the Government of India who propose by virtue of the powers conferred by section 27 of the Act, 1911 to pass the Draft Bill which embodies the modifications and the addition to the Act which are considered desirable together with certain formal and necessary alterations due to difference between English and Indian administration and procedure

It will be observed that the changes proposed are as few as possible in view of the desirability of securing that uniformity throughout the Empire which was advocated by the Imperial Copyright Conference of 1910 — *Statement of Objects and Reasons*

## CHAPTER I

### PRELIMINARY

Short title and extent 1. (1) This Act may be called the Indian Copyright Act, 1911

(2) It extends to the whole of British India including British Beluchistan, the District of Angul and the Sonthal Parganas

Definitions 2 In this Act unless there is anything repugnant in the subject or context,—

(1) 'the Copyright Act' means the Act of Parliament entitled the Copyright Act 1911,\* and

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act

\* 1 & 2 Geo 5 c 46.

## CHAPTER II

## CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT

3 In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule,) the following modifications shall be made, namely —

- (1) the powers of the Board of Trade under section 3 shall in the case of works first published in British India, be exercised by the Governor General in Council
- (2) the powers of the Board of Trade under section 19 shall, as regards records perforated rolls and other contrivances, the original plate of which was made in British India be exercised by the Governor General in Council, and the confirmation of Parliament shall not be necessary to the exercise of any of these powers,
- (3) the references in section 19, sub section (4), and in section 24, sub section (1), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs,
- (4) as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a reference to the Indian Patents and Designs Act, 1911, and the reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section 77 of the Indian Patents and Designs Act, 1911,
- (5) as regards works first published in British India the reference in section 24, sub section (1) proviso (a) to the *London Gazette* and two London newspapers shall be construed as a reference to the *Gazette of India* and two newspapers published in British India, and the reference in proviso (b) of the same sub section of the same section to the 26th day of July 1910 shall as regards, works the authors whereof at the time of the making of the works resident in British India and as regards works first published in British India, be construed as a reference to the 30th day of October, 1912

ations necessary for the application of *Objects and Reasons* In England was no copyright at common law work 44 B 720 The preamble

her persons were frequently in the habit of printing, reprinting and publishing books and other writings without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families For preventing, therefore of such practices for the future and for the encouragement of learned men to compose and write useful books it is enacted that the author of any book or books already printed who have not transferred to any other the copy or copies of such book or books in order to print or reprint the same shall have the sole right and liberty of printing such book or books for the term of one and twenty years and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed and his assignee or assignees shall have the sole right and liberty of printing such book or books for a term of fourteen years and no longer It further enacts that the sole right and liberty of printing such book or books shall not be transferred to any other person after the expiration of the term of fourteen years the sole right and liberty of printing such book or books shall remain in the authors thereof, if they are

of fourteen years" For infringement of copyright forfeiture of illicit copies could be ordered and a fine was imposed This Act was to have effect from the 10th April 1910

The effect of the statute works ; though leaving the

*Donaldson v. Beckett*, 4 E

*v. Bossey*, (1854) 4 H L C

28 years to commence from

survives that period, then

Copyright Act was passed By this Act the period of copyright was extended to the life of the author and seven years after his death or a term of forty two years which ever should be the longer The Indian Copyright Act of 1847 was framed in accordance with the English Copyright Act of 1842 If a copyright is shown to have subsisted when Act III of 1914 came into force the period of copyright substituted by that Act would be 50 years from the death of the author When a complaint for infringement is made after the new Act the question to be considered is whether the copyright is subsisting under the new Act and not whether it was subsisting under the old Act A I R 1931 All 353=1931 A L J 304=3 Cr L J 814=131 Ind Cas 855

**Copyright whether property**—Nothing can with greater propriety be called a man's property than the fruit of his brains The property in any article or substance accruing to him by virtue of his own mechanical labour is never denied to him the labour of his mind is no less arduous and consequently no less worthy of the protection of the law It has nevertheless been a matter of frequent controversy whether copyright is a natural right or one entirely dependent upon statute If it was a natural right then the period of protection ought logically to have been unlimited—*Copinger on the Law of Copyright* 6th Ed p 3 In *Donaldson v. Beckett*, (1774) 4 Burr 2403 the House of Lords decided (1) that the author of an unpublished work has the sole right of first printing and publishing the same at common law, (2) that such right of first printing or publishing his work was not taken away by the first Copyright Act (8 Anne c

literary composition, and his assignees the same in perpetuity by the common

statutory right conferred by the Act

Before the English Copyright Act

work was frequently recognised

*Valley Printing Co* (1908) 2 Ch

25, *Caird v. Sims* (1887) 12 A

(1897) 2 Ch 48, *Exchange Telegr*

of the Copyright Act of 1911 has e

works Now "no person shall b

literary, dramatic, musical or ar

otherwise than under and in accordance with the provisions of the Act or of any other statutory enactment for the time being in force

Modification of copyright as regards translation of works first published in British India

4 (1) In the case of works first published in British India, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall

subsist only for a period of ten years from the date of the first publication of the work :

Provided that if within the said period the author or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section

(2) For the purposes of sub-section (1) the expression "author" includes the legal representative of a deceased author

**Notes**—Under sections 13 of the Act of 1911 the term for which copyrights subsist in translations is the life of the author and a period of fifty years after his death The special linguistic conditions of India are so numerous and differs so widely that the conditions which prevail cannot be compared with those in most

## CHAPTER II

## CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT

3 In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule,) the following modifications shall be made, namely —

- (1) the powers of the Board of Trade under section 3 shall in the case of works first published in British India, be exercised by the Governor General in Council
- (2) the powers of the Board of Trade under section 19 shall, as regards records perforated rolls and other contrivances, the original plate of which was made in British India be exercised by the Governor General in Council, and the confirmation of Parliament shall not be necessary to the exercise of any of these powers,
- (3) the references in section 19, sub section (4), and in section 24, sub section (1), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs,
- (4) as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a reference to the Indian Patents and Designs Act 1911, and the reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section 77 of the Indian Patents and Designs Act 1911,
- (5) as regards works first published in British India the reference in section 24, sub section (1) proviso (a) to the *London Gazette* and two London newspapers shall be construed as a reference to the *Gazette of India* and two newspapers published in British India, and the reference in proviso (b) of the same sub section of the same section to the 26th day of July 1910, shall, as regards, works the authors whereof at the time of the making of the works resident in British India, and as regards works first published in British India, be construed as a reference to the 30th day of October, 1912

Notes.—This contains purely formal modifications necessary for the application of the Act of 1911 to British India—*Statements of Objects and Reasons* In England before the statue of Anne (8 Anne (c) 19) there was no copyright at common law for an author, or a publisher in his published work 44 B 720 The preamble runs as follows 'Printers book sellers and other persons were frequently in the habit of printing, reprinting and publishing books and other writings without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families For preventing therefore of such practices for the future and for the encouragement of learned men to compose and write useful books it is enacted that the author of any book or books already printed, who have not transferred to any other the copy or copies of such book, or books in order to print or reprint the same shall have the sole right and liberty of printing such book or books for the term of one and twenty years, and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed and his assignee, or assignees shall have the sole right of printing and publishing the same for a term of fourteen years and no longer' It further provides that if the author or authors thereof, if they are then living or their representatives, for another term

of fourteen years" For infringement of copyright forfeiture of illicit copies could be ordered and a fine was imposed This Act was to have effect from the 10th April 1910

The effect of the statute was to extinguish the common law copyright in published works ; though leaving the common law copyright in unpublished works unaffected *Donaldson v Beckett*, 4 Burr 2408, *Beckford v Hood* (1798) 7 T R 620, *Jeffreys v Bossey*, (1834) 4 H L C 815 By 54 Geo 3, c 156, the period was extended to 28 years to commence from the day of the first publication of the same, and if he survives that period, then for the residue of his natural life Finally in 1842, the Copyright Act was passed By this Act the period of copyright was extended to the life of the author and seven years after his death or a term of forty two years which ever should be the longer The Indian Copyright Act of 1847 was framed in accordance with the English Copyright Act of 1842 If a copyright is shown to have subsisted when Act III of 1914 came into force the period of copyright substituted by that Act would be 50 years from the death of the author When a complaint for infringement is made after the new Act the question to be considered is whether the copyright is subsisting under the new Act and not whether it was subsisting under the old Act A I R 1931 All 353=1931 A L J 304=37 Cr L J 814=131 Ind Cas 855

**Copyright whether property**—Nothing can with greater propriety be called a man's property than the fruit of his brains The property in any article or substance accruing to him by virtue of his own mechanical labour is never denied to him the labour of his mind is no less arduous and consequently no less worthy of the protection of the law It has nevertheless been a matter of frequent controversy whether copyright is a natural right Or one entirely dependent upon statute If it logically to have been un  
In *Donaldson v Beckett*,  
author of an unpublished  
e same at common law,  
ork was not taken away by

the same in perpetuity by the statutory right conferred by the C Before the English Copyright Act work was frequently recognised *Valley Printing Co* (1908) 2 Ch 25, *Card v Sims* (1887) 12 A C 326, *Exchange Telegraph v Central News* (1897) 2 Ch 48, *Exchange Telegraph v Gregory*, (1896) 1 Q B 147 But section 31 of the Copyright Act of 1911 has extinguished, works Now "no person shall be entitled literary, dramatic, musical or artistic work otherwise than under and in accordance with other statutory enactment for the time being in force"

Modification of copyright as regards translation of works first published in British India 4 (1) In the case of works first published in British India, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work :

Provided that if within the said period the author or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section

(2) For the purposes of sub section (1) the expression "author" includes the legal representative of a deceased author

**Notes**—Under sections 13 of the Act of 1911 the term for which copyrights subsist in translations is the life of the author and a period of fifty years after his death The special linguistic conditions of India are so numerous and differs so widely that the conditions which prevail cannot be compared with those in most

European countries and vernacular translations from English and from one vernacular to another are not only common but serve the useful purpose for disseminating knowledge. It is proposed therefore, that translations of works first published in British India should be permitted from the date of first publication provided that twofold protection has been given to the author by a legal safeguard of and a reasonable safeguard of the public. *Statement of Objects and Reasons*

5 In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the musical works made by resident of, or first published in, British India works resident in British India, or to musical works first published in British India, the term "musical work" shall, save as otherwise expressly provided by the Copyright Act mean "any combination of melody and harmony, or either of them which has been reduced to writing"

Notes.—The provisions of section 19 of the Act of 1911 are new and in view of the peculiar conditions of Indian music, objections have been urged against the application of this section *in toto* to Indian works. It is pointed out that it is impossible in most cases to identify the original composer or author and the majority of the Indian melodies have not been written in staff notation except through the medium of the phonograph and are subject to infinite variety of notation and time. If under these circumstances, section 19 is adopted with its retrospective principle there may be fictitious claims of ownership in musical works and much confusion in the definition is proposed to be obtained in the

English Musical Copyright Act 1902 *viz* musical work means any combination of melody and harmony or either of them printed or reduced to writing.—*Statement of Objects and Reasons*

6 (1) Copies made out of British India of any work in which copyright subsists, which if made in British India would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer as defined in the Sea Customs Act, 1878 that he is desirous that such copies should not be imported into British India, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by the 'Customs authority' in this behalf, may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself, in accordance with these regulations, that the copies are such as are prohibited by this section to be imported

(3) The Governor General in Council may, by notification in the *Gazette of India*, make regulations, either general or special, respecting the detention, and the confiscation of copies the importation of which is prohibited by this section, and the conditions if any, to be fulfilled before such detention and confiscation, and may, by such regulations, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence

works the importation  
ferent regulations may

reimbursing the Sec  
damages incurred in



respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom and communicated by that authority to any authority in British India, shall be deemed to have been given by the owner to the said Chief Customs officer

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act

Notes—Section 18 (a) of the Sea Customs Act 1878 prohibits importation in the case of books alone the copyright whereof subsists in India. In view of the extension of the Act of 1911 to works other than books and the difference in procedure it is proposed to repeal this section and enact the appropriate provisions as the necessary modifications referred to in section 14 (7) of the Act of 1911

## CHAPTER III

### PENALTIES

Offences in respect of infringing copies

7 If any person knowingly—

- (a) makes for sale or hire any infringing copy of a work in which copyright subsists or
- (b) sells or lets for hire or by way of trade exposes or offers for sale or hire, any infringing copy of any such work or
- (c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright or
- (d) by way of trade exhibits in public any infringing copy of any such work, or
- (e) imports for sale or hire into British India any infringing copy of any such work,

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction

Penalties—'We have substituted the word penalties for the words 'summary remedies' in the title of Chapter III in view of the fact that the expression summary trial is used in the Code of Criminal Procedure 1878 to denote a particular procedure in the trial of cases which might not be applicable to cases under this Chapter—*Report of the Select Committee*

Section 7—12—The provisions of section 11 of the Act of 1911 have been in the main adopted. Imprisonment however will in all cases be simple and offences will be triable by a Magistrate of the first class only. It is proposed to convert the amount of English fines on the basis of £ 1 = Rs. 10 in accordance with the recommendation by the Government of India, thus giving—*Statement*  
 • Lahore Court  
 • cases against  
 • book infringing the copyright is printed and it does not depend for its completion upon the ensuing of any consequence such as is mentioned in s. 174 of the Cr. Pro. Code 28 P. R. 1916 Cr.

Who may be convicted—A person who has in his possession any plate for the purpose of making or causing to be made any infringing copy, see also R. v. W. J. & Co., more persons  
 R. v. W. J. & Co., next depends  
 is a colourable imitation of another is a question of fact 5 C. L. J. 243 = 34 C. W. N. 540

A copy comes so near  
the case of pictures it is e  
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**Registration**—Where the act on in respect of infringement of copyright was commenced when the Act of 1914 was in force, the non registration of the copy right does not effect dismissal of the action *Venkata Rao v Padmanava* 1927 Mad 981 *Gonbund v Wallace* (1877) 36 L T 704, *E W Savory v World of Gold Ltd* (1914) 2 Ch 566 Where the offence alleged to have been committed by the accused was one under s 7, Copyright Act (1914) and trial Court took a wrong view of the law and acquitted the accused *Held* that in a case when the Court has proceeded on a wrong view of the law and when the matter is of great importance to the complainant in his position as author of the book, which will be pirated by another who will secure for himself the gains that ought legitimately to go to the petitioner a retrial should be ordered A I R 1927 Mad 281

**8** If any person knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright he shall be punishable with fine which may extend to five hundred rupees

**9** If any person after having been previously convicted of an offence punishable under either of the provisions of this Chapter with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both

**10** (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may, think fit

(2) Any person affected by an order under sub-section (1) may, within thirty days of the date of such order appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal

**11.** No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act

**12** The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act regarding the restrictions on remedies in the case of a work of architecture applies

**Saving in case of infringement by construction of building**  
Courts having civil jurisdiction regarding infringement of copyright

## CHAPTER IV

### MISCELLANEOUS

**13.** Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge

Notes—On account of the technicalities of the subject of copyright and of the greater finality that such a tribunal will afford it has been considered advisable to give jurisdiction to High Courts only in all suits or civil proceedings regarding infringement of copyright—*Statement of Objects and Reasons*

14 No suit or other civil proceeding instituted after the 30th of October, 1912, regarding infringement of copyright in any book the author whereof was at the time of making the book resident in British India, or of any book first published in British India, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyright Act, 1847

Notes—This clause which is self explanatory has been added in view of a recent decision in *Fris v Morris* reported in the Law Journal of March 29th 1913—*Statement of Objects and Reasons* Where the action commenced when Act of 1914 was in force non registration of the copyright does not effect the dismissing of the action A I R 1927 Mad 981=53 M L J 529

15 [Repeals] Repealed by Act XII, of 1927

## THE FIRST SCHEDULE

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA

(See section 3)

COPYRIGHT ACT 1911

[1 & 2 Geo 5 Ch 46]

### ARRANGEMENT OF SECTIONS

#### PART I

#### IMPERIAL COPYRIGHT

#### *Rights*

#### SECTIONS

- 1 Copyright
- 2 Infringement of copyright
- 3 Term of copyright
- 4 Compulsory licences
- 5 Ownership of copyright, etc

#### *Civil Remedies*

- 6 Civil remedies for infringement of copyright
- 7 Rights of owner against persons possessing or dealing with infringing copies, etc
- 8 Exemption of innocent infringer from liability to pay damages etc
- 9 Restriction on remedies in the case of architecture
- 10 Limitation of actions

#### *Importation of Copies*

- 14 Importation of copies

#### *Delivery of books to Libraries*

- 15 Delivery of copies to British Museum and other libraries

#### *Special Provisions as to certain Works*

- 16 Works of joint authors
- 17 Posthumous works
- 18 Provisions as to Government publications
- 19 Provisions as to mechanical instruments
- 20 Provisions as to political speeches
- 21 Provisions as to photographs
- 22 Provisions as to designs registrable under 7 Edw VII c 29
- 23 Works of foreign authors first published in parts of His Majesty's dominions to which Act extends
- 24 Existing works

*Application to British possessions*

- 25 Application of Act to British dominions
- 26 Legislative powers of self governing dominions
- 27 Power of Legislatures of British possessions to pass supplemental legislation
- 28 Application to protectorates

## PART II

## INTERNATIONAL COPYRIGHT

- 29 Power to extend Act to foreign works
- 30 Application of Part II to British possessions

## PART III

## SUPPLEMENTAL PROVISIONS

- 31 \*
- 32
- 33
- 34 Saving of compensation to certain libraries
- 35 Interpretation
- 36 Repeal
- 37 Short title and commencement

## SCHEDULES.

## COPYRIGHT ACT, 1911.

1 &amp; 2 Geo V. Chapter 46

*An Act to amend and consolidate the Law relating to copyright*

[16TH DECEMBER 1911]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows —

## PART I

## IMPERIAL COPYRIGHT

*Rights*

1 (1) Subject to the provisions of this Act copyright shall subsist throughout the parts of His Majesty's dominion to which this Act extends for the term hereinafter mentioned in every original literary dramatic, musical and artistic work if—

(a) in the case of a published work the work was first published within

(b) in ' , and at the date of the

ent within such

parts of his Majesty's dominions as aforesaid , but in no other works except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self governing dominions to which this Act does not extend and to foreign countries

(2) For the purposes of this Act 'copyright' means the sole right to produce, or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public, if the work is unpublished, to publish the work or any substantial part thereof, and shall include the sole right—

(a) to produce, reproduce, perform, or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

- (c) in the case of a novel or other non dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;
- (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered ;

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works

**Original**—According to this section the work must be original. So far as the copyright in a reported speech is concerned, a reporter has no copyright in the speech of a person but he has such rights in the reports of those speech *Walter v. Lane*, (1 00) A C 539 on appeal from (1899) 2 Ch 749 In the same case, *Lord Chancellor* said that copyright "is given by the statute to the first producer of a book whether that book be wise or foolish accurate or inaccurate, of literary merit or no merit whatever" In *University of London Press v University Tutorial Press* (1916) 2 Ch 601, *Peterson J* said "The word 'original' does not in this connection mean that the work must be an expression of original or inventive thought Copyright Acts are not concerned with the originality of ideas but with the expression of thought and in the case of literary work with the expression of the thought in print or writing The originality which is required relates to the expression of the thought But the Act does not require that the work must not be copied from another work—that it should originate from the author" Originality relates to the expression of thought The work must not be copied from another work 48 B 309=28 C W N 613=40 T L R 186 (P C) The word "original" should be understood to mean that the work must be the brain the benefit of that use and not a mere copy of a word which is divested of its plain and which is word for word taken

1299 Copyright doe

*Faden*, (1799) 5 Ves

*Walter v Lane*, (190

*Lestne v Young* (189-

*Copinger* p 47, see

(1868) L R 7 Eq

*Cooper* 28 C W N

were made in an old non copyrighted text

In *Frederick Emerson v Chas Davis*, 3 Story U S Rep 768, the plaintiff had compiled and published a book entitled, "The North American Arithmetic," described as containing elementary lessons by *Frederick H Amson*, the purpose and object of the publication being to teach The complaint was that the defendants on a date consent exposed for sale and sold fifty copies of to have been composed by the defendant Davis copies of the same The main defence was that sold by the defendants was composed by themse part of it was copied adopted or taken from the plaintiff's book or any part thereof At p 778 of the report the learned Judge expressed himself thus "The book of the plaintiff is, in my judgment new and original in the sense in which the

question is not whether the

never been used before, or

purpose The true ques ion

ation of materials have been

used before for the same purpose or for any other purpose If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints for

his plan and arrangement or parts of his plan and arrangement from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before . . . he is entitled to a copyright. It is true that he does not thereby acquire the right to appropriate to himself the materials which were common to all persons before so as to exclude those persons from a future use of such materials but then they have no right to use such materials with its improvements superadded, whether they consist in plan, arrangement or illustrations or combinations, for these are strictly his own. In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout.

In the case of *Macmillan v Suresh Chandra Deb* 17 Cal 951, the question was whether copyright can exist in a selection. In that case *Sir Arthur Wilson* said at p 961 "In the case of work not original in the proper sense of the term, but composed or compiled or prepared from materials open to all the fact that one man has produced such a work does not take away from any one else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by *Hail, V C* in *Hogg v Scott*, L R 18 Eq 444 at p 458, the true principle in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work that is in fact merely to take away the result of another man's labour or in other words his property."

Similarly in *Longman v Winchester* 16 Ves 269 271 (1809) *Lord Eldon* said "A work consisting of a selection from various authors, two men might perhaps make the same selection but that must be by resorting to the original authors, not by taking advantage of the selection already made by another." This passage was approved of by *Lord Hatherly* in *Spire v Brown*, 6 W R (Eng) 852, see also *Maffat and Paige v Gill* (1902) 84 L T 456 on appeal 86 L T 465.

In *Waller v Lane* (1900) A C 539 *Lord Davy* in his judgment pointed out that copyright is merely the right of multiplying copies of a published writing and has nothing to do with the originality or literary merits of the author or composer "What is the precise amount of the knowledge labour judgment or literary skill or taste which the author must bestow upon its composition in order to acquire copyright in it within the meaning of the Copyright Act of 1911 can not be defined in precise terms. In every case it must depend largely on the special facts of that case, and must in each case be very much a question of decree." *Per Lord Atkinson* in 28 C W N 613 at p 623 P C.

In the case of *Black v Murry* 9 Rettie 341 (1870) which dealt with the alleged infringement of the copyright in a volume entitled "Minstrelsy of the Scottish Border" the original edition of which was no longer protected by copyright but a new edition was published to which valuable notes were added *Lord Kinloch*, in delivering the judgment dealt with the question of the effect of these notes upon the edition in which they were printed, in a very clear and forcible judgment. He said at p 355 of the report "I think it is clear it will not create a copyright in a new edition of a work of which the copyright has expired merely to make a few amendments of the text or to add a few unimportant notes. To create a copyright by alterations of the text these must be extensive and substantial practically making a new book. With regard to notes in like manner they must exhibit an addition to the work which is not superficial or colourable but imports to the book a true and real value over and above that belonging to the text. This value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special accounts of

In *J Arnold v Houlston* the plaintiffs were the publishers of a book written by *Dr Brexler* called the "Guide to Science" The Vice Chancellor

S W Pagewood having fully ascertained the object with which this book was compiled and published and the sources from which Dr Brewer obtained the information necessary to enable him to write it stated these matters in the following passage and laid down the principle of law applicable to the facts. He said If any one by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life with answers, to those questions and explanations of those phenomena whether such explanations and answers were furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose, the reduction of the questions so collected with such answers under certain heads and in a scientific form is amply sufficient to constitute an original work of which copyright will be protected. Therefore I have no

*Grupp v Grego*  
370, *Weatherby*  
C 335

**Literary**—The work must not only be original it must be a 'literary work' *Copinger* p 50. The examination papers set by two examiners are original literary works within the meaning of this section and is a proper subject of copyright *University of London Press Ltd v University Tutorial Press Ltd* (1916) 2 Ch 601

L R 39, or in newspaper telegrams [*Water v Steinkoff* (1892) 3 Ch 489 *Exchange Telegram Co v Central News* (1897) 2 Ch 48]—*Copinger* 50. A tradesman's catalogue is a proper subject of copyright *Hotten v Arther* (1863) 1 H & M 603, *Grace v Newman* (1875) L R 19 Eq 623, 21 Ch D 369 (1906) 2 Ch 491, (1893) 1 Ch 218, *Collis v Cater* (1898) 78 L T 613, *Kelly v Morris* (1866) L R 1 Eq 697, *Morris v Ashbee*, (1868) L R 7 Eq 34

**Abridgement**—In an abridgement the idea must be preserved and expressed in author's own language. A book in which certain passages are copied and others are omitted is not an abridgement. In order to constitute an original literary work some skill must be manifested in arranging the selection. In order to constitute a new work a new or a novel plan arrange in whether in a new amenda by alterations of the text these must be extensive and substantial practically making a new book 48 B 308=28 C W N 613 P C see also *Black v Murray* 9 Sc Sess Cas 3rd Ser 341 *Hedderwick v Griffin* 3 Sc Sess Cas 2nd Ser 383 *Thomas v Tuner*, (1886) 33 Ch D 292, *Blacklock v Pearson* (1915) 2 Ch 576

**Compilation**—A copyright may exist in a compilation 43 A 412=61 Ind Cas 394=19 A L J 180

exercise of thought is required and as such is a subject matter of copyright *Benning*, 16 C B 491, *D'Almeida v Bossy*, (1835) 1 Y & C 228

**Translation**—Copyright may exist in the translation of a work. *Byrne* *Statist Co* (1914) 1 K B 672 T or of a book is entitled to copyright in translation of it, as if it were an L 13 A L J 655

his plan and arrangement or parts of his plan and arrangement from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before, he is entitled to a copyright. It is true that he does not thereby acquire the right to appropriate to himself the materials which he has so used, but so as to exclude those persons from a future use of no right to use such materials with its improve consist in plan, arrangement, or illustrations strictly his own. In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout.

In the case of *Macmillan v Suresh Chandra Deb*, 17 Cal 951, the question was whether copyright can exist in a selection. In that case *Sir Arthur Wilson* said at p 961: "In the case of work not original in the proper sense of the term, but composed or compiled or prepared from materials open to all, the fact that one man has produced such a work does not take away from any one else the right to produce another work of the open to him. But, as the law is, R 18 Eq 444 at p 458, it is not at liberty to use or avail for the purpose of producing his work, that is in fact, merely to take away the result of another man's labour or, in other words, his property."

Similarly in *Longman v Winchester*, 16 Ves 269 271 (1809) *Lord Eldon* said: "A work consisting of a selection from the same selection but that must be taking advantage of the selection already approved of by *Lord Hatherly* in *Spies v Brown*, 6 W. R. 461, 1881, 1882, *Maffat and Paige v Gill*, (1902) 84 L. T. 456 on appeal 86 L. T. 465.

In *Walter v Lane* (1900) 15 Q. B. 374, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 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S W Page 600 he said

which this book was com-  
obtained the information  
n the following passage

He said If any one  
by pains and labour collects, and reduces into the form of a systematic course of  
instruction those questions which he may find ordinary persons asking in reference  
to the common phenomena of life, with answers to those questions and ex-  
planations of those phenomena whether such explanations and answers were fur-  
nished by his own recollection of his former general reading or out of works consul-  
ted by him for the express purpose the reduction of the questions so collected with  
such answers under certain heads and in a scientific form is amply sufficient to con-  
stitute an original work of which copyright will be protected Therefore I have no  
hesitation in coming to the conclusion that the book now in question is in that sense an  
original work and entitled to p

way stations as contained in  
(1915) 2 Ch 377, Cf also Wy  
(1891) 3 O W R 473 Trade A  
40 Ch D 500 Cor v Anvil

graph v Gregory (1896) 1 Q B 147 Nisbet v Golf Agency (1907) 23 T L R  
370, Weatherby v International (1910) 2 Ch 297, Leslie v Young, (1894) A  
C 335

**Literary**—The work must not only be original, it must be a 'literary work.'  
*Copinger* p 50 The examination papers set by two examiners are original literary  
works within the meaning of this section and is a proper subject of copyright  
*University of London Press Ltd v University Tutorial Press Ltd* (1916) 2 Ch 601

L R 39), or in newspaper telegrams [*Water v Steinkoff* (1892) 3 Ch 489 *Ex-  
change Telegram Co v Central News* (1897) 2 Ch 48]—*Copinger* 50 A trades  
man's catalogue is a proper subject of copyright *Hotten v Arthur* (1863) 1 H &  
M 603, *Grace v Newman* (1875) L R 19 Eq 623 21 Ch D 369, (1906) 2 Ch  
491 (1893) 1 Ch 218, *Collis v Cater* (1898) 78 L T 613, *Kelly v Morris*, (1866)  
L R 1 Eq 697, *Morris v Ashbee*, (1868) L R 7 Eq 34

**Abridgement**—In an abridgement the idea must be preserved and expressed  
in author's own language A book in which certain passages are copied and others  
are omitted is not an abridgement In order to constitute an original literary work  
some skill must be manifested in arranging the selection In order to constitute

tions of the text these must be extensive and substantial practically making a new  
book 48 B 308=28 C W N 613 P C see also *Black v Murry* 9 Sc Sess  
Cas 3rd Ser 341 *Hedderwick v Griffin* 3 Sc Sess Cas 2nd Ser 383 *Thomas  
v Tuner*, (1886) 33 Ch D 292, *Blacklock v Pearson* (1915) 2 Ch 576

**Compilation**—A copyright may exist in a compilation 43 A 412=61 Ind Cas  
394=19 A L J 180

exercise of thought is required and as such is a subject matter of copyright. *Swett  
v Benning*, 16 C B 491, *D'Almaine v Bossy* (1835) 1 Y & C 278

**Translation**—Copyright may exist in the translation of a work. *Byrne v  
Statist Co* (1914) 1 K B 677 The author of a book is entitled to copyright in a  
translation of it as if it were original work. 13 A L J 636

his plan and arrangement or parts of his plan and arrangement from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before, he is entitled to a copyright. It is true that he does not thereby acquire the right to appropriate to himself the materials which were common to all persons before, so as to exclude those persons from a future use of such materials but then they have no right to use such materials with its improvements superadded, whether they consist in plan, arrangement, or illustrations or combinations, for these are strictly his own. In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout.

In the case of *Macmillan v Suresh Chandra Deb*, 17 Cal 951, the question was whether copyright can exist in a selection. In that case *Sir Arthur Wilson* said at p 961: "In the case of work not original in the proper sense of the term, but composed or compiled or prepared from materials open to all, the fact that one man has produced such a work does not take away from any one else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by *Hall, V. C* in *Hogg v. Scott*, L R 18 Eq 444 at p 458, the true principle in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work, that is in fact, merely to take away the result of another man's labour or, in other words, his property."

Similarly in *Longman v Winchester*, 16 Ves 269 271 (1809) *Lord Eldon* said "A work consisting of a selection from va the same selection but that must be taking advantage of the selection already approved of by *Lord Hatherly* in *Spire v Brown*, 6 W R (Eng) 852; see also *Maffat and Paige v Gill*, (1902) 84 L T 456 on appeal 86 L T 465

In *Waller v Lane*, (1900) A C 539 *Lord Duns* in his judgment pointed out that copyright is merely the right of multiplying copies of a published writing, and has composer "What terary skill or taste quire copyright in terms. In every case it must depend largely on the special facts of that case, and must in each case be very much a question of decree." Per *Lord Atkinson* in 28 C W N 613 at p 623 P C

In the case of *1870*, which dealt with the alleged "Minstrelsy of the Scottish Border", protected by copyright but a new were added *Lord Kinloch*, in deli-

vering the drama to be a selection of the effect of the edition at p edition tion C

of the text there was a new edition

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In *J. Arnold v. Houston* the plaintiffs were the publishers of a book written by *Dr Brewer* called the "Guide to Science" The Vice Chancellor

C 335

this book was contained the information he following passage said If any one a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life with answers to those questions and explanations of those phenomena whether such explanations and answers were furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose the reduction of the questions so collected with such answers under certain heads and in a scientific form is amply sufficient to constitute an original work of which copyright will be protected Therefore I have no

C 335

**Literary**—The work must not only be original, it must be a 'literary work.' *Copinger* p 50 The examination papers set by two examiners are original literary works within the meaning of this section and is a proper subject of copyright *University of London Press Ltd v University Tutorial Press Ltd* (1916) 2 Ch 601 The word literary has not been used to portray quality or style or literary finish but is used to indicate written or printed matter *Ibid* So copyright exists in a telegraphic code [*Anderson v Lieber Co* (1917) 1 K B 469 *Ager v P & O S N Co* 26 Ch D 635, *Ager v Collingridge* 2 T L R 219] or in catalogue of types (*Masson v Embosotype*, 41 R P C 160) or in a system of shorthand (*Ptman v Hume* 1 T L R 39) or in newspaper telegrams [*Water v Steinkoff* (1892) 3 Ch 489 *Exchange Telegram Co v Central News* (1897) 2 Ch 48]—*Copinger* 59 A trades man's catalogue is a proper subject of copyright *Hotten v Arther* (1863) 1 H & M 603, *Grace v Newman* (1875) L R 19 Eq 673 21 Ch D 369 (1906) 2 Ch 491, (1893) 1 Ch 218, *Collis v Cater* (1898) 78 L T 613, *Kelly v Morris*, (1866) L R 1 Eq 697, *Morris v Ashbee*, (1868) L R 7 Eq 34

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tions of the text :  
book 48 B 308=28  
Cas 3rd Ser 341  
v *Tuner*, (1886) 33

making a new  
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183, *Thomas*

**Compilation**—A copyright may exist in a compilation 43 A 412=61 Ind Cas 394=19 A L J 180

exercise of thought is required and as such is a subject matter of copyright. *Saxel v Benning*, 16 C B 491, *D'Almaine v Bossy*, (1835) 1 Y & C 228.

**Translation**—Copyright may exist in the translation of a work. *Byrne v Stiffist Co* (1914) 1 K B 672 The author of a book is entitled to copyright in a translation of it, as if it were an original work. 13 A L J 635.

**Title of a book**—The title of a book is not a subject matter of copyright  
*Licensed Victualler & Nevs Paper Co v Bringham*, 38 Ch D 139

**Unpublished work**—An assignee of an unpublished literary work acquires copyright in it 39 M L J 341=59 Ind Cas 229=12 L W 151=(1920) M W N 426

**Libellous, immoral or obscene work**—A copyright in a libellous, immoral or obscene work will not be enforced, *Copinger* 59 citing *Stockdale v Onwhyn*, (1826), 5 B & C 173 P 28, *Walkot v Walker* (1802) 7 Ves 1, *Poplett* M 347, *Gee v Pichard* (1818) 2 Swans, 413, *Soull* 35, *Murray v Benbond* (1822) 1 Jac 474, *Lawrence v Smith* 1 Jac 471, *Fores v Johnes*, (1802) 4 Esp 97, *Gale v Leckie*, (1817) 2 Stark N P C 107, *Baschel v London Illustrated*, (1900) 1 Ch 73, *Glyn v Western Features Film Co* (1916) 1 Ch 261

**Original Dramatic Work**—In *Tate v Fulbrook* (1908) 1 K B 831, it was held that a dramatic work was not entitled to be protected against piracy by public performance unless it was capable of being printed and published. The actual decision in *Tate v Fulbrook*, to the effect that mere scenic effects are not the subject of protection has been approved under the Act of 1911—*Copinger* p 68 citing *Tate v Thomas* (1921) 1 Ch 503

**Musical Work**—A musical work may also be a dramatic work *Russell v Smith* (1848) 12 Q B 27 *Clerk v Bishop*, 25 L T 908, *Roberts v Bignal*, 3 T L R 552, but see *Fuller v Blackpool Winter Gardens* (1895) 2 Q B 429

**Artistic Work**—This Act includes, among artistic works works of painting, drawing, sculpture and architectural work. Vide section 35 (1), see also *Graves v* artist

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**Published**—A work is published  
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*Britton v Ken*

*Blanchett v*

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*Albert v Strange* (1849) 2 De G & Sm 657, *Kenrich v Duinbe Collieries*

(1891) 39 W R 473, *Caird v Sims* 12 App Cas 133

The publication of a  
 publication in book  
 (1901) 107 Fed

case of artistic work  
 for sale *Blunk v*

18 T L R 525,

ture in public for the

rk is not publication

*Britton v Kennedy*, (1902) 19 T L R 122

—*Oldfield, The Law of Copyright* p 46

2 (1) Copyright in a work shall be deemed to be infringed by any

infringement of copyright

person who, without the consent of the owner

of the copyright, does anything the sole right

to do which is by this Act conferred on the owner of the copyright, Provided

that the following act shall not constitute an infringement of copyright —

(i) Any fair dealing with any work for the purposes of private study,

research, criticism, review or newspaper summary

- (ii) Where the author of an artistic work is not the owner of the copy right therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work
- (iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art
- (iv) The publication in a collection, mainly composed of non copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists. Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged
- (v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written notice in the lecture which the used for nothing in (1) as to newspaper summaries,
- (vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

- (a) sells or lets for hire or by way of trade exposes or offers for sale or hire, or
- (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- (c) by way of trade exhibits in public, or
- (d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

**Any person**—This term includes company *Marzials v Gibbons*, (1874) L R 9 Ch 518, *McLean v Mody*, 20 Sess Cas 1154

**Consent**—No written consent is necessary. Consent may be presumed from circumstances *Coper v Stephens*, (1895) 1 Ch 567; *Damison v Ashdown*, (1897) 13 T L R 226, *Boirtus v Cooke*, (1903) 2 K B 227, 236. A licensee can sue for infringement *British Film Actors v Glover*, (1915) 1 K B 299.

**Fair Dealing**—As a question of strict law, apart from exceptional cases, if privilege of fair use accorded to a subsequent writer must be such, and such

**Title of a book**—The title of a book is not a subject matter of copyright  
*Licensed Victuallers News Paper Co v Bringham*, 38 Ch D 139

**Unpublished work**—An assignee of an unpublished literary work acquires copyright in it 39 M L J 341=59 Ind Cas 229=12 L W 151=(1920) M W N 426

**Libellous immoral or obscene work**—A copyright in a libellous, immoral or obscene work will not be enforced *Copinger* 59 citing *Stockdale v Onwhyn*, (1826), 5 B & C 173 *Hume v Dale* (1803) cited 2 Camp 28, *Walkot v Walker* (1802) 7 Ves 1, *Popplett v Stockdale*, (1825) 1 Ry & M 347, *Gee v Pichard* (1818) 2 Swans, 413, *Southey v Sherwood* (1817) 2 Mer 435, *Murray v Benbond* (1822) 1 Jac 474, *Lawrence v Smith*, 1 Jac 471, *Fores v Johnes*, (1802) 4 Esp 97, *Gale v Leckie* (1817) 2 Stark N P C 107, *Baschet v London Illustrated*, (1900) 1 Ch 73, *Glyn v Western Features Film Co* (1916) 1 Ch 261

**Original Dramatic Work**—In *Tate v Fulbrook* (1908) 1 K B 831, it was held that a dramatic work was not entitled to be protected against piracy by public performance unless it was capable of being printed and published. The actual decision in *Tate v Fulbrook*, to the effect that mere scenic effects are not the subject of protection has been approved under the Act of 1911—*Copinger* p 68 citing *Tate v Thomas* (1911) 1 Ch 503

**Musical Work**—A musical work may also be a dramatic work *Rusell v Smith* (1848) 12 Q B 27, *Clerk v Bishop* 25 L T 908, *Roberts v Bignal*, 3 T L R 552, but see *Fuller v Blackpool Winter Gardens* (1895) 2 Q B 479

**Artistic Work**—This Act includes among artistic works, works of painting drawing, sculpture and architectural works of art and engravings and photographs. Vide section 35 (1), see also *Grave's Case* (1869) L R 4 Q B 715. But an artist has no monopoly in the subject *De Berenger v Weheble* (1819) 2 Stark N P 548. *Blackwell v Hasper* (1740) 2 Atk 94. In *Grave's Case* (1869) L R 4 Q B 723 *Blackburn J* observed as follows in regard to photographs. The distinction between an original painting and its copy is well understood but it is difficult to say what is meant by an original photograph. All photographs are copies of some object, such as painting or a statue and it seems to me that a photograph taken from a picture is an original photograph in so far that to copy it is an infringement of this statute. As I have already pointed out by section 7 although it is unlawful to copy a photograph or negative it is permitted to copy the subject matter of the photograph by taking another photograph.

**Publication**—A work is said to be published when it is made available to the public in any form.

*Britain v Blanché* series 74 *Albert* (1891) 39 W R 473, *Curry v Mitchell* 12 App Cas 326. The publication of a story in parts in magazine has been held to be equivalent to publication in book form *Holmes v Hurst* (1898) 174 U S Rep 28, *Miffin v Dutton* (1901) 107 Fed Rep 708, *Miffin v White* (1902) 112 Fed Rep 1004. In the case of artistic work or design such a work is published when it is publicly exhibited for sale *Blind v Loomman* (1888) 39 Ch D 678, *Britain v Hinks Bros*, (1902) 18 F L R 525, *Dalglisk v Irvine*, 2 Mac & G 231. But the exhibition of a picture in public for the purpose of obtaining subscribers for engravings of the work is not publication *Turner v Robinson* 191r Ch Rep 510, *Briton v Kennedy*, (1902) 19 T L R 122—*Oldfield, The Law of Copyright* p 46

2 (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright, Provided that the following act shall not constitute an infringement of copyright—

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary

- (ii) Where the author of an artistic work is not the owner of the copy right therein the use by the author of any mould cast, sketch plan, model, or study made by him for the purpose of the work provided that he does not thereby repeat or imitate the main design of that work
- (iii) The making or publishing of printings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship if permanently situate in a public place or building or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art
- (iv) The publication in a collection mainly composed of non copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists. Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged
- (v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given and except whilst the building is being used for public worship in a position near the entrance, but nothing in this paragraph shall affect the provisions of newspaper summaries, or the republication or performance of the work if the author *Oliffeltis*
- (vi) The reading or recitation in public by one person of an extract from any published work,

(2) Copyright in a work shall also be held by a person who—

- (a) sells or lets for hire or by way of hire, or
- (b) distributes either for the purpose of sale or hire, or affects prejudicially the owner of the work, or
- (c) by way of trade exhibits in public or
- (d) imports for sale or hire into any country in which this Act extends,

any work which to his knowledge infringes the copyright if it had been made within the country into which the sale or hiring, exposure, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be held by a person who for his private profit permits a theatrical performance to be used for the performance in public of the work, or the owner of the copyright, unless he was not aware of the performance, or for suspecting, that the performance would be made.

**Any person**—This term includes company, *9 Ch 518, McLean v. Mody, 20 Sess. Cas. 11*

**Consent**—No written consent is necessary in the following circumstances *Coper v. Stephens, (1897) 13 T. L. R. 226, Bourne v. Borneo*, *1914* can sue for infringement

**Fair Dealing**—"As a privilege of fair use"

the provision of this work shall be the first

ograph, or portrait, the some other person and pursuance of that order, the contrary, the person ordered shall be the

some other person under the work was made by that person, the person by in the absence of any owner of the copyright, or other contribution to a work there shall, in the contrary, be deemed to be the publication of the work in a paper, magazine, or

assign the right to any other person for any

to the proprietor of the first publication ; but cases where there is some injury, yet equity will not interfere if use, is where the amount copied is small and of bad motive, or where there is a well founded doubt as to the legal title, or where there has been long acquiescence in the infringement or culpable laches and negligence in seeking redress, especially if it appear that the delay has misled the respondent" *Lawrence v Dona*, 4 Cliff 1. Quotations reasonable in quantity, number and length is fair if within reasonable limits *Sampson v Seaver Radford*, 140 Fed 539, *Chatterton v Cave*, 3 A C 483

**Infringement of copyright**—In an action for an injunction and damages for an infringement of plaintiff's copyright, if it be found that even inaccuracies in both the work are indetical, that references of significance in plaintiff's work are reproduced in defendant's work but by reason of absence of other matter, have no significance therein and there is identity not merely of information but of language, that leaves no doubt that the work of the defendant is a copy of the plaintiff's in a very high degree 67 Ind Cas 983

The moral basis on which the principle of these protective provisions rest is the Eighth commandment, "Thou shalt not steal" 28 C W N 613 P C In *Walter v. Lane*, (1900) A C 539 at p 547 Lord Halsbury said "I should very much regret if I were compelled to come to a conclusion that the state of the law permitted one man to make a profit and to appropriate to himself what has been produced

(1847) 3 C B 871 ;  
ble for infringement of  
(1924) 1 K B 762 ;

ys —(1) By reprint  
a part of it (3) By  
imitating the whole or a part or by reproducing the whole or a part  
using the whole or a part under an abridged  
r a part under the form of a translation  
(7) By making mechanical contrivances  
performing it in public (9) By dealing  
with copies made or imported in contravention of the Act—*Copinger* p 118

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death

Provided that any time after the expiration of twenty five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent on the price at which he publishes the work, and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties

**Notes**—"The proper period of copyright has long been a matter of controversy. Some have contended that the period ought, in the interests of literature, to be a very short one, others urge in the same interest that it should be long. Those who argue in favour of a long period contend that it is a necessary monopoly, whilst upholders of copyright to prevent others multiplying copies of it sometimes argue that the existence of it in literature, but it is exceedingly doubtful on Copyright p 84. At the conference in 1907 for the purpose of considering what modifications ought to be made in the Berne convention, it was decided that the minimum protection accorded to an



author should be during his life and for a period of fifty years after his death

This appears to be a reasonable period and it has now been adopted by the

works of the same author  
namely one and the same

"The above proviso is to apply to posthumous works as if the author died at the date when his work was first published, performed or delivered in public. There is no similar provision expressly extending the proviso to photographs and mechanical contrivances and it is submitted that these cannot be compulsorily reproduced upon a royalty basis."—*Copinger* p 88

4. If, at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public, a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the judicial Committee may think fit

Notes—"There must be a refusal to republish or allow republication or performance of such refusal the work is  
the death of the author" *Oldfield's*

Ownership of copyright, etc. 5. (1) Subject to the provision of this Act, the author of a work shall be the first owner of the copyright therein

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations, to the United Kingdom or any self governing dominion or other part of his Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in



The person by whom such plate etc.—vide *Petty v Taylor* (1897) 1 Ch 467, *Boucas v Cooke*, (1903) 2 K B 227

Contract of service—'The greater the amount of direct control exercised over the person rendering the services by the persons contracting for them, the stronger the grounds for holding it to be a contract of service, and, similarly, the greater the degree of the independence of such control the greater the probability that

There is a contract of service where the contract is such that the employer is entitled to say 'You shall do it in this way that is to say, not only shall you do it by virtue of your agreement but shall do it as I direct you to do' *Sadler v Henlock*, 4 E & B 578, *Limpus v London General Omnibus Co* 1 H & C 526, *Tewens v Noakes*, 6 Q B D 532

Apprenticeship—'An apprentice is a person bound to and who serves another for the purpose of learning some thing which the other is to teach him' *St Pancras v Clapham* 2 E & E 74, see also *R v Shinfield* 14 East, 514

Sub-section (2)—This section deals with assignment and licenses. There is a difference between assignment and exclusive license *Heath v Hartley* 42 Ch D 461, *Lon*

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461, *Nr*

of a sum

power of printing, reprinting and publishing a certain work for all time, that would be parting with the copyright. *Per Wood V C* in *Stevens v Benning* 1 K & J 168

### Civil Remedies.

6. (1) Where copyright in any work has been infringed, the owner of the Civil remedies for infringement of copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court

(3) In any action for the infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to

be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein

**Notes**—The 'owner of the copyright' is either the original owner or a person who derives title through him. Where the right of the plaintiffs is equitable only, he cannot sue without joining the legal owner. *Performing Right Society Ltd v London Theatre of Varieties* (1924) A C 1, see also *University of London Press v University Tutorial Press* (1916) 2 Ch 601, *Bowdens v Herbert*, (1904) 2 Ch 86. Special damage need not be proved. *Exchange Telegraph v Gregory*, (1896) 1 Q B 147. A licensee without joining the owner cannot sue. *Nelson v Horniman*, (1909) 25 T L R 685, see also *Nicol v Stockdale* 3 Swan 687, *Petty v Taylor*, (1897) 1 Ch 467. The infringed copies must be delivered to the owner. *Mansell v Valley Printing Co* (1908) 1 Ch 567. An application for injunction must be made without any delay. *Mawman v Tegg*, 2 Russ 385. *Baily v Taylor Russ & My* 73, *Southey v Sherwood* 2 Mer 435. *Lewis v Chapman*, 3 Beav 132, *Pitman v Hume*, 1 T L R 39. As to method of accounting vide *Colburn v Simms* 2 Ha 543 560. Where the defendants in an action for damages for infringement of copyright in respect of work do not put in work there is an irrebuttable presumption which copyright exists and the plaintiff is of cases, the Court should be reluctant to question of infringement of copyright with J 134

**7 All infringing copies** of any work in which copyright subsists, or of any substantial part thereof and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possessions thereof or in respect of the conversion thereof

**Notes**—Infringing copies mean copies including colourable imitation made or imported in contravention of the provisions of this Act. It is to be observed that proceedings for recovery under this section can only be taken when the whole work of any substantial part thereof is copied. Only a few passages were reprinted properly. This is in substantial accord with the decision in *C L R* at at p 171, where the Court observed that under the 23rd section the proprietor of a property of all copies of an other book which contained printed therein a few pages or passages of his book. In such a case the plaintiff would be entitled to delivery for cancellation. *Wane v Seeboken* (1888) 39 Ch D 73—*Oldfield* p 87. One of the co-owners can sue under his section. Vide *Lauri v Renad*, (1892) 3 Ch 402, *Cecinski v Routledge* (1916) 2 K. B 325

**8 Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had not reasonable ground for suspecting, that the copyright subsisted in the work.**

**Notes**—By Berlin Convention the necessity of registration has been done away with. So there may be cases, in which for want of registration the defendant may not be aware of the existence of the copyright in the work. This section has been enacted in order to enable to an exemption under this section. A copyright is a proprietary right and as such acted innocently. *Mansell v Valley Print* proving that the defendant 'was not aware of

the existence of the copyright in the work" is on the defendant 'The only grounds for not suspecting copyright appear to be either, (a) that the period of copyright protection has run out, (b) that he thinks that the work is of such a character that it ought not to be a subject of copyright, (c) that the work is a foreign work' *Copinger* p 173

9. (1) Where the construction of a building or other structure which infringes or which, if completed would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copy right or as impose summary penalties, shall not apply in any case to which this section applies

Notes—In such a case the only remedy of the plaintiff lies in an action for damage As regards amount of damage, vide *Lufort v Lallemant*, cited in *Old field* p 90, *Birn v Keen* (1918) 2 Ch 281, *Fenning v Wolterhampton*, (1914) 31 L T 1171

10 An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement

Notes—This period of limitation applies in an action to be brought under section 7. (Vide *Copinger* p 179) Moreover the acts which are deemed to be infringements under section (2) are each new infringement, and the period is to be counted from such an act and not from the original making of the work. *Ibid*

#### Importation of copies

14\* (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of the section be deemed to be included in table of prohibitions and restrictions contained in section forty two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions or other matters to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention, and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence

(4) The regulations may apply to copies of all works, the importation of which is prohibited by this section, or different regulations may be made for different classes of works

for the informant reimbursing the Com  
penses and damages incurred in respect

be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein

**Notes**—The "owner of the copyright" is either the original owner or a person who derives title through him. Where the right of the plaintiffs is equitable only, he cannot sue without joining the legal owner. *Performing Right Society Ltd v. London Theatre of Varieties*, (1924) A. C. 1; see also *University Tutorial Press* (1916) 2 Ch 601. Special damage need not be proved. *Exchange* B 147. A licensee without joining the owner (1909) 25 T. L. R. 685, see also *Nicol v. Stoc* (1897) 1 Ch 467. The infringed copies must be made without any delay. *Maruman v. Tegg*, & My 73, *Southey v. Sherwood*, 2 Mer 435; *Lewis v. Chapman*, 3 Bea 132, *Pitman v. Hume*, 1 T. L. R. 39. As to method of accounting, vide *Colburn v. Simms* 2 Ha 543 560. Where the defendants in an action for damages for infringement of copyright in respect of work do not put in issue the existence of the copyright in the work there is an irrebuttable presumption, that the alleged work is a work in which copyright exists and the plaintiff is the owner of the copyright. In this class of cases, the Court should be reluctant to sit as the trier of facts and to decide the question of infringement of copyright without the aid of expert evidence. 39 C. L. J. 134.

**7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possessions thereof or in respect of the conversion thereof**

**Notes**—"Infringing copies" mean copies including colourable imitation made or imported in contravention of the provisions of this Act. It is to be observed that proceedings for recovery under this section can only be taken when the whole work of any substantial part thereof is reproduced—when only a few passages were reprinted proper. This is in substantial accord with the C. L. R. at at p 171, where the Court observed that under the 23rd section the proprietor property of all copies of another book which contained printed therein a few pages or passages of his book. In such a case the plaintiff would be entitled to delivery for cancellation. *Wane v. Seebohm*, (1888) 39 Ch D 73—*Oldfield* p 87. One of the co-owners can sue under his section. Vide *Lauri v. Renad*, (1892) 3 Ch 402, *Cecinski v. Routledge*, (1916) 2 K B 325.

**8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had not reasonable ground for suspecting, that the copyright subsisted in the work**

**Notes**—By Berlin Convention the necessity of registration has been done away with. So there may be cases, in which for want of registration the defendant may not be aware of the existence of the copyright in the work. This section has been enacted to meet such contingency. In order to entitle to an exemption under this section, must be specifically pleaded. A copyright is a proprietary right and as such it is no defence that the defendant acted innocently. *Mansell v. Valley Printing*, (1903) 2 Ch 441. The onus of proving that the defendant "was not aware of

the existence of the copyright in the work is on the defendant. The only grounds for not suspecting copyright appear to be either, (a) that the period of copyright protection has run out, (b) that he thinks that the work is of such a character that it ought not to be a subject of copyright (c) that the work is a foreign work. *Copin Ger* p 173

9. (1) Where the construction of a building or other structure which infringes or which if completed would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright or as impose summary penalties shall not apply in any case to which this section applies.

Notes.—In such a case the only remedy of the plaintiff is in an action for damage. As regards amount of damage, vide *Lusford v Lallemand*, cited in *Oldfield* p 90, *Birn v Keen* (1918) 2 Ch 281, *Fenning v Wolterhampton* (1914) 31 L T 1171.

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Notes.—The limitation period applies to actions to be brought under section 11. It is to be counted from the date of the infringement. *Ibid*.

### Importation of copies

14\* (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise that he is desirous that such copies shall not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of the section be deemed to be included in table of prohibitions and restrictions contained in section forty two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information conditions or other matters to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of which is prohibited by this section or different regulations may be made for different classes of such works.

Notes.—The regulations may provide for the informant reimbursing the Commission all expenses and damages incurred in respect





*Special Provisions as to certain Works*

16. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death or during the life of the author who dies last whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of death of the author

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid

(3) For the purposes of this Act "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property

Notes—By mere suggesting an idea person does not become a joint author *Tate v Thomas* (1929) 1 Ch 523, *Evans v Hulton* (1924) WN 130 In *Levy v Rutly*, (1871) LR CP 525, *Byles J* at p 528 said "If the piece had been originally written by the plaintiff and W jointly in prosecution of a preconceived joint design the two might have been said to be co authors of the whole play, notwithstanding that different portions were respectively the sole productions of either" In the same case *Keating J* said "Though it may not be necessary that each should contribute the same amount of labour, there must be a joint labouring in furtherance of a common design" The copyright rests in the joint authors as tenants in common and not as joint tenants *Louri v Renad*, (1892) 3 Ch 402, *Powell v Head* 12 Ch D 686 *Trade Auxiliary v Middlesborough*, (1889) 40 Ch D 425 One of two joint authors can restrain the other by injunction from publish-

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*Renad ubi supra Powell v Head*

(1888) 40 Ch D 475 An em

ployer of an author is not a joint author *Levy v Putley* (1871) LR 6 CP 523, *Eaton v Lake*, (1888) 20 QB D 378, *Tate v Gulbrook* (1908) 1 KB 821

Sub-section (4)—Presumably this sub-section was inserted in order to make

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17 (1) In the case of literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author, or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or

Posthumous works

musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section three of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public, nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript

Notes—Sub section (1) does not apply to artistic work other than engravings—*Oldfield* p 110

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work

Notes—Originally the copyright in the Bible belonged to the Crown. Gradually this right is partially lost by the authorised version of the Bible. *Imbridge v Richardson*, (1802) 6 Ves 689. *Manners v Blair*, 3 Bl 111 (1799). *Red Letter Testament, In re*, (1900) 17 T L R 11 and Prayer Books. Before this Act, Government publications were not subject to copyright. This section therefore covers the case of the Bible or on behalf of the Crown. The work was not to be the

Crown is concerned (1926) 1 Ch 433

19 (1) Copyright shall subsist in records perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the parts of His Majesty's dominions to which this Act extends, records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work, and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for

the benefit of the owner of the copyright in the work royalties in respect of all such contrivances sold by him calculated at the rate hereinafter mentioned

Provided that—

- (i) nothing in this provision shall authorize any alterations in or omissions from the work reproduced unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by or with the consent or acquiescence of the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question and
- (ii) for the purposes of this provision a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced
- (3) The rate at which such royalties as aforesaid are to be calculated shall—
  - (a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same be two and one-half per cent and
  - (b) in the case of contrivances sold as aforesaid after the expiration of that period be five per cent

on the ordinary retail selling price of the contrivance calculated in the prescribed manner so however that the royalty payable in respect of a contrivance shall in no case be less than a half penny for each separate musical work in which copyright subsists reproduced thereon and where the royalty calculated as aforesaid includes a fraction of a farthing such fraction shall be reckoned as a farthing

Provided that if at any time after the expiration of seven years from the Board of Trade that such rate as Trade may after holding a public increasing that rate to such extent as under the circumstances may seem just but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament, but where an order revising the rate has been so made and confirmed no further revision shall be made before the expiration of fourteen years from the date of the last revision

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as failing agreement may be determined by arbitration

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made then for the purposes of this section the owner of the copyright in the work shall in relation to any person who makes the prescribed inquiries be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time

(6) For the purposes of this section the Board of Trade may make regulations requiring payment in advance or otherwise securing the payment of royalties

(7) In the case of musical works published before the commencement of this Act, the foregoing provision shall have effect, subject to the following modifications and additions :

- (a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply ;
- (b) The rate of two and one half per cent, shall be substituted for the rate of five per cent, as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten
- (c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives
- (d) The saving contained in this Act of the rights and interests arising from or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section
- (e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copy-

rights in the Act, subsist therein in like manner as if the contrivance had been in force at the date of its making, or if the contrivance was directly

or indirectly derived

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright, and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance

Sub section (1)—Section 1, sub section 2 (d) for the first time gives the author, of a literary, dramatic or musical work the sole right to make any record perforated roll, cinematograph film, or other contrivance by means of which the work may

be mechanically performed or delivered *Monckton v Pathe Freres* (1914) 1 K B 395

**Sub section (2)**—The rights given by the Copyright Act, 1911 to the author of a musical production to restrain the manufacturer of records upon giving notice to the author and paying royalties to him do not affect any copyright vested in an assignee under an assignment made before the Act *Chappell v Columbia Gramophone Co.*, (1914) 2 Ch 127, 745

**Sub section (6)**—Under sub section (6) the Board of Trade may make regulations prescribing the mode time and frequency of payment of royalties, and any such regulations may if the Board think fit include regulations requiring payments in advance or otherwise securing the payment of royalties—(1914) 1 K B 395

**20** Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper

Provision as to political speeches

**21** The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative, from which the photograph was directly or indirectly derived and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work and, where such owner is a body corporate the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

**Notes**—This section applies irrespective of the fact that the photograph is published or unpublished. A negative will be deemed to be made not upon exposure, but upon the plate being developed and fixed. *Vide Copingers Copyright* p 85

*Exhibitions* 84 T L R 550

**22. (1)** Provisions as to registered designs, are not used or intended to be used as models or patterns to be multiplied by any industrial process

Provisions as to registered designs, are not used or intended to be used as models or patterns to be multiplied by any industrial process

**Notes**—This section is intended to make the distinction between the law of copyright and the law of design. Under the old law there was no considerable overlapping. Such a division has, however, now become necessary by reason of the inclusion of works of artistic craftsmanship and architectural works of art as matter for copyright protection—*Oliffel's Law of Copyright* p 124

(7) In the case of musical works published before the commencement of this Act, the foregoing provision shall have effect, subject to the following modifications and additions :

- (a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply ;
- (b) The rate of two and one half per cent, shall be substituted for the rate of five per cent, as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten
- (c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives .
- (d) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section
- (e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright, and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

Sub section (1)—Section 1, sub section 2 (d), for the first time gives the author, of a literary, dramatic, or musical work the sole right to make any record perforated roll, cinematograph film, or other contrivance by means of which the work may

be mechanically performed or delivered *Monckton v Pathe Freres* (1914) 1 K B 395

**Sub section (2)**—The rights given by the Copyright Act, 1911, to the author of a musical production to restrain the manufacturer of records upon giving notice to the author and paying royalties to him do not affect any copyright vested in an assignee under an assignment made before the Act *Chappel v Columbia Gramophone Co.*, (1914) 2 Ch 127, 745

(6) the Board of Trade may make regulations as to the frequency of payment of royalties, and any regulations so made may think fit include regulations requiring payments in advance or otherwise securing the payment of royalties—(1914) 1 K B 395

**20** Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper

**Provision as to political speeches**

**Notes**—Under clause (v) of sub section 1 of section 2 the publication of a report of a public lecture is not an infringement of copyright Under this section if the address be of a political nature and if it be delivered in a public meeting a full report of it may be published Whether an address is an address of a political nature is a question of fact—Vide *Oldfield* p 123

**21.** The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative, from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

**Provisions as to photographs**

**Notes**—This section applies irrespective of the fact that the photograph is published or unpublished A negative will be deemed to be made not upon exposure, but upon the plate being developed and fixed Vide *Copinger's Copyright* p 85 The copyright dates from the making of the original negative and subsists for a period of fifty years from that date Where however, the work is ordered by another person, and is made for valuable consideration, the first ownership in the copyright belongs to the person so ordering the work in the absence of any contrary agreement Vide section 5 (1) (a) But the proprietary right in the negative will remain with the photographer *Pollard v Photograph Co* 40 Ch D 345, *Bolton v London Exhibition* 84 T L R 350

**22. (1)** This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process

**Provisions as to designs registrable under 7 Edw VII c. 29**

**(2)** General rules under section eighty six of the Patents and Designs Act 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid

**Notes**—This section is intended to make the distinction between the law of copyright and the law of design Under the old law there was no considerable overlapping Such a division has, however, now become necessary by reason of the inclusion of works of artistic craftsmanship and architectural works of art as matter for copyright protection—*Oldfield's Law of Copyright* p 124

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works

Notes—"The intention of this Act is that by Order in Council, the benefit of the protection under the Act should be extended to foreign countries when such countries give reciprocal advantages, and it may be assumed that such extension will be made before the Act comes into force in favour of those countries that are members of the copyright union, so that any author who first publishes in a union country will be entitled to have the same treatment if he were a native of the country. This section gives power by Order in Council to withhold the advantages of the Act or to withdraw the advantages after they have been conferred, if such a case should arise as to justify the words of the section, where, it appears "that a foreign country does not give or has not undertaken to give adequate protection to the works of British authors —*Oldfield's Law of Copyright* p 128

24 (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder.

Provided that—

(a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either —

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration, or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment if demanded by the author within three years after the date at which the right would have expired, or to the author as, failing agreement, where the work is incorporated in a book or other work of art, of the right or interest in the work without any such payment ;



The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found advertised in the *London Gazette* and in two London newspaper,

- (b) where any person has, before the twenty six day of July nineteen hundred and ten taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration

(2) For the purposes of this section, the expression 'author' includes the legal personal representatives of a deceased author

(3) Subject to the provisions of section nineteen sub sections (7) and (8) and of section thirty three of this Act copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section

Notes—An entry in the Copyright Registrar Book under section 3 of the previous Copyright Act is *prima facie* evidence of the proprietorship of the person mentioned therein but the absence of that provision from the new Copyright Act, does not make it none the less evidence when the new Act grants to the owners of existing copyrights right at least as valuable as the rights given under the repealed Act. Section 114 of the Evidence Act can therefore be invoked to make such evidence admissible 30 Ind Cas 721=16 Cr L J 673 This section makes this Act retrospective and this Act is to be considered as if in force at the time when this was made for the purpose of computing the term for which copyright subsists—*Oldfield's Law of Copyright* p 129

Proviso (a)—By this proviso when the author of a work has assigned his right for a period less than the whole original term, he would have a reversionary interest which would automatically confer upon him by virtue of the earlier provisions of this section the substituted right which would become exercisable by him upon the falling in of his revision. If however the author had granted a license to one person for a portion of the old term, and then to another for the residue of that term it is conceived that he would have granted an interest, in his copyright "for the whole term" within the meaning of the proviso—*Cobinger on Copyright* p 267

#### *Application to British Possessions*

25 (1) This Act except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions. Provided that it shall not extend to a self governing dominion, unless declared by the Legislature either without any modifications or and additions relating exclusively to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature

(2) If the Secretary of State certifies by notice published in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British sub-



27 The Legislature of any British possession to which this act extends may modify or add to any of the provisions of this Act in its application to the possession, except, so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were at the time of the making of the work resident in the possession, and to works first published in the possession

Notes—This sub-section corresponds to resolution 2 (b) of the Imperial Copyright Conference, 1910. It applies to all British possessions except the self governing dominions unless adopted by those dominions. The result is that local Acts will only be operative within the possession.—*Oldfield's Law of Copyright* p 136

28 His Majesty may, by Order in Council extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends

Notes—The administration of *Cyprus* is entrusted to England under a treaty of June 4 1887

## PART II

### INTERNATIONAL COPYRIGHT

29 (1) His Majesty may, by Order in Council direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

- Power to extend Act to foreign works
- (a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends,
  - (b) to literary, dramatic, musical, and artistic works or any class thereof the authors whereof were, at the time of the making of the works, subjects or citizens of a foreign country to which the Order relates in like manner as if the authors were British subjects,
  - (c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends,
- and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly

Provided that—

- (i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into the convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make such provisions if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I, of this Act,
- (ii) the Order in Council may provide that the terms of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates,
- (iii) the provisions of this Act as to the delivery of copies shall not apply to works first published in a foreign country so far as is provided by the law of that country

- (iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order,
- (v) in applying the provisions of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country,
- (vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886 \*

(2) An Order in Council under this section may extend to all the several countries named or described therein

Notes—If an order in council is made giving the full rights allowed by this section with regard to a particular country copyright under the British Act is conferred upon (i) works published in that country, (ii) unpublished works of citizens of that country and (iii) unpublished works of persons resident in that country  
*Copinger's Copyright*, p. 294

30 (1) An order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self governing dominions and British possessions and any other possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply

(2) The Governor in Council of any self governing dominion to which this Act extends may, as respects that dominion, make the like Orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self governing dominions and the provisions of this Part of this Act shall, with the necessary modifications apply accordingly

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions, not being a self governing dominion it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

Notes—Under this section the self governing dominions are enabled to make their own orders in Council applying the law in such dominion to foreign works This is new law—*Oldfield's Law of Copyright* p. 148

## PART III

### SUPPLEMENTAL PROVISIONS

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished otherwise than under and in accordance with the provisions of this Act, of or any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence

**Notes**—The New Act here as before abolishes common law copyright, and confers the same as are made in three things which are (a) the right to the material manuscript by making

copies thereof or extracts therefrom, and (c) the right to make use of the ideas or information conveyed by the manuscript, without copying the actual language employed therein. The second right only belongs properly to the law of copyright, the first is protected by the ordinary possessory remedies and the third by that equitable jurisdiction to restrain breaches of trust and confidence which is expressly preserved by section 31 of the Act of 1911—*Copinger on the Law of Copyright* p 27. This breach of confidence must originate from some contract for secrecy, but such a contract may be either express or implied from the circumstances of the case. *Ibid* citing *Prince Albert v Strange* (1849) 1 Mac & G 25 see also *Webe v Rose*, (1732) cited Burr 2330, *Forrester v Walker*, (1741) *Ibid*, *Macklin v Richardson*, 1758) 2 Eden 329 *Lamb v*

*Green* (1887) 19 Q B D 629, *Pollard v* *Clark* (1887) 12 A C 326. But

in order to give rise to such a breach of trust or confidence, it must be proved that the defendants either published the confidence or was fully aware of all for breach of trust or confidence in a manuscript without notice. *Philip*

**32** (1) His Majesty in Council may make Orders for altering, revoking or varying any Order in council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not effect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

**33.** Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775,\* of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

**Notes**—The result of this section is that no new perpetual copyright can be acquired by any University or College—*Oldfield's Law of Copyright* p 150.

**34.** There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books.

Provided that this compensation shall not be paid to a library in any year unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

**Notes**—This section refers to the compensation payable to the libraries of Sion College the four Universities of Scotland, and of the King's Inns in Dublin in respect of the books to which they were formerly entitled under the Copyright Act, 1836, 6 & 7 Will IV c 10—*Vide Oldfield's Law of Copyright* p 150.

35 (1) In this Act, unless the context otherwise requires,—

of Canada, the Com-  
f New Zealand, the

(3) . . . . .  
lished . . . . .

notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part

same The distinction is obvious The first is temporary the second is permanent  
to denote a fixed permanent residence to which he has returned " *Per Beck J* in *Colen v Daniel*  
home the permanent home " *Per Lord Cranvo*  
Cas 120 (160)=28 L J Ch 395=4 Jur N S  
" legal idea of domicile " *Per Chetty J* in *Fortal*  
of a person is that place or country in which his  
is his intention of removing therefrom " *Per Chetty*

36 Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part

Notes—The repeal is to take effect in the first instance in the United Kingdom of Great Britain and Ireland

Short title and commencement 37 (1) This Act may be cited as the Copyright Act 1911

(1) This Act shall come into operation

(a) In the United Kingdom, on the first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council,

(b) in a self-governing dominion to which this Act extends at such date as may be fixed by the Legislature of that dominion,

(c) In the Channel Islands at such date as may be fixed by the States of those islands respectively,

(d) in any other British possession to which this Act extends on the proclamation thereof within the possession by the Governor.

SCHEDULES\*  
FIRST SCHEDULE  
EXISTING RIGHT

| EXISTING RIGHTS                                                       | Substituted Right                                                                                                        |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <i>(a) In the case of works other than Dramatic and Musical Works</i> |                                                                                                                          |
| Copyright                                                             | Copyright as defined by this Act†                                                                                        |
| <i>(b) In the case of Musical and Dramatic Works</i>                  |                                                                                                                          |
| Both Copyright and performing right                                   | †, except work or                                                                                                        |
| Copyright, but not performing right                                   | any substantial part thereof public.                                                                                     |
| Performing right, but not copyright                                   | The sole right to perform the work in public but none of the other rights comprised in copyright, as defined by this Act |

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings —

"Copyright, in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before the date and statutory copyright wherein depends on publication includes the right at common law (if any) to restrain publication or other dealing with the work ,

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public

SECOND SCHEDULE  
ENACTMENTS REPEALED

| Session and Chapter | Short Title                       | Extent of Real |
|---------------------|-----------------------------------|----------------|
| 8 Geo 2, c 13.      | The Engraving Copyright Act 1734  | The whole Act  |
| 7 Geo 3 c 38        | The Engraving Copyright Act, 1767 | Ditto          |
| 15 Geo 3, c 53.     | The Copyright Act 1775            | Ditto          |
| 17 Geo 3 c 56       | The Prints Copyright Act 1777     | Ditto          |
| 54 Geo 3, c. 56     | The Sculpture Copyright Act 1814  | Ditto          |

\* *Vide* Section 24

† In the case of an essay, article or portion forming part of and first published in a review, subject to which the had not Act, 1842

right shall be rate form to if this Act Copyright



| Session and Chapter      | Short Title                                                | Extent of Repeal                                                                                                                                                                                                   |
|--------------------------|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 and 4 Will 4,<br>c 15  | The Dramatic Copyright Act,<br>1833                        | Ditto                                                                                                                                                                                                              |
| 5 and 6 Will 4,<br>c. 65 | The Lectures Copyright Act<br>1835                         | Ditto                                                                                                                                                                                                              |
| 6 & 7 Will 4<br>c 59     | The prints and Engravings<br>Copyright (Ireland) Act, 1836 | Ditto                                                                                                                                                                                                              |
| 6 & 7 Will 4,<br>c. 110  | The Copyright Act 1836                                     | Ditto.                                                                                                                                                                                                             |
| 5 & 6 Vict., c.<br>45    | The Copyright Act 1842                                     | Ditto                                                                                                                                                                                                              |
| 7 & 8 Vict., c<br>12     | The International Copyright Act<br>1844                    | Ditto                                                                                                                                                                                                              |
| 10 & 11 Vict<br>c 95     | The Colonial Copyright Act<br>1847                         | Ditto                                                                                                                                                                                                              |
| 15 & 16 Vict<br>c 12     | The International Copyright Act<br>1852                    | Ditto                                                                                                                                                                                                              |
| 25 & 26 Vict.,<br>c 68   | The Fine Arts Copyright Act<br>1862                        | Sections one to six<br>in section eight the<br>words and "pursu-<br>ant to any Act for<br>the protection of<br>copyright engrav-<br>ings," and "and in<br>any such Act as<br>aforesaid" Sections<br>nine to twelve |
| 38 & 39 Vict.,<br>c 12   | The International Copyright Act<br>1875                    | The whole Act                                                                                                                                                                                                      |
| 39 & 40 Vict.,<br>c 36   | The Customs Consolidation Act<br>1876                      | Section forty two<br>from "Books where-<br>in" to "such copy-<br>right will expire"<br>Sections forty four<br>forty five, and one<br>hundred and fifty<br>two                                                      |
| 45 & 46 Vict.,<br>c 40   | The Copyright (Musical Compositions)<br>Act, 1882          | The whole Act                                                                                                                                                                                                      |
| 49 & 50 Vict.,<br>c. 33  | The International Copyright Act 1886                       | Ditto                                                                                                                                                                                                              |
| 51 & 52 Vict<br>c 17     | The Copyright (Musical Compositions)<br>Act, 1888          | Ditto                                                                                                                                                                                                              |
| 52 & 53 Vict.,<br>c 42   | The Revenue Act, 1889                                      | Section one from<br>"Books first publi-<br>shed" to "as provi-<br>ded in that section                                                                                                                              |

SECOND SCHEDULE.—*concl'd.*

| Session and Chapter | Short Title                    | Extent of Repeal                                                                                                                                                                                                                                                        |
|---------------------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 Edw 7 c 36        | The Musical Copyright Act 1906 | In section three the words "and which has been registered in accordance with the provisions of the Copyright Act 1842, or of the International Copyright Act, 1844 which registration may be effected notwithstanding anything in the International Copyright Act 1886" |

## SECOND SCHEDULE

## REPEAL OF ENACTMENTS

Repealed by the Repealing Act, 1927 (12 of 1927)

## THE COURT FEES ACT, 1870

## ACT NO VII OF 1870

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received His Excellency's assent on 11th March, 1870)

## CHAPTER I

## PRELIMINARY

|                     |                                                                                                                  |
|---------------------|------------------------------------------------------------------------------------------------------------------|
| Short title         | 1 This Act may be called the Court Fees Act, 1870                                                                |
| Extent of Act       | It extends to the whole of British India,                                                                        |
| Commencement of Act | And it shall come into force on the first day of April 1870                                                      |
|                     | Power to amend the Court Fees Act by Act (XXXVIII of 1920) The various Court Fees Act of 1870 have been given in |

Legislative papers—For the Statement of Objects and Reasons see *Gazette of India* 1869 Pt V p 57, for Proceedings in Council see *Ibid* 1869, Supplement, pp 1179 and 1452, *Ibid* 1870 Supplement pp 52, 378, 421 and 434

Scope and Object of the Act—The Court Fees Act, 1870 was as even its name imports an Act primarily passed for the purpose of prescribing the fees which are to be paid in respect of documents to be used in Court. It also provides in the schedules for the stamps to be used in certain offices of Courts of Chief Justice. That Act not only prescribes the fees but provides how fees are to be far as Courts which only the may be received, The Court Fees

Act also specifies the documents which need not be stamped under that Act for the purpose of being used in Courts." *Per Edge J* in 12 A 129 (F B) at p 139. The object of s 10 and indeed of the whole of the Court Fees Act, is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens or encroach upon, or qualify the rights of the subject, must be strictly construed applies with special force to such provisions of the Act as provides a penalty whatever its nature may be. *Per Mahmood J* in 8 A 282. The Court Fees Act is essentially a fiscal enactment. Its primary object is to provide for and protect the revenue and not to coerce the subject." *Per Manuk J* in 49 Ind Cas 442 at p 44=49 Pat L J 57 (71), see also 39 C L J 209, 9 M 148 (F B), 14 A L J 850=36 Ind Cas 877, 1922 U B R 14, 44 Ind Cas 251 (F B), 37 A 158=27 Ind Cas 731; 34 B 239. "The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenues for the benefit of the state. This is evident from the character of the Act and is brought out by section 12, which makes the decision of the First Court as to value final as between the parties and enables the Court of appeal to correct any error as to this, only where the First Court decided to the detriment of revenue." *Per Sir Lawrence Jenkins* in 24 C W N 33 at p 40=43 B 507=29 C L J 452=36 M L J 437=21 Bom L R 489=17 A L J 418=50 Ind Cas 280. The Act must be considered as a whole. 18 C W N 121.

**Extent of the Act**—Act VII of 1870 has been declared in force—

in Upper Burma generally (except the Shan States), by the Burma Laws Act (XIII of 1898) s 4 (1) Sch 1,

in British Baluchistan by Regulation (II of 1913) s 3,

in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation (III of 1899)

In Sub-division of Angul by Reg (III of 1899)

It has further been declared by a notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874) in force in the following Scheduled Districts namely—

the district of Hazaribagh (see *Gazette of India*, 1881 Pt 1 p 507),

The District of Lohardaga (now called the Ranchi District) (see *Calcutta Gazette* 1899 Pt 1 p 44, *ib* 1881 Pt 1 p 508); the District of Lohardaga then included the present District of Palamau separated in 1894,

The District of Manbhum (see *Calcutta Gazette*, 1881 (Pt 1 p 509),

the Pargana Dhalbhum in the District of Singbhum (see *Calcutta Gazette* 1881 Pt 1 p 510),

the Scheduled District in Ganjam and Vizagapatam (see *Gazette of India*, 1898 Pt 1, p 869),

North-Western Provinces Tarai (see *Gazette of India* 1876 Pt. 1 p 505

It has been extended, by notification under ss 5 and 5 A of the same Act, to the following Scheduled Districts, namely—The Garo Hills District the Khasia and Jaintia Hills District, Naga Hills District, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugar Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption—See *Assam Gazette*, 1897, Pt 1, p 861, *Gazette of India* 1884 Pt 1 p 164

It has also been applied to the Baluchistan Agency Territories by the Baluchistan Agency Law, 1890, 4 (1)

The Act came into permanent operation in Aden on 1st April, 1876.—See *Bombay Government Gazette*, 1876. Pt 1 p 956

... officers making a settle  
... nas Settlement Regulation  
... Santhal Parganas Justice

The Act has been amended in Upper Burma (see the Upper Burma Civil Courts Regulation, I of 1896 = 36, in the Punjab (see the Punjab Courts Act, XVII of 1886, s 71), in Lower Burma (see the Lower Burma Courts Act, VI of 1900, Sch I, Pt 1)

**Retrospective effect of the Act**—"As observed in *Munjhoori v Akel*, 17 C W N 889=17 C L J 316 every statute which takes away or impairs a vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability, in respect of transactions or considerations already passed must be deemed retrospective in its operation. The rule that enactments in a statute are generally to be construed to be prospective and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice, and it has been repeatedly laid down that in the absence of clear intent to take away a vested right *Hafiz*, 18 C L J 274 and 804=19 C L J 549. By ant that where the full fee time it is granted has been grant is made in respect of

that property as comprised in that state 20 C W N 472=43 C 625=22 C L J 370=30 Ind Cas 394. When appeal is filed after the Court Fees Act came into operation the Court Fee is to be paid according to the subsequent Act 15 W R 272, 7 W R 461, 7 W R 452. But when a plaint is presented with deficit Court Fees the Court Fees would be charged in accordance with the Court Fees Act in force at the date of the presentation 28 C W N 860=51 C 216=39 C L J 212. An appeal must be presented to a proper officer and accordingly such an appeal must be charged with the court fees prescribed in the Court Fees Act which is in force on the date of presentation to the proper officer 2 Pat 264=(1923) A I R 150 (Patna), see also 14 W R 167, 30 C W N 90=1926 A I R 355 (Cal), but see 39 C L J 222=28 C W N 403=1924 A I R Cal 881, 46 M 685=45 M L J 557=1923 M W N 883 (F B)

**How determined**—In each case the Court fee is to be imposed by the nature of the relief claimed 21 C W N 375, 40 C L J 150, 20 C 762, 28 Ind Cas 79, 30 M 18 21 Ind Cas 404=40 C 615. It is to be imposed on the actual value of the property 69 Ind Cas 513=6 P L J 411. As to when no Court Fee is to be paid, vide 12 C W N 917

Chief Controlling Revenue authority defined

\*"2 In this Act unless there is anything repugnant in the subject or context 'Chief Controlling Revenue authority', means—

(a) in the Presidency of Fort St George "the Presidency of Fort William in Bengal"† and the territories respectively under the administration of the Lieutenant Governors of "Behar and Orissa"‡ and the North Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue,

(b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(c) in Sindh—the Commissioner,

(d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner, and

(e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf

**Notes**—The Lieutenant Governor of the North Western Provinces and the Chief Commissioner of Oudh is now known as the Lieutenant Governor of the United Provinces of Agra and Oudh—vide Proclamation No 9196 P dated the 22nd March 1902 Gazette of India, 1902 Pt I p 228 and U P Act VII of 1902

\* Section 2 was added by the Court Fees (Amendment) Act (X of 1901) s 2

† The words with quotations have been inserted by Act 24 of 1917

‡ Added by Act 24 of 1917

## CHAPTER II.

## FEES IN THE HIGH COURTS, AND THE COURTS OF SMALL CAUSES AT THE PRESIDENCY TOWNS

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by "section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915",<sup>\*</sup> or chargeable in each of such Courts under No 11 of the First, and Nos 7, 12, 14 † 20 and 21 of the Second Schedule to this Act annexed ,
- Levy of fees in High Courts on their original sides
- Levy of fees in Presidency Small Cause Courts and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns ‡ and their several offices,

shall be collected in manner hereinafter appearing

Notes—The words of this section must be controlled by the reference to section 15 of the High Courts Charter Act 70 Ind Cas 813=42 M L J 436=16 L W 210 =1922 M W, N 511=45 M 849=1922 A I R (Mad) 421 The Court fees are to be collected in stamps 4 Pat 336=1925 A I R 392 (Pat), 29 C W N 879 No Court fees are leviable upon a petition of appeal preferred, under the Letters Patent of the Allahabad High Court from the judgment of a single Judge 63 Ind Cas 318=19 A L J 677=44 A 13 The levy of Court fees in the Presidency Small Cause Courts is provided in this section 15 Ind Cas 172=20 P L R 1922 When a suit is transferred from the City Civil Court Madras to the High Court under cl 13 of the Letters Patent the Court fee payable is that in force in the High Court as a court of ordinary original jurisdiction as the case is expressly governed by s 14 of the Madras City Court Act 60 M L J 435=132 Ind Cas 645

4. No document of any of the kinds specified, in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ,
- or in the exercise of its extraordinary original criminal jurisdiction ,
- or in the exercise of its jurisdiction as regards appeals from the "judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction in their appellate jurisdiction, of the Court) of one § or more Judges of the said Court, or of a Division Courts,
- or in the exercise of its jurisdiction as regards appeals from the Court; subject to its superintendence ,
- as Courts of reference and revision, or in the exercise of its jurisdiction as a Court of reference or revision ,

unless, in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedule as the proper fee for such document

\* See the Indian High Courts Act 1861 (24 & 25 Vict c 104) and Government of India Act 1915 The words within quotations have been substituted by Act 24 of 1917

† Here the number 16<sup>a</sup> repealed by the Repealing and Amending Act (VII of 1891) has been omitted

‡ See the Presidency Small Cause Courts Act (XV of 1882) Ch X For amount of fees payable in certain cause, see the North Western Provinces Rent Act (XII of 1881), s 9, as amended by the North Western Provinces Rent Act (XIV of 1886) s 2

§ The words within quotations have been substituted by Act 19 of 1922

**Memorandum of appeal—**

second schedule of the Act and therefore, be filed or recorded in court fee in respect of it is paid. Ind Cas 675=3 P L J 74=5 P L W 18, 18 C L J 133, 1925 Pat C W N 65 46 Ind Cas 509=3 P L J 484, A I R 1924 (Lah) 401. But no court fee was payable on Letters Patent of the Allahabad, Lahore and Patna High Courts appeals from the decision of a single Judge, inasmuch as this section made no provision for the case of such appeal. 44 A 13=19 AL J 177=63 Ind Cas 318; see also 21 A 178 19 A W N 23, 68, Ind Cas 423=1923 A I R Lah 275=3 Lah 420, 65 Ind Cas 673=3 P L T 19=1922 C W N (Pat) 88. But by the amendment of this section by Act 19 of 1922 the above decisions have been made obsolete. As regards court fee payable on revision, see 11 A 176. After receipt of the Court may fees 1926 A I R (Bom) 343, see also. *plaint and not merely the exact relief asked for has to be looked into in order to determine the court fee payable on the plaint* 10 Pat 432=130 Ind Cas 46.

**5** When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court, as the Chief Justice shall appoint, either generally or specially, in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final except when the question is in his opinion one of general importance in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing officer within the meaning of the first paragraph of this section.

**Amendment—**This section has been amended by Mad Act V of 1922 section 3.

**Taxing officer's decision—**The taxing officer's decision is final. 32 A 59, 12 A 129 (F B) 21 M 769, 29 C W N 879, 47 A 756, 3 Pat L J 62, 4 Pat L J 700 (1925) P H C C 359, 92 Ind Cas 626. The jurisdiction of the taxing officer does not arise like the jurisdiction of an arbitrator upon a difference of some sort of formal reference. =A I R 1925 Cal 120. Where at all the Court hearing the =23 A L J 725, 37 C 914.

**Scope—**The intention of this section is merely to ensure that the question should be raised before the taxing officer and that he should bring his mind to bear on the question and that he should decide it. 29 C W N 879=52 C 871; see also 20 M 398. To determine the amount of Court fee on an appeal, the Judge for himself the proper value of the appeal and should not exercise his powers.

the Bench before which the appeal is heard. 87 =4 Pat 336=A I R 1925 Pat 392 (F B), 4 Pat 756, 7 Ind Cas 715, 75 Ind Cas 871, 92 Ind

Where the decision of the taxing officer is erroneous additional Court fee need not be paid. 15 A 177, 11 A 91, but see 46 B 840=67 Ind Cas 364. A taxing officer can correct his error. 68 Ind Cas 316. Levy of additional Court fees

after decision is not allowable 32 Ind Cas 534 A taxing officer can decide as to deficiency of Court fee on plaint and memo of appeal in lower Courts 84 Ind Cas 822=1925 All 184=L R 6A 33 The decision of a taxing officer is neither a decree nor an order 12 A 129 (F B)

It is competent to the Chief Justice to refer a case to a taxing officer what an assessor or his attorney can do on an appeal from an order of a particular Judge of the High Court M W N 511=16 L 502=1923 Mad 160, 18 C W N 121, 21 Ind Cas 502, 7 A L J 842

## CHAPTER III

### FEES IN OTHER COURTS AND IN PUBLIC OFFICES

6 Except in the Courts hereinbefore mentioned, no document of any of the kind specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document

Scope—Plaints memorandum of appeals and application for review are documents within the meaning of this section 12 A 129 (F B), 10 A W N 39, 10 C W N 199, 17 C L J 365 (F B) A succession certificate and certificate of duty 17 W R 48, 22 C 542 As regard duty vide ss 19, 33 and 35 *infra* Application are not documents under this section 2 N W No fresh Court fee is to be imposed on plaint 17 B 47, 8 B 313, 8 M 62, 2 A 357, 2 C W N 917 The Government is not exempted 493 A document is said to be filed which is presented and put on the file 19 C 780 A plaint may be filed with deficit Court fees 19 C 780, 34 C 216=3 P L J 745, 4 Pat see 20 M 319 As regards P C, 12 A 129, 29 A 749 675=3 P L J 74, 46 Ind Court fee stamp must be (Patna)

Computation of fees payable in certain suits

7 The amount of fee payable under this Act in the suits\* next hereinafter mentioned shall be computed as follows—

- i In suit for money (including suits for damages or compensation, or arrears of maintenance or annuities or of other sums payable periodically) according to the amount claimed,
- ii In suits for maintenance and annuities or other sums payable periodically for maintenance and annuities—according to the value of the subject matter of the suit and such value shall be deemed to be ten times the amount claimed to be payable for one year
- iii In suits for movable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint

\* As to the valuation of suits for the purpose of determining the jurisdiction of Courts see the Suits Valuation Act (VII of 1887)

Memorandum of appeal—is a document specified in the first and also in the second schedule of the Act and within the meaning of the section. It should not, therefore, be filed or recorded in or received by the High Court unless the proper court fee in respect of it is paid. 12 A 129 (F B), see also 30 Ind Cas 379; 42 Ind Cas 675=3 P L J 74=5 P L W 18 18 C L J 133, 1915 Pat C W N 65 46 Ind Cas 507=3 P L J 484, A I R 1924 (Lah) 401. But no court fee was paid in appeals from decisions of the High Court.

Amendment of this section by Act 19 of 1912 has been made obsolete. As regards court fee payable on revision, see 11 A 176. After receipt the Court may, in a revision, grant the relief asked for in the plaint and not merely the exact relief asked for. 10 Pat 432=130 Ind Cas 46.

5 When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is in his opinion, one of general importance in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court, as the Chief Justice shall appoint, either generally or specially, in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final except when the question is, in his opinion, one of general importance in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing officer within the meaning of the first paragraph of this section.

Amendment—This section has been amended by Mad Act V of 1922 section 3.

Decision is final. 32 A 59, 756, 3 Pat L J 92, 4 Pat jurisdiction of the taxing officer upon a difference of a sort of formal reference. I R 1925 Cal 120. Where the Court hearing the L J 725 37 C 914.

Scope—The intention of this section is merely to ensure that the question that he should bring his mind to it. 29 C W N 879=52 C 871. Court fee payable on a memorandum of appeal. The taxing officer has power to investigate and take evidence for that purpose in any manner. His decision is final when the appeal is heard. 87 1925 Pat 392 (F B), 4 Pat 75 Ind Cas 871; 92 Ind

Where the decision of the taxing officer is erroneous additional Court fee need not be paid. 15 A 177, 11 A 91, but see 46 B 840=67 Ind Cas 364. A taxing officer can correct his error. 68 Ind Cas 316. Levy of additional Court fees



after decision is not allowable 32 Ind Cas 534 A taxing officer can decide as to deficiency of Court fee on plaint and memo of appeal in lower Courts 84 Ind Cas 822=1925 All 184=L R 6A 33 The decision of a taxing officer is neither a decree nor an order 12 A 129 (F B)

It is competent to the Ch suitor or his attorney and the c on an appeal from an order of a particular Judge of the Hjj M W N 511=16 L W 210=19-2 Mad 41=70 Ind Cas 613, see also 40 M 502=1923 Mad 160, 18 C W N 121, 21 Ind Cas 507, 7 A L J 842

### CHAPTER III

#### FEES IN OTHER COURTS AND IN PUBLIC OFFICES

6 Except in the Courts hereinbefore mentioned no document of any of the kind specified as chargeable in the First or Second Schedule to this Act annexed shall be filed exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document

Scope—Plaints memorandum of appeals and application for review are documents within the meaning of this section 12 A 129 (F B) 10 A W N 39, 10 C W N 199 17 C L J 365 (F B) A succession certificate and certificate p duty 17 W R 48, 22 C 542 As regard np duty vide ss 19 33 and 35 *infra* Application are not documents under this section 2 N W No fresh Court fee is to be imposed on plaint returned for filing in a proper Court 17 B 427, 8 B 313, 8 M 62 2 A 357, 1 B 538, 30 C W N 90 12 C W N 917 The Government is not exempted from payment of Court fees 25 M 493 A document is said to be filed which is presented and put on the file 19 C 780 A plaint may be filed with deficit Court fees 19 C 780, 34 C 20=11 C W N 38 (F B), 1 P L J 420, 58 Ind Cas 216=3 P L J 745, 4 Pat 190=22 M 494, 32 M 305=6 Ind Cas 503 (F B), but see 20 M 319 As regards memorandum of appeal vide 24 C 889, 19 C 747, 2 A 241 P C, 12 A 129, 29 A 749 25 M 380, 24 M 331 15 M 20 22 B 849, 42 Ind Cas 675=3 P L J 74, 46 Ind Cas 509 4 Pat L J 703=59 Ind Cas 316 An *ad valorem* Court fee stamp must be affixed to a memorandum of appeal 50 Ind Cas 367 (Patna)

7 The amount of fee payable under this Act in the suits\* next hereinafter mentioned shall be computed as follows—

- i In suit for money (including suits for damages or compensation, or arrears for money, of maintenance or annuities or of other sums payable periodically) according to the amount claimed,
- ii In suits for maintenance and annuities or other sums payable periodically for maintenance and annuities —according to the value of the subject matter of the suit and such value shall be deemed to be ten times the amount claimed to be payable for one year
- iii In suits for movable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint—

\* As to the valuation of suits for the purpose of determining the jurisdiction of Courts see the Suits Valuation Act (VII of 1887)

## iv In suits—

(a) for a movable property where the subject matter has no market value, for instance in the case of documents relating to title,  
for movable property of no market value

(b) to enforce the right to share in any property on the ground that it is joint family property,  
to enforce a right to share in joint family property,

(c) to obtain a declaratory decree or order where consequential relief is prayed,  
for a declaratory decree and consequential relief

(d) to obtain an injunction  
for an injunction

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and  
for easements,

(f) for account—according to the amount at which the relief sought is valued in the plaint or memorandum of appeal  
for accounts

In all such suits the plaintiff shall state the amount at which he values the relief sought.

v In suits for the possession of land houses and gardens—according to the value of the subject matter, and such value shall be deemed to be—  
for possession of lands house, and gardens

where the subject matter is land, and—

(a) where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government  
or form part of such an estate and is recorded in the Collector's register as separately assessed with such revenue  
and such revenue is permanently settled—  
ten times the revenue so payable

(b) where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government or forms part of such estate, and is recorded as aforesaid,  
and such revenue is settled but not permanently—  
five [ten] times the revenue so payable

(c) Where the land pays no such revenue or has been partially exempted from such payment or is charged with any fixed payment, in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits,

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood,

(d) where the land forms part of an estate paying revenue to Government but is not a definite share of such estate and is not separately assessed as above mentioned—the market value of the land

31 shall  
be added by

Punjab

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—  
 Proviso as to Bombay Presidency

- (1) where the land is held on a settlement for a period not exceeding thirty years, and pays the full assessment to Government,—a sum equal to five times the survey assessment,
- (2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey assessment, and,
- (3) where the whole or any part of the annual survey assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso as the case may be, in addition to ten times the assessment, or the portion of assessment so remitted,

*Explanation*—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue,

for houses and garden (e) where the subject matter is a house or garden—according to the market value of the house or garden,

vi In suits to enforce a right of pre-emption (computed in accordance with paragraph v of this section) of this land house or garden in respect of which the right is claimed,

vii. In suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest

to redeem, ix In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose, and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage :

for specific performance x In suits for specific performance—

(a) of a contract of sale according to the amount of the consideration ;  
 (b) of a contract of mortgage—according to the amount agreed to be secured

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term ;

(d) of an award—according to the amount or value of the property in dispute :

between landlord and tenant <sup>x1</sup> In the following suits between land-  
lord and tenant —

- (a) for the delivery by a tenant of the counterpart of a lease,
  - (b) to enhance the rent of a tenant having a right of occupancy,
  - (c) for the delivery by a landlord of a lease,
  - \* (cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,"
  - (d) to contest a notice of ejectment,
  - (e) to recover the occupancy of "immovable property" \* from which a tenant has been illegally ejected by the landlord, and
  - (f) for abatement of rent—
- according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint

**Notes—Amendments—**This section has been amended in Assam Bengal Bihar and Orissa Madras, the Punjab and U P

**Valuation—**The plaintiff in a declaratory suit with consequential relief is not at liberty to value the suit arbitrarily 6 C L J 427, 14 C L J 47, 12 M 223, but see 32 C 734 See also 20 M 289, 18 B 696, 13 B 517, 97 P L R 1901 The provisions of this section are applicable to suits as well as appeal  
25 O C " " 3 C W  
decided " " of the  
N 33  
subject matter of the suit 25 W R 39, 18 W R 109, 20 W R 39 The valuation depends upon the substance of the claim 1935 Mad 248=22 L W 515 In order to arrive at a correct valuation the allegation made in the plaint is to be looked to 21 C W N 375=35 Ind Cas 797, 35 C 202 (P C), 1935 A I R P 210, 6 S L R 72, 22 L W 515=19-5 A I R Mad 1248 70 Ind Cas 1913, 12 C W N 37, 9 C L J 128, 96 Ind Cas 129 The valuation should be a reasonable one 17 C 680, 40 C L J 15

#### Para (1)

**Mortgage suits—**Plaintiffs brought a suit for sale upon a mortgage There were two prior mortgages on the property in respect of which no relief was claimed and no court fee paid *Held* that the plaintiff can redeem the prior mortgages but cannot obtain a decree for sale—30 A 103 A W N 1882 97 In a mortgage suit the court fee is payable on principal plus interest 7 Bom L R 194, 18 B 696, 35 A 9

**Decree for mesne profits—**When a suit for recovery of mesne profits is brought

*Held* that should be  
dent to the su 30 W R 405, see also  
49 Ind Cas 962

**Future profits—**A claim for future profits is governed by this clause 2 A 682 (F B)

In the case of an appeal from a decree directing ejectment and awarding mesne profits the court fee should be charged on the land and the amount of mesne profits 16 M 310

**Pre-emption—**When the question in appeal relates solely to the amount to be paid by the pre emptor the court fee must be calculated *ad valorem* on the amount 6 A 488

on arising from the same  
claimed may comprise a number of separate items, such a suit must be stamped under cl. 1, s 7 of the Act 3 A 131

The fee payable in a suit for money must be according to the amount claimed 47 Ind Cas 992, 175 P W R 1918

\* The words within quotations have been added by Act VI of 1905

A suit by the heir of a deceased landlord for the recovery of arrears of rent against a tenant and also for an injunction restraining certain others from disputing his title as landlord, is based upon two causes of action and falls under cl (i) and cl (iv) of this section 6 S L R 114

A suit for money being the balance alleged by plaintiffs due to them on a commission agency is not a suit to obtain a declaratory decree nor one where it is not possible to estimate the subject matter in dispute at a money value or which is not otherwise provided for by the Court Fees Act. The suit falls under this clause 64 Ind Cas 826=15 S L R 82

### Para (II)

Scope—Where  
in a section of a stat  
kind as those specif  
Act the expression  
words that precede

8 M 384, A W N 1886 228 A claim for future profits is governed by clauses 1 and 2 of this section 2 A 632 (F B) A suit for payment of an amount periodically falls under this clause 42 A 353, see also 8 Bom H C A C 55, P J 1883 at p 205, 71 Ind Cas 31, 1922 A I R 264 (Nag) 51 Ind Cas 15=4 Pat L J 561

### Para (III)

Vide 4 C 322=3 C L R 375, 2 P R 1871, 2 A 63

### Para (IV)

Valuation—Where plaintiff sues for a declaratory decree and asks for consequential relief and puts his own valuation upon the consequential relief then for purposes of court fee and also for purposes of jurisdiction it is the value which plaintiff puts upon the claim that determines both—23 C W N 753, 31 Ind Cas 807 2A 689, 32 C 734, 17 B 56, 38 M 922 (F B), 16 C L J 914, 40 C 615, 16 C L J 194, 7 A L J 842 But see 14 C L J 47, 28 P R 1906 4 Pat L J 703, 5 P L J 394, 36 A 500, 62 Ind Cas 685, 44 B 331 But the plaintiff is not entitled to put an arbitrary valuation but the valuation must always be reasonable 40 C 245=16 C L J 194=17 C W N 59, 17 C 680, 14 C L J 47 19 C L J 15, 40 C L J 150, 22 B 823, 17 C W N 627, 36 A 500, 4 P L T 71, 56 Ind Cas 316, 41 Ind Cas 95, 5 P L J 394, 22 B 315, 255 P L R 1903=28 P R 1903 But this view does not find support in Bombay, Madras and in the Punjab vide 33 B 307, 44 B 331, 23 M 390, 2 B 219, 17 B 56, 38 M 922, 30 M 18, 24 M L J 233, 43 B 376=23 C W N 753 (P C), 1922 Lah 236, 22 Ind Cas 503, 3 Bur L J 128=1924 Rang 378 (2) In the absence of any basis of valuation the plaintiff is at liberty to make an imaginary valuation 79 Ind Cas 582 (Sind)

Clause (a)—This clause applies to a suit to obtain possession of a mortgage deed where the debt had not been paid and the defendant was not entitled to keep the deed 39 P R 1871 See also 10 P R 1871 A suit to recover title deed of immovable property is not a suit under this sub clause 4 C 322=3 C L R 375 But a suit to recover a bond comes under this clause (1894) P J 145, see also 10 P R 1871, 39 P R 1875

Clause (b)—This clause appears to be designed to cover not merely the cases where the plaintiff is in possession but quite possibly cases where the plaintiff's status as a co-parcener is in dispute and is sought to be enforced 21 M L J 21 F B, 8 Ind Cas 512, 104 P R 1893, A W N (1885) 48, 6 Ind Cas 628, 1892 P J 13, 6 Pat L J 661=3 Pat L T 293

The court fee should be sufficient to cover the value of the property claimed by the plaintiff 1882 P J 148, 150 P R 1908 In a suit for partition of the share of one party, the proper valuation of the

share in any joint property' That clause refers to a suit to enforce the right to 'share in any property, not the right to "a share" in property. Therefore a suit for separate possession by partition, falls under section 7 (v) and its market value determines the jurisdictional value 11 Bom L R 1074=4 Ind Cas 243=53 B 658. In such a suit *af. idem* court fee is payable on the plaintiffs' share 18 B 209. According to the Calcutta High Court this sub-clause has no application in such a suit. Vide 8 C 757=11 C L R 95, 10 C 97=13 C L R 249, 6 C L J 651=12 C W N 37, 15 C L J 443, 22 C W N 667, 21 C L J 253, 20 C 762, 44 Ind Cas 226. According to the Lahore High Court, such a suit falls under this clause 2 Lah 114=61 Ind Cas 621, 104 P R 189, 61 P L R 1916=34 Ind Cas 857. The Madras High Court held that in a suit for partition of joint family property, where the plaintiff is in joint possession with the other coparceners the court fee is to be fixed under article 1 of schedule I of the Court Fees Act and not under article 17 (vi) of the schedule II of the Act 8 Ind Cas 512=21 M L J 21 (F B), 20 M 289, 4 M L J 110, 24 M L J 233=18 Ind Cas 363. Where the plaintiff in a suit for partition is admittedly in possession and only seeks to change the form of the enjoyment of the share a court fee of Rs. 10 under Art 17 of sch II would suffice 15 C P L R 120, holds that a certain property is partition its direction amounts Court fee on the appeal memo emmes 34 C W N 1054.

**Clause (c) —** The clause means whether it falls under this clause 5 Ind Cas 97, 122 (F B), 35 Ind Cas 797=21 C W N 375, 113, 80 Ind Cas 544=3 Pat. 915, 40 C L J 150, 630, 16 Ind Cas 773=6 S L R 71. For the purposes of the Court Fees and Suits Valuation Acts the expression consequential relief means a substantial and immediate remedy in accordance with the title which the Court has been asked to declare 24 Ind Cas 316.

**Consequential relief —** A prayer for injunction is a consequential relief 10 B 60, 18 B 100, 11 C W N 705=6 C L J 427, 32 C 734, 15 M 15, 33 B 307, 15 A 378, 43 Ind Cas 99, 44 Ind Cas 398, 39 C 704=16 C W N 838=15 Ind Cas 477, 46 Ind Cas 884, 40 C L J 150, 34 B 267, 13 Bom L R 158, 111 P R 1913, 1925 A I R 1143, 133 Ind Cas 120, 130 Ind Cas 445. But a suit for a declaration and injunction is not merely a suit for consequential relief 12 C W N 369. Plaintiff must fix reasonable valuations and Court can revise if valuation is arbitrary. If Court's valuation is also arbitrary High Court can interfere in revision 12 Lat L T 658=133 Ind Cas 687.

Consequential relief was held to be sought in the following cases —

(1) In a suit in which the relief claimed is declaration that a decree is fraudulent 4 Pat L J 703, 3 Lat L J 92, 56 Ind Cas 360, 54 Ind Cas 833, 56 Ind Cas 55.

(2) A suit which is brought for cancellation of a document under s. 39 of the Specific Relief Act is a suit for a declaration and a consequential relief 29 B 207; 2 L B R 266, 27 M 470, 2 P R 1886, see also 21 W R 330, 47 A 78=84 Ind Cas 624, 13 B L R 427, 23 M 490, 20 M L J 791, 49 M L J 608, A I R 1931 Pat 453.

(3) In a suit for assessment of rent and for the recovery of a specific sum of money as damages for use and occupation 4 Pat L J 565.

(4) In a suit for declaration that adoption never took place where title to immovable property is indirectly in issue 58 Ind Cas 905, 5 P L J 339.

(5) Suit by a reversioner for declaration of invalidity of alienation by widow and for appointment of receiver 62 Ind Cas 36, see also 6 Pat L J 101, 3 Pat L J 21, 45 M 246 3 Pat L J 704, 79 Ind Cas 668, 19 Ind Cas 839, 96 Ind Cas 129,

stratation Office for cancelling a 3 Pat L J 194, 27 B 207; 3, 25 Ind Cas 435, 1 C W

(7) In a suit where declaration is sought for invalidating a revenue sale and for possession of property sold 3 Pat L J 468.

(8) When property is required to be released from attachment and possession 43 Ind Cas 971=1685 A W N 48

(9) Where the plaintiff prayed for a declaration that a sale by Official Receiver is invalid and for the appointment of a fresh Receiver 37 M L J 447

(10) A suit to enforce the registration of a document 12 M L J 87 but see 12 M L J 88

(11) A suit for the setting aside of the lease and to have the building erected on the land by the lessee demolished is one for a declaratory decree in which consequential relief is sought 4 A 370

(12) A suit to set aside an illegal sale held for arrears of revenue and declaration of right and possession in respect of property in dispute is a suit to obtain a declaratory order, when consequential relief is prayed for 6 C W N 157, see also 2 A (F B) 720, 5 A W N 48

(13) When the plaintiff prays for confirmation of possession being out of possession 68 Ind Cas 316 16 W R 213 27 C L J 415 21 W R 340 22 W R 438, 23 C L J 561

(14) Where plaintiff sues for a declaration that he is a raiyat and the defendants are under raiyats and for the ejection of the latter 65 Ind Cas 240

(15) A suit in which removal of attachment is prayed 2 A. 869, 11 B H C A 186

**Suit in which no consequential relief is asked—***Vide* 10 B 60, 11 A 365, 10 B 610, 13 A 386, 13 Ind Cas 601, 130 Ind Cas 344

**Clause (d)**—In a suit for an injunction an appellant must value the relief sought 10 B 60 But the plaintiff is at liberty to value his relief 118 P L R 1904 25 M 34 23 C W N 753 (P C), 59 Ind Cas 777 37 C 734 18 B 100 22 Bom L R. 1450, 46 Ind Cas 884 24 M 343 The valuation must not be an arbitrary one 29 C W N 76=40 C L J 150=19 C L J 15 see also 94 Ind Cas 951=1976 A I R 413 (All)=48 A 412

**Clause (e)**—*Vide* 2 N W P 41 18 W R 21

**Clause (f)**—A suit for administration is on the same footing as a suit for accounts for the purposes of court fees 39 B 545 55 Ind Cas 262, 24 C L J 448, 4 L B P 279, 4 Pat L J 57=49 Ind Cas 442, 45 C 634 10 C L J 503 30 B 545, 27 C W N 457 As regards what are the suits for accounts *vide* 18 B 100, 13 P R 1901=137 P L R 1901, 14 C W N 932, 21 A 200 The appeal should be valued on the relief claimed 39 M 725, 131 Ind Cas 337 Under certain circumstances a defendant appellant can make his own valuation *vide* 44 A 542, 3 Pat 146=75 Ind Cas 871

**Partnership**—Where the Contract Act by a *ad valorem* court fee stamp

6 C 321, 7 B 125, 11 Bom L R 1123, 12 B 535

### Para V.

**Scope of the para**—Section 7, clause (v) does not apply to a suit for recovery of possession of land of which the plaintiffs claim to be tenants brought against the admitted landlords and persons who also claim to be tenants of the same, and the value of the relief sought, as stated in the plaint determines the jurisdiction of the Court to try the suit 19 C L J 418, see also 37 C 268, 15 A 63, 3 Pat L J 448, but see 8 C 892 The land does not include house or garden 24 A 218, 4 B 515, 18 M L J 243 Garden is used in the sense of ornamental garden 40 M 824

**Clause (a)**—In a su

separately assessed 1 C W N 990, 8 C 192 Cas 132, 49 C 880 A plaintiff cannot avail himself of sub clause (a) of clause 5 of this section unless he brings his case strictly within its terms and for that purpose the determining factor is the land in suit and not a larger property in which it may be included 19 C L J 347 A share in an under proprietary tenure in a permanently-settled village is a definite share of an estate 24 O C. 39=58 Ind Cas. 132, 42 Ind Cas 928

Clause (b)—Vide 8 A L J 821, 29 A 382, 3 A L J 511, 41 Ind Cas 167, 45 Ind Cas 982, 21 M L J 251=39 Ind Cas 254, 1924 A L R 102 (Rang)

Clause (C)—For the purpose of the Court Fees Act *porombus* in Malabar should be classed either as land paying no revenue or as gardens, and the question is one of a fact which must be decided in each case 12 M 30 (F B), see also 18 P R 1875. Before a party can successfully rely on this sub clause he must establish that the land in suit pays no revenue permanently or temporarily settled thereon, or has been partially exempted from such payment or is charged with a fixed payment in lieu of such revenue 41 C 822 see also 60 Ind Cas 5. The case of the land subject to fluctuating assessment is governed by this sub-clause 50 Ind Cas 142=100 P R 1912, see also 19 C L J 342.

Year next before—*ie* 365 days before 28 A 411

Clause (d)—This clause provides merely for the case of lands excepted from the operation of sub clauses (a) and (b) and has no reference to the case of an entire estate or a definite fraction or part of an estate 50 Ind Cas 143 see also 33 Ind Cas 683, 77 Ind Cas 281, 34 M L J 558=47 Ind Cas 543, 41 C 812=18 C W N 659, 6 P R 1883, 75 Ind Cas 217, 79 Ind Cas 579 74 Ind Cas 198=45 M L J 274 (F B)

Clause (e)—In suit for land forming a garden and two houses the valuation of court fee is governed by this sub clause and is not to be arrived at either for court fee or in ascertaining jurisdiction, by the artificial 30 times *jama* rule notwithstanding that the land is assessed to land revenue 71 P R 1914, 2 Lah L J 362, see also, 6 Bom L R 475, 19 P R (1908) F B, 65 Ind Cas 345=2 Lah L J 362, 9 B L R 30 72 P R 1899, 82 Ind Cas 614, 5 Pat 631, 25 Ind Cas 545. A garden whether assessed or unassessed falls under this sub clause 18 M L J 243. As regards the meaning of a garden, vide 40 M 824=39 Ind Cas 254.

Para VI—Vide 32 A 110 (F B) 123 P L R 1903, 49 Ind Cas 358, 1924 Lah 380, 76 P R 1913=19 Ind Cas 961, 44 Ind Cas 666.

Para VII—A suit which in terms set aside a sale on the ground that an attachment is not binding is virtually a suit to set aside an attachment and court fees should be paid on the amount of the attachment or the value of the land attached whichever is less 27 A 440 1 B 352, see also 4 M L J 183, 14 M L J 144.

### Para IX.

Redemption—A suit for recovery of property mortgaged from a mortgagee is one for redemption and is governed by this clause 1889 P J 58 7 O C 157, 12 O C 130 4 A L J 275 30 A 547 20 M L J 121 12 M L T 439, 67 Ind Cas 130 3 Lah L J 370 L R 3 A 628 3 Pat L T 813, see also 1925 M W N 747 134 Ind Cas 174 132 Ind Cas 317.

Appeals—This section has application only to suits and not to appeals 27 A 447, 30 A 547 36 A 40 29 M 367. But in a suit for redemption or foreclosure of a mortgage *or* foreclosure for an adjudged sale *or* will be governed by *will* be according to the v *will* 22 O C 289, 6 N L 33=

### Para X

Sub clause (a)—1923 Oudh 253, 45 M L J 431; 73 Ind Cas. 709

Sub clause (c)—Vide 34 C L J 34=25 C W N 768, 15 Ind Cas. 56, 66 Ind Cas 268=34 C L J 94, 16 Ind Cas 963=16 C L J 375

Sub clause (d)—Oudh S C 32, U B R (1909) 2nd Qr

### Para XI

Sub clause (co)—The court fee payable in a suit for ejectment from a house against a tenant is chargeable on one year's rent under this clause 24 P L R 1907, 1 L B R 303, see also 2 A L J 933, 27 M L J 475, 39 M 873=29 L J 572, 27 P R 1910=5 Ind Cas 910, 4 P L T 666, 83 Ind Cas 1, 24 C W N 151, 93 Ind Cas 291. When a suit is brought for possession of leased property on the ground that the tenancy has terminated by forfeiture the proper valu-



ation is not the value of the immovable property but the amount of the rent payable for the year next before the date of presentation of appeal L R 5 All 701 The tenancy of a tenant holding over is created by occupation under an implied demise or agreement In a case where notice to quit has been given no demise or consent to continuance of occupation can be implied The person continuing in possession after a notice to quit and demand for possession is liable to ejectment as a trespasser and the suit does not fall under this sub clause 20 N L R 124 A suit to eject a *thucadar* on the expiry of his lease falls under this sub clause 74 Ind Cas 619=7 Pat 260 Suit for possession on the ground of forfeiture is governed by this sub clause 83 Ind Cas 1 Where a plaint seeks for declaration of title or against a tenant and also against a trespasser, the former portion of the relief falls under this sub clause but not the latter 91 Ind Cas 488

Sub clause (d) —111 P R 1883, 23 M 84

Sub-clause (e) —A suit by a tenant against the landlord falls under this sub clause. The clause should not be limited to suits where the landlord and tenant alone are parties it applies to cases where to avoid delay etc, other persons also are impleaded 87 Ind Cas 100=A I R 1925 Sind 275, see also 16 C L J 375, but see 32 C 268

8 The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation shall be computed according to the difference between the amount awarded and the amount claimed by the appellant

Notes —*Advalorem* court fee ought to be paid on the memorandum of appeal computed according to the difference between the amount awarded and amount claimed by the appellant 39 C 905, 19 P W R 1913 See also 1925 Pat C W N 65 (F B) When the crown appeals against award of compensation in a land ac is excessive s 8 of the Court Fees Act as 435=46 M L J 150=34 M L T 357 t the award is governed by article 17 as 764=17 P L R 1912 but see 78 Ind Cas 435, 29 C W N 522 (F C), 92 Ind Cas 991, 97 Ind Cas 140 There is no discrimination between court fees payable by the Secretary of State and the claimant from an appeal against award of the Judge 1927 Cal 45

9. If the Court sees reason to think that the annual nett profits or the market value of any such land, house, or garden as is mentioned in section 7, paragraphs v. and vi, have or has been wrongly estimated the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court

## NOTES

Appointment of Commissioner —The Court is not bound to appoint a Commissioner to hold an investigation under this section 29A 749, 5 B L R 6

This section is applicable only to suits and not to appeals 12A 129, 29A 749.

10. (1) If, in the result of any such investigation the Court finds that the nett profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion refund the excess paid as such fee, but, if the estimation

(11) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed \*

## NOTES

**Application**—This section is not susceptible of restriction to any particular stage 2 M 308, 27 A 297

**Clause 2**—Either before or after the expiration of the time fixed by a Court for payment of additional fees by the plaintiff who has been ordered to pay the same acting under cl 2 of s 10 of the Court Fees Act, it is competent to the Court to enlarge the time fixed on circumstances rendering it just and proper that such extensions should be given if ultimately the order is not complied with and additional fees not paid the Court should pass an order dismissing the suit and not one rejecting the plaint as under s 54 of the Civil Procedure Code 19 A 240, P R 84 of 1876. Until the appeal is admitted, it is not competent to the appellate Court to pass an order dismissing the original suit under ss 10 and 11 for non payment of court fee 1 M L J 528

A plaintiff is at liberty to withdraw any part of his claim to bring it within the court fees he had paid on his plaint and a Court is not bound to dismiss a claim, if a plaintiff instead of complying with an order for payment of deficient court fee abandons that portion of his claim which the Court had held to have been over valued 27 A 151

**Time given by Court**—It is competent to a Court after the expiry of the time initially granted to enlarge the time for payment of the deficit court fees on a plaint upon payment of deficit court fees the suit must be taken to have been instituted on the day when the plaint was originally presented 2 Ind Cas 1, see also 15 C L J 120, 13 C L J 78, 3 Ind Cas 830

**Suit**—includes appeal 15 Ind Cas 463

**Appeal**—Vide 1 A L J 39, 20 A 362, 28 A 270 (F B), 7A 528, 15 M 288, A W N (1905) 277, 1921 Pat 161 (F B), 6 Pat L J 243, 4 Pat L J 703, 5 P L J 508

**Dismissal of a suit** under ss 10 and 11 has the same effect as a rejection of the plaint under s 54 of C P Code—1 A 129 (F B)—A W N 1890, 39, 4 Pat L J 703

This section allows a Court to dismiss a suit for non payment of the additional court fee when it has jurisdiction to dismiss the suit 1927 Bom 257 (b)

**11** In suits for mesne profits or for immovable property and mesne profits or for an account if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed

ained in the course  
ned exceed the profits  
until the difference  
between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed

**Scope**—The word 'suit' in the last clause of para 2 s 11, Court Fees Act does not mean the entire suit. It can fairly be construed as the suit or claim in respect of mesne profits 24 C 173. The intention of the first part is that no time should be fixed for payment of extra court fee but the execution should be stayed until the extra fee is paid 30 M 32, 59 Ind Cas 385. Court fee is payable on future mesne profits but it can only be exacted after the amount has been ascertained by enquiry and the

\* Clause 11 having been repealed by the Repealing and Amending Act (XII of 1891) has been omitted

Court has no jurisdiction to dismiss such an application for non payment of Court fee in advance 93 Ind Cas 939

*Enlargement of time*—The Court can extend the time originally fixed for payment of extra court fee 13 C L J 432, see also 1 A L J 350, 24 O C 209

*Suit for account*—is one in which the relief is by way of account 6 Bom L R 1102

*Future mesne profits*—No court fee is payable on future mesne profits 20 M L J 98 See also 33 C 1232, 6 O C 351 But see 62 Ind Cas 175

*Suit for damage*—In a suit for damage offer to pay additional court fees if more damages are due is not barred 17 M L J 625

**Para 2** The final provision of this section does not apply to the conditions set forth in the first paragraph of this section 11 Ind Cas 73

**Interest**—on decree is not chargeable with court fees 12 B H C 227

**Part execution**—of decree is allowed before payment of court fees under this section 12 B 98

**Appellate court** cannot extend time 22 Ind Cas 890

This section refers only to suits for immovable property, mesne profits and account and as such does not apply to mortgage suits 3 Pat L J 146

**Interest pendente lite**—There is no provision of law authorizing the assessment of additional court-fee by reason of the accrual of interest *pendente lite* 1917 Pat 230

**12 (i)** Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit

(ii) But, whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph 11, shall apply.

**Scope**—The correct meaning of this section is that the decision of the Court is final only as regards the actual appraisement of the suit and the determination of such question as relates directly and immediately thereto and that the question

section should be strictly construed and the additional fee should be levied from a party, litigant only in exact conformity with the precise words of the statute But the provisions in fiscal statutes should not be so construed as to furnish a chance of escape and means of evasion 39 C L J 217

But this section has no application to the case where the Court decides the valuation of the suit for purposes of determining the pecuniary limits of its jurisdiction 52 Ind Cas 1001

**Appeal**—Once an appeal has been dismissed for whatever cause the High Court is *functus officio* and ceases to have seisin of the appeal 4 Pat L J 472 If the

C L J 212=81 Ind Cas 763

When once a document is admitted by the lower Court it is not for a party to say that the document should be struck off from the record The Court is entitled to allow the other party on payment of the proper fee to rely upon the document. 54

Ind Cas 646, 23 Bom L R 525, see also 91 Ind Cas 729 This section only applies to a decision as to the valuation of a suit which falls within a particular class and not to a decision as to the particular class in which a suit falls. If there is no doubt as to the class in which a suit falls and the section of the Court Fees Act which applies to it, the decision of the First Court as to valuation which depends on the value of

if there is a dispute as to the class in which a suit is 911=A I R 1925 Nag 435 A decision as to the belongs is not final 87 Ind Cas 660=A I R 3, see also 6 Pat L T 448=90 Ind Cas 321. An order by a trial Court wrongly assessing court fee is not subject to appeal 26 P L R 163 The words "shall be decided by the court" in the section do not mean that an issue shall be raised and decided by the Court. All that they mean is that the Court either the presiding officer, or the ministerial officer who is charged with that duty, has to determine what the court fee is 19 M L J 608=1926 Mad 96 An order directing court-fees to be paid and granting time to pay it is not revisable 1927 Mad 1021

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure,\* is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351† of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject matter in respect whereof the suit has been remanded

Notes—For refund under this section of the court fee paid on an appeal from an order rejecting a plaint under s 113 Civil Procedure Code—Vide 16 M L J 30, see also 15 C L J 658, 5 A L J 543, 14 W R 47, 6 W R Mis 65, 4 B L R Ap 96, 14 A L J 671, 28 Ind Cas 300, 3 Pat L J 67, 83 Ind Cas 829

Dismissal of a suit on inadmissibility of document is a preliminary point 1927 Lah 592 The court fee is refunded if remand is under Order 41, r 23 of the Civil Procedure Code 1927 Lph 196

14 Where an application for a review of judgment is presented on or after the nineteenth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant back from the Collector so much the fee which would have been

Object—The apparent intention of this section is to require full stamp in every case of delay after the eighty ninth day from the date of the decree, and to permit a refund at the discretion of the Judge when the delay is not due to the appellant's laches 9 M 134, 9 C L R 479, 39 C L J 344 The provision of section 5 of the Limitation Act is not applicable to extend the period 15 C L J 505

15 Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authori-

\* This reference should now be read as applying to Act V of 1908—See s 158 of that Act

† The reference to s 351 of the the Code of Civil Procedure (Act VIII of 1859) should now be read as applying to order 41 rule 23 Act V, of 1908

zing him to receive back from the Collector so much of the fee paid on the application \* as exceeds the fee payable on any other application to such Court under the second Schedule to this Act, No 1, clause (b) or clause (d)

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing

Notes—In order to attract the operation of this section the conditions requisite are that there should be an application for review of judgment that it should have been admitted, that on the re-hearing the Court should have reversed or modified its former decision on the ground of mistake in law or fact and that such reversal or modification was not due to fresh evidence which might have been produced at the original hearing 28 C W N 918 see also 31 A 294, 73 P L R 1916, 1915 Pat C W N 65, 84 Ind Cas 278

16 [Repealed by Act V of 1908, Sch V]

17. Where a suit embraces two or more distinct subjects, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaintiffs or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9 †

Scope—This section is applicable only to a case where cumulative relief is sought by the plaintiff 15 B 82 but see 30 M 61 16 M L J 462 11 O C 173 47 Ind Cas 886 44 Ind Cas 143 This section applies only to suits 23 C 723 (F B), see also 10 C 617 A 5 8 13 C L R 156

Distinct Subjects—Distinct subjects mean distinct and separate causes of action 2 A 676, 1 A 552, see also 16 M 415, 7 A 761, 9 A 252 19 A 155, 27 A 186, 5 L B R 94 (F B), 16 A 491, 5 Lah 114 29 A 190, 18 M 459, 2 A 682, 1887 P J 8, 36 B 628, 8 Bur L T 217 (F B), (1922) Lat 79 The word 'subject' is not capable of any precise definition of the word subject when used in law is exercised, and the two mortgages are The word 'subject' means causes of

action 78 Ind Cas 415

Suits for possession and mesne-profits—The claim in such a suit is to be regarded as one entire claim 8 C 593 F B = 10 C L R 359, 16 A 401, see also 3 A 131, 56 Ind Cas 883, 4 Pat L J 195

Subject to maximum limit—The aggregate of the court fee payable in respect of each matter should be paid but it is subject to the maximum limit under Art 1 of sch 1 3 A 188, 29 C 143

In a suit on a khata computation of court fees should be made on the balance due and not on each separate item 23 Bom L R 99,

In a suit by a landlord against 25 sets of tenants in respect of 25 holdings for a declaration that their several lands were held under the *bhau* system and that they were wrongly recorded as paying cash rent held that a court fee of Rs 10 should have been paid in respect of each of the 25 sets of tenants 4 Pat L J 299

Two mortgage bonds—Where the plaintiff brings a suit on the basis of two mortgage bonds in which the same properties are hypothecated he has to pay *advalorem* court fee on the amount due under each of the two bonds separately and not on the total claim 1 P L T 444, 4 P L T 546

A suit for redemption of mortgage and surplus collection need not be valued separately The surplus profits need not be valued at all 68 Ind Cas 226

The word 'subject' is of a somewhat uncertain connotation as is not capable of any precise definition 43 M L J 431

Where three declarations were sought arising from distinct causes of action, three times the court fee should be paid 75 Ind. Cas 597

\* The word has been substituted by Act XX of 1870

† The reference to s 7 of the Code of Civil Procedure (Act VII of 1859) should now be read as applying to Order II, rule 6 of Act V of 1903—Vide s 1, 3 of that Act



- xiv First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend, either to give evidence, or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court
- xv Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or other wise
- xvi Petition, application, charge or information respecting any offence when presented, made, or laid to or before a police officer or to or before the heads of villages\* or the village police† in the territories respectively subject to the Governor in Council of Madras and Bombay
- xvii. Petition by a prisoner or other person in duress or under restraint of any Court or its officers
- xviii Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a railway Company
- xix Application for permission to cut timber in Government forests or otherwise relating to such forests
- xx Application for the payment of money due by Government to the applicant
- xxi Petition of appeal against the chaukidari assessment under Act No XX of 1856, or against any municipal tax
- xxii Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes‡
- xxiii Petitions presented to the Special Commissioner appointed under Bengal Act N II of 1869 (*to ascertain, regulate, and record certain tenures in Chota Nagpur*)
- xxiv §Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48 ||

*Clause (iii)*—A written statement in which a set off is claimed is chargeable with court fee (10 C W N 199, but see 8 C W N 174) Where defendant does not allege any definite sum to be due to him and does not pray for passing any decree therefor but merely pleads that he is entitled to get from the plaintiff damages arising out of the transaction on which plaintiff's claim is based it is not chargeable with court fee 85 P R 1908

*Clause (viii)*—The exemption from liability to pay court fees provided in this clause applies only in cases where the gross value does not exceed one thousand or two thousand rupees as the Case may be 17 C W N 21, but see 40 A 279 when the estate is held to be exempted from court fee if the nett value is less than Rs 1000 40 A 279, 46 Ind Cas 865

*Ad valorem* court fee as provided by Sch I, Art 11 must be paid before letters of administration can be granted to the estate of a Hindu governed by the *Mitakshara* law 29 C W N 372

*Clause (xvii)*—A petition of appeal presented by a legal practitioner on behalf of a prisoner in goal need not bear a court fee stamp 14 N L R 77, 45 Ind Cas 158, 19 C L J 494, 65 Ind Cas 553=23 Cr L J 121

\* See Mad Regs XI of 1816 and IV of 1821 s 6

† See Bombay Village Police Act (VIII of 1867) ss 14 15 and 16

‡ See now the Land Acquisition Act (1 of 1894)

§ This clause has been substituted for the original by the Indian Christian Marriage Act (XV of 1872) s 2. The original clause ran as follows petitions under or Marriages in India) s 5, or under Act

No court fee is leviable on the memorandum of appeal against an order rejecting an application by a judgment debtor, whilst in custody, to be declared an insolvent  
10 C 61

Copies of documents for purpose of appeal in criminal cases are not exempted from payment of court fees 6 Mad App H C R 12

*Clause (xv)*—An application for refund of the unspent portion of money deposited for the preparation of the paper book falls within Sch II Art. 1 and is not an application for money due by Government under this clause 27 C W N 646=1923 (Cal) 597

## CHAPTER III A \*

### PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

**19A** Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid a court fee which is in excess of the value of the property to be proved, the court may, on application by the person who obtained the probate or letters of administration, and on being satisfied that a greater fee was paid on the probate or letters than the law required, make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion

the said Authority may—

- (a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled,
- (b) substitute another stamp for denoting the court fee which should have been paid thereon, and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion

**Notes**—There is no grant of probate until the court fee is paid and the grant is issued to the party 38 M 988=29 M L J 680 'The sum charged upon a grant of probate or of letters of administration is not a tax or duty levied upon the property upon which the probate or administration operates and it is not charged thereon as is Estate Duty in England but it is merely a fee levied for the work done in this connection And I do not think that this is any less the case because the fee is levied upon the value of the property' *Per Greaves J* in 27 C W N 812 at p 815

**19B** Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act

such authority may return the difference, provided the same be claimed within three years after the date of such probate or letters

But when, by reason of any legal proceeding the debts due from the deceased have not been ascertained and paid or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is

\* This chapter has been inserted by the Probate and Administration Act (XIII of 1875) s 6

† The words quoted were substituted for the words 'of the province' by Act (X of 1901) s 3



prevented from claiming the return of such difference within the said term of three years the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances

**Notes**—Whenever it is proved to the satisfaction of the Chief Controlling Revenue Authority for the local area in which the probate or letters of administration has or have been granted that an executor or administrator has paid debts due from the deceased an abatement in court fees should be allowed 8 B L R App 43=16 W R 252, 6 N W P 214, 1 B 118

**19C** Whenever a grant of probate or letters of administration has been made or is made in respect of the whole of the property belonging to an estate and the full fee chargeable under this Act has been or is paid thereon no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates

**Scope**—No further court fee is leviable on a subsequent grant of letters of administration of the whole or part of the property comprised in the estate of a deceased person no fees shall be payable on the grant of a fresh probate of a will or letters of administration of the estate of the same person e.g. when probate is revoked or a portion of an estate remains unadministered 5 P L J 36=54 Ind Cas 703

**Full fee chargeable under this Act**—as stated in this section is to be determined by reference to the point of time when the grant of probate is made. The expression under the same Act in this section refers to the Court Fees Act 27 C L J 370 R 253=8 B L R B R App 139, 3 1 W R 246, 3 C

133 O D L R App 130

**19D** The probate of the will, or the letters of administration of the effects of any person deceased, heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled either wholly or in part if the value of such property is not less than £500 in respect of which a court administration

**Scope**—Property held in trust not beneficially or with general power to confer a beneficial interest is exempt from *ad valorem* fee. The exemption of trust estates from the payment of *ad valorem* court fee is not court fee is no conditional on the circumstances that there had been a previous grant of probate or letters of administration on which a court fee had been paid. The exemption is referable to the character of the property and not to the procedure adopted 29 B 191, 23 C 980, 7 B L R O C 57, 12 B L R App 39, but see 27 B 140

*Property belonging to the Joint Hindu family.*—A Will was propounded for probate, whereby the testator devised the joint family property to his minor son. Exemption from stamp duty was claimed on the ground that the property was joint family property. Held, that the property was joint family property, and the Will was exempt from stamp duty. See also 5 Bom L R 1240.

Trust Property — "Property held in trust" within the meaning of Annexure B of Schedule III of the Court-Fees Act as exempt from duty are trusts not created by the testator's will to take effect after his decease, but trusts held not beneficially. *Collector of Singh-Cas 573=2 Pat power to confer*

*Darbhanga*  
*bhoon v.*  
*L. T. 683*  
a beneficial interest, is exempt from *ad valorem* fee. The exemption of trust estates from the payment of *ad valorem* court fee is not conditional on the circumstances that there had been a previous grant of probate or letters of administration on which a court fee had been paid. The exemption is referable to the character of the property and not to the procedure adopted. *Collector of Khairat, Chumilal, 29 B 23 C 980=1 C*

*In Bonis Brind Joymoney Dass, B 140=5 Bom M L J 591=6 Trigunait 29 C 1925 A. I R 120*  
in a joint *Mita* bank. The brother and the two sons applied for letters of administration with a certificate from the Registrar who as the Taxing Officer (under R 4 of Chapter XXXV of the Rules and Orders of the Calcutta High Court) certified exemption of court fees as "the property was held in trust not beneficially or with general power to confer a beneficial interest". On reference to *Ghosh* exemption was refused, (vide 29 C W N 2271). *Collector of Khairat*

decision of 11 of section 5 of also entered, and important the decision of the Taxing Officer in view of the decision of the other Courts. *Ahmedabad v Kashinath v R 1240=77 Ind Cas 749* he should refer it to the Chief Justice. There has been and there is likely to be a continuous increase in the number of cases in which shares Government Securities and Bank accounts belonging to *Mitakshara* joint families stand in the name of one member. It is plain that further provision by the legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of holder. Decisions given upon reference under section 5 of the Act or I can not be expected to goods of *Gladstone* 1 C 11. *In the goods of Froesch* the goods of *Po* 24 C 567, *In D Sasoon, 2* those cases it of *Ram Kuma Ketavil v* the views expressed N 31 and in *Collector of Anaira v Chumilal, 29 B 161=6 Bom L R 652* were followed.

710 In L R 1240 =1 C W. 652 were

**19E\*** Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court fee thereon, the

Provision for case where too low a court fee has been paid on probate &c

Chief Controlling Revenue Authority "for the local area"† in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper court fee, without any deduction of the court fee, originally paid on such probate or letters

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been first paid thereon

**Scope**—This section contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. The section further contemplates that the estimated value of the estate is less than what the value afterwards proved to be. Where there is no determination of value by the Probate Court the section has no application. 23 C L J 375, 1896 P J 251

**19F.** In case of letters of administration on which too low a court fee has been paid at first, the said authority shall

Administrator to give proper security before letters stamped under section 19E

not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the court by which the letters of administration have been granted as ought by law, to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained

**19G†** Where too low a court fee has been paid on any probate or letters of administration in consequence of any

Executors &c not paying full court fee on probates &c with in six months after discovery of under payment

not, within six months effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum

\*As to power of Chief Controlling Revenue Authority to remit the whole or part of any penalty or forfeiture payable under s. 19 E. See the Probate and Administration Act (VI of 1889) s. 20 (2)

†The words quoted were substituted for the words of the province\* by Act (X of 1889) s. 3

‡As to recovery of penalties or forfeitures under s. 19 G, see the Probate and Administration Act (VI of 1889, s. 20 (1))

§ Here the words and figures "after the first day of April 1873" repealed by the Repealing and Amending Act (VII of 1891) have been omitted

*Property belonging to the Joint Hindu family*—A Will was propounded for probate, whereby the testator devised the joint family property to his minor son.  
 Exemption  
 property I  
 much as the  
 see also 5  
 traction no court fee need be paid 25 Bom L R 1240

**Trust Property**—"Property held in trust" within the meaning of Annexure I of Schedule III of the Court Fees Act as exempt from duty are trusts not created by the testator's will to take effect after his decease, but trusts held not beneficially  
*Chandrabati Koer v Collector of Darbhanga*  
*dhoom v*  
 Pat L J 411=62 Ind Cas 573=2 Pat L T 683  
 Property held in trust not beneficially or with general power to confer a beneficial interest is exempt from *ad valorem* fee. The exemption of trust estates from the payment of *ad valorem* court fee is not conditional on the circumstances that there had been a previous grant of probate or letters of administration on which a character of the property

*Chumilal*, 29 B 161=6  
 23 C 980=1 C W N 31  
*In Bonis Brindaban G Joymoney Dass*, 14 B L B 140=1 Bom L R M L J 591=6 M L Trigunait 29 C 372 S C 1925 A I R 120 (Cal) f  
 in a joint *Mitakshari* f bank. The brother and the two s certificate from the Registrar who XXXV of the Rules and Order of court fees as the property was l to confer a beneficial interest (vide 29 C  
 decision of  
 of section 5

also entered into the merit of the case and observed. Several questions of a difficulty and importance arise upon the merits of the present application. Notwithstanding

reference by  
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 decisions of  
*Collector of M 93 (95)*  
 25 Bom L  
 ere has been  
 which shares

Government securities and Bank accounts belonging to *Mitakshara* joint families stand in the name of one member. It is plain that further provision by the legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of holder. Decisions given upon reference under section 5 of the Act or in appeal from the District Courts acting under section 19 l can not be expected to put this matter on a proper basis. Note (a)—*In the goods of Gladstone* 1 C 168 *In re Gasper*, 3 C 736 *In the goods of March* 4 C 725, *In the goods of Fröeschman* 20 C 574. *In the goods of Abdul Aziz*, 23 C 577. *In the goods of Ramchunder Ghose* the goods of Sir Albert A 11: Chetty 33 M 93 95 In paid But see *Re Estate* 7=1 Pat L T 710 In 749=25 Bom L R 1240 *allah* 23 C 982=1 C W =6 Bom L R 652 were

**19E\*** Where any person on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a court fee thereon, the

Provision for case where too low a court fee has been paid on probate &c

Chief Controlling Revenue-Authority "for the local area"† in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or if it or they is or are produced after one year from such date, of twenty times, such proper court fee, without any deduction of the court fee, originally paid on such probate or letters

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been first paid thereon

**Scope**—This section contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. The section further contemplates that the estimated value of the estate is less than what the value afterwards proved to be. Where there is no determination of value by the Probate Court the section has no application 23 C L J 375, 1896 P J 251

**19F.** In case of letters of administration on which too low a court fee has been paid at first, the said authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the court by which the letters of administration have been granted as ought by law, to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained

Administrator to give proper security before letters stamped under section 19E

letters of administration have been granted as ought by law, to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained

**19G.†** Where too low a court fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does

Executors &c, not paying full court fee on probates &c with in six months after discovery of under payment

not, within six months § after the discovery of the mistake, or any effects not known at the time to have belonged to the deceased apply to the said Authority, and pay what is wanting to make up the court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum

“ . . . . .” revenue Authority to remit the whole or part 19 E See the Probate and Administra

(X of 1889) s 3

† As to recovery of penalties or forfeitures under s 19 G, see the Probate and Administration Act (VI of 1889, s 20 (1))

§ Here the words and figures after the first day of April 1875 repealed by the Repealing and Amending Act (XII of 1891) omitted

for the words ‘of the province’ by Act

of one thousand rupees, and also a further sum at the rate of ten rupees per cent on the amount of the sum wanting to make up the proper court-fee

Notes This section is moulded on s 43 of 55 Geo III Ch 189 and s 122 of 56 Geo III Ch 56 22 C L J 375

Notice of applications for probate or letters of administration to be given to Revenue authorities and procedure thereon

19H\* (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority "for the local area in which the High Court is situated"†

(3) The collector within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may, at any time inspect, or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made, and if, on such inspection or otherwise, he is of opinion that the petitioner has under estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under estimated, may require the petitioner to amend the valuation

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by the section 277 of the Indian Succession Act, 1865 or, as the case may be, by section 98 of the Probate and Administration Act, 1881

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry, may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the enquiry shall return to the Court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding and the Court may record a finding in accord

that it is erroneous  
ded under sub section (5) shall be  
and disposal by the Chief Con  
.. ation under section 19E

\* Ss 19H 19I 19J and 19K have been inserted after 19G by the Court Fees Act Amendment Act (XI of 1899) s 2 the original s 19H having since been repealed by the Guardians and Wards Act (VII of 1890) s 2 and Sch

† The words quoted were substituted for the words 'of the province' (X 1901) s 3.

(8) The local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub section (3)

## NOTES

*Costs of enquiry*—It is not stated by whom the cost of the enquiry should be borne. It is the duty of the Court to hold the enquiry and if possible to save further expense. 6 C W N 893. In a later Calcutta case it was held that under this section, a proceeding merely decides a revenue dispute between the collector and the holder of the probate and as such the Court has no power to award cost. 50 C 239.

*Clause (4)*—The six months provided in clause (4) runs from the lodging of an

**Notice of Application to Revenue authorities**—By section 19 H notice of every application for probate or letters of administration has to be given to the Chief Controlling Revenue Authority and means are provided whereby the revenue authorities may check valuations and recover the proper fees. *In the goods of the Shubaneswar Trigonut*, 29 C W N 879=52 C 878=95 Ind Cas 529 see also *In the goods of Steenson*, 6 C W N 893. The cost for such an enquiry can not be real sed from the applicant. *Hriday Mohini v Secretary of State* 50 C 239=29 Ind Cas 473. Under clause (4) of section 19 H of the Court Fees Act the collector may ask the Probate Court to hold an inquiry into the true value of the property. The finding of the Probate Court recorded under clause (4) of the section is final under clause (7) of the same section. *Chunilal v Secretary of State for India* 78 Ind Cas 901=1925 1 I R 347 (Cal). But the Collector cannot make any such motion after the expiration of six months from the date of the lodging of the inventory required by the Succession Act. *Rajkumari v The Collector of Gaya*, 41 C 446=18 C W N 135=19 C L J 136=21 Ind Cas 915.

**19 I\* (1)** No order entitling the petitioner to grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters or administration shall not be delayed by reason of any motion made by the Collector under section 19 H, sub-section (4)

**Notes**—Sub section (1) provides that no order entitling the petitioner to the administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No 11 of the first schedule has been paid on such valuation. 39 C L J 209, 3 C 625, 43 C 230, fund money, 81 Ind Cas 128. On a petition for probate or letters of administration on the value of the whole property cannot be levied if the property is payable under the Act in force on date of grant. 50 Ind Cas 60 Probate fees 19-6 Bom 643.

**19J\* (1)** Any excess fee found to be payable on an inquiry held under section 19H, sub section (6) and any penalty or forfeiture under section 19G, may on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E, or of any court fee under section 19E, in excess of the full court fee which ought to have been paid

Notes—There is no provision in the law for recovery of the penalty by summary process as sect on 19 E, is not mentioned in sub section 1 of section 19 J 20 C W N 404=43 C 230=22 C L J 375=31 Ind Cas 460

Section 6 and 28 not to apply to probate or letters of administration

19K\* Nothing in section 6 or section 28 shall apply to probates or letters of administration

## CHAPTER IV.

### PROCESS FEES

Rules as to cost of processes matters —

20† The High Court shall, as soon as may be, make rules‡ as to the following

- i The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue § Court established within the local limits of such jurisdiction,
- ii the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without warrant, and,
- iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes

The High Court may, from time to time, alter and add to the rules so made

All such rules, alterations, and additions shall, after being confirmed by the local Government|| be published in the local official Gazette, and shall thereupon have the force of law

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act

\* See foot note (†) in page 1356

† This sect on is not in force in Burma—Vide Bur Act 1 of 1910 s 2

‡ As a bare

prescribe fees for processes in Lower Burma of 1889) ss 89 and 91 now see Act (VI 1 Commissioner to make rules and regulate in Upper Burma see the Upper Burma Civil

Courts Regulation (1 of 1869) s 30 (1) (a) As to the power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act (XIV of 1869) see sec 42 of that Act

As to the power of the Chief Commissioner of British Baluchistan to make rules and prescribe fees see the British Baluchistan Criminal Justice Regulation (VII of 1895) s 20 (1) (a), and the British Baluchistan Civil Justice Regulation (IX of 1896) s 92 (a)

§ In the Punjab the words quoted in s 20 cl (i) have been repealed by Punjab Land Revenue Act—(XVII of 1887)

|| Certain words repealed by Act—38 of 1920 have here been omitted





Notes—Vide 27 A 406, 19 B 145

Rules for supply number 27 The Local Government may from renewal and keeping ac fine to time, make rules for regulating— counts of stamps

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any free chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping of accounts of all stamps used under this Act

Provided that in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court

All such rules shall be published in the Local Official Gazette, and shall thereupon have the force of law

Notes—The words 'for use in the High Court only' impressed on the back of court fee stamps do not limit their use to High Court only. The words may have some significance for administrative purposes, but they are not capable of invalidating the stamps themselves if filed in lower Courts. 97 Ind Cas 822

Stamping documents inad 28 No document which ought to bear a stamp under this Act, shall be of any validity, verty received unless and until it is properly stamped

But, if any such document is, through mistake or inadvertence received, filed or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct, and, on such document being stamped accordingly, the same, and every proceeding relative thereto, shall be as valid as if it had been properly stamped in the first instance

Scope—Clause ( ) is not applicable to memorandum of appeal insufficiently stamped (1901) A W N 21 see also in this connection 12 A 129 25 M 380, 12 C W N 1028, 14 M L J 144, 96 Ind Cas 135

Mistake or inadvertence—The words mistake or inadvertence in the section of the Court or its officers and not that 2 A 129 28 A 310, 4 A L J 130

High Court held that this section is ) 24 M 331 25 M 380

s not override the provisions of the Court to reject an insufficiently

without giving the appeal W N 1902 183, 54 P

A Court is competent even to filing an unstamped plaint

limitation is not saved 36 P R 1900, 28 A 310, 27 A 411, A W N (1904) 133 Deficiency can be made good even in appeal 14 M L J 144, 1902 A W N 153

Limitation—Presentation of insufficiently stamped plaint making up of duty subsequent to the period of limitation for the suit—validity—Vide 123 P R 1907, 32 M 303, 19 C 747, 27 C 814, 15 A 65, 1900 P L R 189

Ad valorem court fee on the value of the appeal should be paid on the memorandum of appeal from an order refusing an application for an order absolute under s 89 of the Transfer of Property Act 12 C W N 1078

Revenue officer—Under this section a Revenue officer has the power to direct on revision the payment of court fee and to order that the plaint improperly stamped be properly stamped 22 C L J 57

29 Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp

is brought this section does 892 See 13 A W N 220 plaint

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed

Notes—Where a plaint is returned by a Court for presentation to the proper Court, the Court to which the plaint is presented thereafter is bound to credit for the fee levied by the Court that returned the plaint 21 M L J 533 (F. B.)=10 Ind Cas 201.

## CHAPTER VI.

### MISCELLANEOUS

31.—Repealed by Act, 18 of 1923, s 163

32. [*Amendment of Act VIII of 1859 and Act IX, of 1869*] Repealed by the Repealing and Amending Act, 1891 (XII. of 1891)

33 Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of Justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition

Admission in criminal cases of documents for which proper fee has not been paid

34\* (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons

Sale of stamps

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person, not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

*Exchange*—A muktear who has purchased a court fee stamp of 8 annas for a client, and not having any use of it, has transferred it to another client who promised to return another stamp of equal value when the vendor arrived in Court, has not sold a stamp within the meaning of s 34 of the Court Fees Act and cannot be convicted under that section 30 C 921=7 C W. N 704, see also 24 M. 312

35 "The Local Government"† may, from time to time by notification ‡ "in local official Gazette" † reduce or remit, in the whole or any part of "the territories under its administration"‡ all or any of the fees mentioned in the first and second schedules to this Act annexed, and may, in like manner, cancel or vary such order

Power to reduce or remit fees

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

Saving of fees to certain officers of High Courts

\* S 34 has been substituted for the original by the Repealing and Amending Act (XII of 1891)

† The words within quotations have been substituted by Act 38 of 1920

‡ For Notification No 4650 dated September 10, 1889 as amended and added to by subsequent notification, see appendix

## SCHEDULE I.

*Ad-valorem Fees*

| NUMBER |                                                                                                                                                                             | PROPER FEE.        |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
|        | When the amount or value of the subject matter in dispute does not exceed five rupees ...                                                                                   | Six annas          |
|        | When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees                                    | Six annas          |
|        | When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees                     | Twelve annas       |
|        | When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees           | Five rupees        |
|        | When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees, up to ten thousand rupees | Ten rupees         |
|        | When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees up to twenty thousand rupees         | Fifteen rupees     |
|        | When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees | Twenty rupees      |
|        | When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees  | Twenty rupees      |
|        | When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees ...                            | Twenty five rupees |
|        | Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees                                                                   |                    |

1. Plaint, Written statement pleading a set off, or counter claim\*\* or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection† presented to any Civil or Revenue Court except those mentioned in section 3‡

**Plaint**—An application for the winding up, by the Court, of the business of a firm of . . .  
 of . . .  
 aa . . .  
 wl . . .  
 to . . .

**Set-off**—Where a written statement pleaded a set off within the meaning of Art. 1. Sch I of the Court Fees Act and omitted to pay the requisite court fees, the Court can neither go into the question of set off nor make an order for payment of additional court-fees as no fee at all had been paid—36 Ind Cas 957 The deduction which a lessee can make legally is not in the nature of a set off, it is payment to landlord. 12 C L J 351 See also 22 Ind Cas 320 where statement was held to be not counter claim Where the defendant claims right of set-off, he has to pay *ad-valorem* court fee on the same 20 A L J 1005, 45 A 218=69 Ind Cas 921 Court fee for excess over plaintiff's claim should be paid if decree for excess is prayed for A. L. R. 1927 Nag 74

**Cross objections**—In the case of cross objections relating to possession of land *ad-valorem* fee is payable on its value and not on the basis of calculation under s 7 (v) of the Court Fees Act L R 5 A 712=22 A L J 911 A memorandum of cross-objections which relates to costs only should be stamped *ad-valorem* on its value and is not to be treated as mere application 2 Rang 637=3 Bur L J 279

**Memorandum of appeal**—In an appeal in a pre-emption case in which the appellant asks the Court to reduce by a certain sum the amount payable by him under the order of the first Court, that sum represents the subject matter of his appeal 76 P R 1913 In a case where the whole subject matter of the suit is also the subject matter of appeal, the amount or value of the subject matter of appeal is nothing more than the value of the property which the plaintiff is seeking to recover and possession of which the defendant is seeking to retain 32 Ind Cas 121 Where execution of a decree is refused, an appeal against such order is maintainable Cas 429 *Ad-valorem*

decides court-fees 48 M. 625=85 Ind Cas 405, A I R 1927 (Pat) 46, A. I R 1927 Sind 251

**Order 20 rule 12 O P C**—An appeal from a final decree under this order is chargeable with *ad-valorem* court fee 14 L W 730, 69 Ind Cas 722

**Order 34 rule 5**—An appeal from this order requires *ad-valorem* court-fees 35 A 476 (F B), 57 Ind Cas 579=22 Bom L R 811

**Order 34 Rule 6**—An order refusing to make a decree under this order is a decree *ad-valorem* court-fees—16 A L J 438  
 require *ad-valorem*

**Mortgage**—In the case of appeals or cross objections in suits for redemption or for foreclosure, in all cases whether a decree for interest has been made in them or not in which the court fee declared by the Court due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross objection should be valued and future interest should not be taken into account The effect of this is that in original appeals the court fee should be levied on the sum due at the date of original decree and in all second appeals it should be levied on the sum due at the date of the decree of the lower appellate Court 3 Pat L J 443



| NUMBER                                                                                                      | PROPER FEE                                             |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| 4 Application for review of judgment if presented on or after the ninetieth day from the date of the decree | The fee leviable on the plaint or memorandum of appeal |

**Holiday**—The apparent intention of s 14 is to require full stamp in every case from the date of the decree. Hence an application on the day the Court was reopened after ninety days prescribed for its presentation had effect 134, 7 C P L R 11, P R 59 of 1879, 35

**Interlocutory orders**—Neither this article nor article 5 refers to interlocutory orders but they refer to judgments ending in decrees 6 A L J 151-31 A 252.

**Forma pauperis**—When an application for review is presented in suit in *forma pauperis*, that application like the plaint in a suit is not liable to any court-fee 20 A 410. But if he has not been declared a pauper in any of the earlier stages

if the *mosussil* does not fall in application for review of appeal in the suit in which the judgment sought to be reviewed was passed whether the review affects the whole or a part of the decree—31 A 294, 6 A L J 215 see also A W N 1898, 12, 3 C W N 292. But see 4 B 26. In computing the period of 89 days the applicant cannot deduct the time which may have been spent in obtaining a copy of the judgment. 2 O C 302. 'The fee payable on plaint or memorandum of appeal' means the proper fee payable 1927 Mad 360

| Number                                                                                                    | Proper Fee                                                         |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 5 Application for review of judgment, if presented before the ninetieth day from the date of the decree * | One half of the fee leviable on the plaint or memorandum on appeal |

**Insufficiently stamped**—An insufficiently stamped application for review stands

respect of which relief was sought by the application for review 74 Ind Cas 255-26 O C 33. Review—presentation to Stamp Reporter during vacation—Valid

\* As to application for review of judgment see the Code of Civil Procedure Act (V of 1908) s 114; O.

| Number                                                                                  |                                                                                                                                                                                                | Proper Fee  |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 6 Copy of translation of a judgment or order not being, or having the force of a decree | When such judgment or order is passed by any Civil Court, other than a High Court, or by the presiding officer of any Revenue Court or office or by any other Judicial or Executive Authority— |             |
|                                                                                         | (a)—If the amount or value of the subject matter is fifty or less than fifty rupees                                                                                                            | Four annas  |
|                                                                                         | (b)—If such amount or value exceeds fifty rupees                                                                                                                                               | Eight annas |
|                                                                                         | When such judgment or order is passed by a High Court                                                                                                                                          | One rupee   |

Art 6—A security bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act and cannot be written on plain paper bearing a court fee of eight annas 7 Lah L J 343=A 1 R 1925 Lah 452

|                                                          |                                                                                                                                         |             |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 7 Copy of a decree or order having the force of a decree | When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—                                  |             |
|                                                          | (a)—If the amount or value of the subject matter of the suit wherein such decree or order is made is fifty or is less than fifty rupees | Eight annas |
|                                                          | (b)—If such amount or value exceeds fifty rupees                                                                                        | One rupee   |
|                                                          | When such decree or order is made by a High Court                                                                                       | Four rupees |

Notes—Notes of Judgment furnished to the parties under rules of the Small Cause Courts falls under this Article—6 M H C App 23

|                                                                                                                                                             |                                                                                |                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------|
| 8 Copy of any document liable to stamp-duty under Indian Stamp Act, 1869* when left by any party to a suit or proceeding in place of the original withdrawn | (a)—When the stamp duty chargeable on the original does not exceed eight annas | The amount of the duty chargeable on the original |
|                                                                                                                                                             | (b)—In any other case                                                          | Eight annas                                       |

General power of attorney—Whether its copy produced in Court requires Court fees of annas eight vide 9 P R 1918 See also 11 B 526

\* See now the Indian Stamp Act (II of 1899) The reference originally was to Act XVIII of 1869



| Number                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                     | Proper fee                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division | For every three hundred and sixty words or fraction of three hundred and sixty words                                                                                                                                                                                                                                                                                                                                                | Eight annas                                         |
| 10 [Repealed by the Guardians and Wards Act (VIII of 1890)]                                                                                                                                                                                                                                                         | When the amount or value of the property in respect of which the grant of probate or letters is made, exceeds one thousand rupees but does not exceed ten thousand rupees                                                                                                                                                                                                                                                           | Two per centum on such amount or value              |
| 11 * Probate of a will or letters of administration with or without will annexed                                                                                                                                                                                                                                    | When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees                                                                                                                                                                                                                                                                                                                                     | Two and one half per centum on such amount or value |
|                                                                                                                                                                                                                                                                                                                     | When such amount or value exceeds fifty thousand rupees                                                                                                                                                                                                                                                                                                                                                                             | Three per centum on such amount or value            |
|                                                                                                                                                                                                                                                                                                                     | Provided that, when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant |                                                     |

## NOTES

*Amount or value of property*—For purposes of this Act, the expression "amount or value of the property" signifies the net value of the property after deducting the amount of the debt and expenses from the gross value.

\* No 11 has been substituted by Act VII of 1912

annuity is to be determined by its market value 1 B 118 See also 24 M 241, 6 N W P 214, 23 C 577, 3 C 736, 8 B L R App 43

*Property in respect of which the grant is made*—The court fee is payable on such property also 1 C 168, 4 C 725 is property within the 138

*Uncertainty*—The uncertainty of recovering a debt is no ground for reducing the proportionate duty payable thereon for probate 24 C 567, 13 B L R App 244, 21 W R 397

Where married parties held property under the Buddhist law or under the Code Napoleon and one of them dies, only one half of the property is chargeable with duty—20 C 575, 50 Ind Cas 545

No stamp duty is payable on probate granted to a second executor, 15 W R 496 See also 6 B L R App 189 But if no duty was originally paid in that case *ad valorem* duty should be paid 3 C 733=2 C L R 436 See also 6 B L R App 137, 21 W R 246 N Appeal from an order passed on an application for final decree in a mortgage suit against the judgment debtor who objected on the ground that he had satisfied the decree, is chargeable with *advalorem* court fee and not only 8 annas 27 O C 225=84 Ind Cas 747=A I R 1925 Oudh 102 A mortgagee who obtained a decree for such was ordered to pay out of the sale proceeds a certain amount as interest due to a prior mortgagee decree holder He filed an appeal against the order Held the order was one under s 47 C P Code, and under the Government Notification court fee would be payable under this article 4 Pat 294=A I R 1925 Pat 577

*Trust property*—The term property does include trust property 11 B L R App 39, 14 B L R 184, but see 7 B L R 57

| Number                                                    | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12* Certificate under the Succession Certificate Act 1889 | <p>Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act and three percentum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act</p> <p>NOTE—(1) the amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred, under the Act, and where such a power has been so conferred whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of the security or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained</p> |
| In any case                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

Vile 15 W R 456, 5 M H C R (App) 45, 5 C L R 368

\* Nos. 11, 12, and 12 A have been substituted, by the Succession Certificate Act (VII of 1889), s 13 (1) for Nos 11 and 12 as originally enacted

| Number                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                      | Proper Fee                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 A * Certificate under the Regulation of the Bombay Code No VIII of 1827                                                                                                                                                                                                                                      | <p>(1) As regards debts and securities</p> <p>(2) As regards other property in respect of which the certificate is granted—when the amount or value of such property exceeds one thousand rupees but does not exceed ten thousand rupees,</p> <p>Where such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees</p> <p>When such amount or value exceeds fifty thousand rupees</p> | <p>The same fee as would be payable in respect of a certificate under the Succession Certificate Act 1889 or in respect of an extension of such a certificate, as the case may be</p> <p>Two per centum on such amount or value.</p> <p>Two and one half per centum on such amount or value</p> <p>Three per centum on such amount or value</p> |
| 13 † "Application to the High Court of Judicature at Lahore † for the exercise of its jurisdiction under section 44 of the Punjab Courts Act 1918, or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 84 of the Punjab Tenancy Act 1837" | <p>When the amount or value of the subject matter in dispute does not exceed twenty five rupees</p> <p>When such amount or value exceeds twenty five rupees</p>                                                                                                                                                                                                                                                      | <p>Two rupees</p> <p>The fee leviable on a memorandum of appeal</p>                                                                                                                                                                                                                                                                             |

*Legislative Change*—It appears from the Punjab Act—1 of 1912 that art 13 of Schedule 11 of the Court Fees Act—has been repealed and as such should be omitted. But it appears from Act—18 of 1919 the article is still in force.

\* Nos 12 and 12A have been substituted for the original No. 12 by Act VII of 1910.  
Act (XVIII of 1884) s 71, as  
except the italicized words

Act 18 of 1919.

| Number                                                                                                                                                                                                                                                                                 |                                                                                                                                                      | Proper Fee                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 14 * Application to the "High Court of Judicature at Rangoon"† for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887 (or section 25 of the Rangoon Small Cause Court Act 1920) | When the amount or value of the subject matter in dispute does not exceed twenty five rupees<br>When such amount or value exceeds twenty five rupees | Two rupees<br><br>The fee leviable on a memorandum of appeal |
| 15 [Repealed by Act XI (of 1923, Sch II)]                                                                                                                                                                                                                                              |                                                                                                                                                      |                                                              |

*Table of Rates of Ad valorem Fees leviable on the Institution of Suits.*

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | Where the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|---------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs As      | Rs                                                      | Rs                  | Rs A       |
| 0                                                      | 5                   | 0 6        | 85                                                      | 90                  | 6 12       |
| 5                                                      | 10                  | 0 12       | 90                                                      | 95                  | 7 2        |
| 10                                                     | 15                  | 1 2        | 95                                                      | 100                 | 7 8        |
| 15                                                     | 20                  | 1 8        | 100                                                     | 110                 | 8 4        |
| 20                                                     | 25                  | 1 14       | 110                                                     | 120                 | 9 0        |
| 25                                                     | 30                  | 2 4        | 120                                                     | 130                 | 9 12       |
| 30                                                     | 35                  | 2 10       | 130                                                     | 140                 | 10 8       |
| 35                                                     | 40                  | 3 0        | 140                                                     | 150                 | 11 4       |
| 40                                                     | 45                  | 3 6        | 150                                                     | 160                 | 12 0       |
| 45                                                     | 50                  | 3 12       | 160                                                     | 170                 | 12 12      |
| 50                                                     | 55                  | 4 2        | 170                                                     | 180                 | 13 8       |
| 55                                                     | 60                  | 4 8        | 180                                                     | 190                 | 14 4       |
| 60                                                     | 65                  | 4 14       | 190                                                     | 200                 | 15 0       |
| 65                                                     | 70                  | 5 4        | 200                                                     | 210                 | 15 12      |
| 70                                                     | 75                  | 5 10       | 210                                                     | 220                 | 16 8       |
| 75                                                     | 80                  | 6 0        | 220                                                     | 230                 | 17 4       |
| 80                                                     | 85                  | 6 6        | 230                                                     | 240                 | 18 0       |

\* have been substituted for  
 † s. 584 see the Lower

| When the<br>amount or<br>value of the<br>subject-<br>matter<br>exceeds | But does not<br>exceed | Proper Fee | When the<br>amount or<br>value of the<br>subject<br>matter<br>exceeds | But does not<br>Exceed | Proper fee |
|------------------------------------------------------------------------|------------------------|------------|-----------------------------------------------------------------------|------------------------|------------|
| Rs                                                                     | Rs.                    | Rs A       | Rs                                                                    | Rs                     | Rs A       |
| 240                                                                    | 250                    | 18 12      | 770                                                                   | 780                    | 58 8       |
| 250                                                                    | 260                    | 19 8       | 780                                                                   | 790                    | 59 4       |
| 260                                                                    | 270                    | 20 4       | 790                                                                   | 800                    | 60 0       |
| 270                                                                    | 280                    | 21 0       | 800                                                                   | 810                    | 60 12      |
| 280                                                                    | 290                    | 21 12      | 810                                                                   | 820                    | 61 8       |
| 290                                                                    | 300                    | 22 8       | 820                                                                   | 830                    | 62 4       |
| 300                                                                    | 310                    | 23 4       | 830                                                                   | 840                    | 63 0       |
| 310                                                                    | 320                    | 24 0       | 840                                                                   | 850                    | 63 12      |
| 320                                                                    | 330                    | 24 12      | 850                                                                   | 860                    | 64 8       |
| 330                                                                    | 340                    | 25 8       | 860                                                                   | 870                    | 65 4       |
| 340                                                                    | 350                    | 26 4       | 870                                                                   | 880                    | 66 0       |
| 350                                                                    | 360                    | 27 0       | 880                                                                   | 890                    | 66 12      |
| 360                                                                    | 370                    | 27 12      | 890                                                                   | 900                    | 67 8       |
| 370                                                                    | 380                    | 28 8       | 900                                                                   | 910                    | 68 4       |
| 380                                                                    | 390                    | 29 4       | 910                                                                   | 920                    | 69 0       |
| 390                                                                    | 400                    | 30 0       | 920                                                                   | 930                    | 69 12      |
| 400                                                                    | 410                    | 30 12      | 930                                                                   | 940                    | 70 8       |
| 410                                                                    | 420                    | 31 8       | 940                                                                   | 950                    | 71 4       |
| 420                                                                    | 430                    | 32 4       | 950                                                                   | 960                    | 72 0       |
| 430                                                                    | 440                    | 33 0       | 960                                                                   | 970                    | 72 12      |
| 440                                                                    | 450                    | 33 12      | 970                                                                   | 980                    | 73 8       |
| 450                                                                    | 460                    | 34 8       | 980                                                                   | 990                    | 74 4       |
| 460                                                                    | 470                    | 35 4       | 990                                                                   | 1,000                  | 75 0       |
| 470                                                                    | 480                    | 36 0       | 1,000                                                                 | 1,100                  | 80 0       |
| 480                                                                    | 490                    | 36 12      | 1,100                                                                 | 1,200                  | 85 0       |
| 490                                                                    | 500                    | 37 8       | 1,200                                                                 | 1,300                  | 90 0       |
| 500                                                                    | 510                    | 38 4       | 1,300                                                                 | 1,400                  | 95 0       |
| 510                                                                    | 520                    | 39 0       | 1,400                                                                 | 1,500                  | 100 0      |
| 520                                                                    | 530                    | 39 12      | 1,500                                                                 | 1,600                  | 105 0      |
| 530                                                                    | 540                    | 40 8       | 1,600                                                                 | 1,700                  | 110 0      |
| 540                                                                    | 550                    | 41 4       | 1,700                                                                 | 1,800                  | 115 0      |
| 550                                                                    | 560                    | 42 0       | 1,800                                                                 | 1,900                  | 120 0      |
| 560                                                                    | 570                    | 42 12      | 1,900                                                                 | 2,000                  | 125 0      |
| 570                                                                    | 580                    | 43 8       | 2,000                                                                 | 2,100                  | 130 0      |
| 580                                                                    | 590                    | 44 4       | 2,100                                                                 | 2,200                  | 135 0      |
| 590                                                                    | 600                    | 45 0       | 2,200                                                                 | 2,300                  | 140 0      |
| 600                                                                    | 610                    | 45 12      | 2,300                                                                 | 2,400                  | 145 0      |
| 610                                                                    | 620                    | 46 8       | 2,400                                                                 | 2,500                  | 150 0      |
| 620                                                                    | 630                    | 47 4       | 2,500                                                                 | 2,600                  | 155 0      |
| 630                                                                    | 640                    | 48 0       | 2,600                                                                 | 2,700                  | 160 0      |
| 640                                                                    | 650                    | 48 12      | 2,700                                                                 | 2,800                  | 165 0      |
| 650                                                                    | 660                    | 49 8       | 2,800                                                                 | 2,900                  | 170 0      |
| 660                                                                    | 670                    | 50 4       | 2,900                                                                 | 3,000                  | 175 0      |
| 670                                                                    | 680                    | 51 0       | 3,000                                                                 | 3,100                  | 180 0      |
| 680                                                                    | 690                    | 51 12      | 3,100                                                                 | 3,200                  | 185 0      |
| 690                                                                    | 700                    | 52 8       | 3,200                                                                 | 3,300                  | 190 0      |
| 700                                                                    | 710                    | 53 4       | 3,300                                                                 | 3,400                  | 195 0      |
| 710                                                                    | 720                    | 54 0       | 3,400                                                                 | 3,500                  | 200 0      |
| 720                                                                    | 730                    | 54 12      | 3,500                                                                 | 3,600                  | 205 0      |
| 730                                                                    | 740                    | 55 8       | 3,600                                                                 | 3,700                  | 210 0      |
| 740                                                                    | 750                    | 56 4       | 3,700                                                                 | 3,800                  | 215 0      |
| 750                                                                    | 760                    | 57 0       | 3,800                                                                 | 3,900                  | 220 0      |
| 760                                                                    | 770                    | 57 12      | 3,900                                                                 | 4,000                  | 225 0      |
|                                                                        |                        |            | 4,000                                                                 | 4,100                  | 230 0      |

| When the amount or value of the subject matter exceeds. | But does not exceed. | Proper Fee. | When the amount or value of the subject-matter exceeds. | But does not exceed. | Proper Fee. |
|---------------------------------------------------------|----------------------|-------------|---------------------------------------------------------|----------------------|-------------|
| Rs.                                                     | Rs.                  | Rs. A.      | Rs.                                                     | Rs.                  | Rs. A.      |
| 4,100                                                   | 4,200                | 235 0       | 23,000                                                  | 24,000               | 855 0       |
| 4,200                                                   | 4,300                | 240 0       | 24,000                                                  | 25,000               | 875 0       |
| 4,300                                                   | 4,400                | 245 0       | 25,000                                                  | 26,000               | 895 0       |
| 4,400                                                   | 4,500                | 250 0       | 26,000                                                  | 27,000               | 915 0       |
| 4,500                                                   | 4,600                | 255 0       | 27,000                                                  | 28,000               | 935 0       |
| 4,600                                                   | 4,700                | 260 0       | 28,000                                                  | 29,000               | 955 0       |
| 4,700                                                   | 4,800                | 265 0       | 29,000                                                  | 30,000               | 975 0       |
| 4,800                                                   | 4,900                | 270 0       | 30,000                                                  | 32,000               | 995 0       |
| 4,900                                                   | 5,000                | 275 0       | 32,000                                                  | 34,000               | 1,015 0     |
| 5,000                                                   | 5,250                | 285 0       | 34,000                                                  | 36,000               | 1,035 0     |
| 5,250                                                   | 5,500                | 295 0       | 36,000                                                  | 38,000               | 1,055 0     |
| 5,500                                                   | 5,750                | 305 0       | 38,000                                                  | 40,000               | 1,075 0     |
| 5,750                                                   | 6,000                | 315 0       | 40,000                                                  | 42,000               | 1,095 0     |
| 6,000                                                   | 6,250                | 325 0       | 42,000                                                  | 44,000               | 1,115 0     |
| 6,250                                                   | 6,500                | 330 0       | 44,000                                                  | 46,000               | 1,135 0     |
| 6,500                                                   | 6,750                | 345 0       | 46,000                                                  | 48,000               | 1,155 0     |
| 6,750                                                   | 7,000                | 355 0       | 48,000                                                  | 50,000               | 1,175 0     |
| 7,000                                                   | 7,250                | 365 0       | 50,000                                                  | 55,000               | 1,200 0     |
| 7,250                                                   | 7,500                | 375 0       | 55,000                                                  | 60,000               | 1,225 0     |
| 7,500                                                   | 7,750                | 385 0       | 60,000                                                  | 65,000               | 1,250 0     |
| 7,750                                                   | 8,000                | 395 0       | 65,000                                                  | 70,000               | 1,275 0     |
| 8,000                                                   | 8,250                | 405 0       | 70,000                                                  | 75,000               | 1,300 0     |
| 8,250                                                   | 8,500                | 415 0       | 75,000                                                  | 80,000               | 1,325 0     |
| 8,500                                                   | 8,750                | 425 0       | 80,000                                                  | 85,000               | 1,350 0     |
| 8,750                                                   | 9,000                | 435 0       | 85,000                                                  | 90,000               | 1,375 0     |
| 9,000                                                   | 9,250                | 445 0       | 90,000                                                  | 95,000               | 1,400 0     |
| 9,250                                                   | 9,500                | 455 0       | 95,000                                                  | 1,00,000             | 1,425 0     |
| 9,500                                                   | 9,750                | 465 0       | 1,00,000                                                | 1,05,000             | 1,450 0     |
| 9,750                                                   | 10,000               | 475 0       | 1,05,000                                                | 1,10,000             | 1,475 0     |
| 10,000                                                  | 10,500               | 490 0       | 1,10,000                                                | 1,15,000             | 1,500 0     |
| 10,500                                                  | 11,000               | 505 0       | 1,15,000                                                | 1,20,000             | 1,525 0     |
| 11,000                                                  | 11,500               | 520 0       | 1,20,000                                                | 1,25,000             | 1,550 0     |
| 11,500                                                  | 12,000               | 535 0       | 1,25,000                                                | 1,30,000             | 1,575 0     |
| 12,000                                                  | 12,500               | 550 0       | 1,30,000                                                | 1,35,000             | 1,600 0     |
| 12,500                                                  | 13,000               | 565 0       | 1,35,000                                                | 1,40,000             | 1,625 0     |
| 13,000                                                  | 13,500               | 580 0       | 1,40,000                                                | 1,45,000             | 1,650 0     |
| 13,500                                                  | 14,000               | 595 0       | 1,45,000                                                | 1,50,000             | 1,675 0     |
| 14,000                                                  | 14,500               | 610 0       | 1,50,000                                                | 1,55,000             | 1,700 0     |
| 14,500                                                  | 15,000               | 625 0       | 1,55,000                                                | 1,60,000             | 1,725 0     |
| 15,000                                                  | 15,500               | 640 0       | 1,60,000                                                | 1,65,000             | 1,750 0     |
| 15,500                                                  | 16,000               | 655 0       | 1,65,000                                                | 1,70,000             | 1,775 0     |
| 16,000                                                  | 16,500               | 670 0       | 1,70,000                                                | 1,75,000             | 1,800 0     |
| 16,500                                                  | 17,000               | 685 0       | 1,75,000                                                | 1,80,000             | 1,825 0     |
| 17,000                                                  | 17,500               | 700 0       | 1,80,000                                                | 1,85,000             | 1,850 0     |
| 17,500                                                  | 18,000               | 715 0       | 1,85,000                                                | 1,90,000             | 1,875 0     |
| 18,000                                                  | 18,500               | 730 0       | 1,90,000                                                | 1,95,000             | 1,900 0     |
| 18,500                                                  | 19,000               | 745 0       | 1,95,000                                                | 2,00,000             | 1,925 0     |
| 19,000                                                  | 19,000               | 760 0       | 2,00,000                                                | 2,05,000             | 1,950 0     |
| 19,500                                                  | 20,000               | 775 0       | 2,05,000                                                | 2,10,000             | 1,975 0     |
| 20,000                                                  | 21,000               | 795 0       | 2,10,000                                                | 2,15,000             | 2,000 0     |
| 21,000                                                  | 22,000               | 815 0       | 2,15,000                                                | 2,20,000             | 2,025 0     |
| 22,000                                                  | 23,000               | 835 0       | 2,20,000                                                | 2,25,000             | 2,050 0     |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 2,25,000                                               | 2,30,000            | 2 075 0    | 3,20,000                                               | 3,25,000            | 2 550 0    |
| 2,30,000                                               | 2,35,000            | 2 100 0    | 3,25,000                                               | 3,30,000            | 2 575 0    |
| 2,35,000                                               | 2,40,000            | 2 125 0    | 3,30,000                                               | 3,35,000            | 2 600 0    |
| 2,40,000                                               | 2,45,000            | 2 150 0    | 3,35,000                                               | 3,40,000            | 2 625 0    |
| 2,45,000                                               | 2,50,000            | 2 175 0    | 3,40,000                                               | 3,45,000            | 2 650 0    |
| 2,50,000                                               | 2,55,000            | 2 200 0    | 3,45,000                                               | 3,50,000            | 2 675 0    |
| 2,55,000                                               | 2,60,000            | 2 225 0    | 3,50,000                                               | 3,55,000            | 2 700 0    |
| 2,60,000                                               | 2,65,000            | 2 250 0    | 3,55,000                                               | 3,60,000            | 2 725 0    |
| 2,65,000                                               | 2 70,000            | 2 275 0    | 3,60,000                                               | 3,65,000            | 2 750 0    |
| 2 70,000                                               | 2 75,000            | 2 300 0    | 3,65,000                                               | 3,70,000            | 2 775 0    |
| 2 75,000                                               | 2 80,000            | 2 325 0    | 3,70,000                                               | 3,75,000            | 2 800 0    |
| 2 80,000                                               | 2 85,000            | 2 350 0    | 3,75,000                                               | 3,80,000            | 2 825 0    |
| 2 85,000                                               | 2 90,000            | 2 375 0    | 3,80,000                                               | 3,85,000            | 2 850 0    |
| 2 90,000                                               | 2 95,000            | 2 400 0    | 3,85,000                                               | 3,90,000            | 2 875 0    |
| 2 95,000                                               | 3 00,000            | 2 425 0    | 3,90,000                                               | 3,95,000            | 2 900 0    |
| 3 00,000                                               | 3 05,000            | 2 450 0    | 3,95,000                                               | 4 00,000            | 2 925 0    |
| 3 05,000                                               | 3 10,000            | 2 475 0    | 4 00,000                                               | 4 05,000            | 2 950 0    |
| 3 10,000                                               | 3 15,000            | 2 500 0    | 4 05,000                                               | 4 10,000            | 2 975 0    |
| 3 15,000                                               | 3 20,000            | 2 525 0    | 4 10,000                                               |                     | 3 000 0    |

## SCHEDULE II

## Fixed Fees

| Number                    | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 Application or petition | <p>When presented to any officer of the Customs</p> <p>or when presented to any officer of Land revenue by any person holding temporarily settled land under direct engagement with Government and when the subject matter of the application or petition relates exclusively to such engagement,</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place if the application or petition relates solely to such conservancy or improvement</p> <p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction*</p> |

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\* Here the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No III of 1859, have been omitted having been repealed by the Cantonments Act (XIII of 1889) s 2 and Sch

| When the<br>amount or<br>value of the<br>subject matter<br>exceeds | But does not<br>exceed | Proper Fee. | When the<br>amount or<br>value of the<br>subject-matter<br>exceed | But does not<br>exceed | Proper Fee |
|--------------------------------------------------------------------|------------------------|-------------|-------------------------------------------------------------------|------------------------|------------|
| Rs.                                                                | Rs                     | Rs A        | Rs                                                                | Rs                     | Rs A.      |
| 4,100                                                              | 4,200                  | 235 0       | 23,000                                                            | 24,000                 | 855 0      |
| 4,200                                                              | 4,300                  | 240 0       | 24,000                                                            | 25,000                 | 875 0      |
| 4,300                                                              | 4,400                  | 245 0       | 25,000                                                            | 26,000                 | 895 0      |
| 4,400                                                              | 4,500                  | 250 0       | 26,000                                                            | 27,000                 | 915 0      |
| 4,500                                                              | 4,600                  | 255 0       | 27,000                                                            | 28,000                 | 935 0      |
| 4,600                                                              | 4,700                  | 260 0       | 28,000                                                            | 29,000                 | 955 0      |
| 4,700                                                              | 4,800                  | 265 0       | 29,000                                                            | 30,000                 | 975 0      |
| 4,800                                                              | 4,900                  | 270 0       | 30,000                                                            | 32,000                 | 995 0      |
| 4,900                                                              | 5,000                  | 275 0       | 32,000                                                            | 34,000                 | 1,015 0    |
| 5,000                                                              | 5,250                  | 285 0       | 34,000                                                            | 36,000                 | 1,035 0    |
| 5,250                                                              | 5,500                  | 295 0       | 36,000                                                            | 38,000                 | 1,055 0    |
| 5,500                                                              | 5,750                  | 305 0       | 38,000                                                            | 40,000                 | 1,075 0    |
| 5,750                                                              | 6,000                  | 315 0       | 40,000                                                            | 42,000                 | 1,095 0    |
| 6,000                                                              | 6,250                  | 325 0       | 42,000                                                            | 44,000                 | 1,115 0    |
| 6,250                                                              | 6,500                  | 330 0       | 44,000                                                            | 46,000                 | 1,135 0    |
| 6,500                                                              | 6,750                  | 345 0       | 46,000                                                            | 48,000                 | 1,155 0    |
| 6,750                                                              | 7,000                  | 355 0       | 48,000                                                            | 50,000                 | 1,175 0    |
| 7,000                                                              | 7,250                  | 365 0       | 50,000                                                            | 55,000                 | 1,200 0    |
| 7,250                                                              | 7,500                  | 375 0       | 55,000                                                            | 60,000                 | 1,225 0    |
| 7,500                                                              | 7,750                  | 385 0       | 60,000                                                            | 65,000                 | 1,250 0    |
| 7,750                                                              | 8,000                  | 395 0       | 65,000                                                            | 70,000                 | 1,275 0    |
| 8,000                                                              | 8,250                  | 405 0       | 70,000                                                            | 75,000                 | 1,300 0    |
| 8,250                                                              | 8,500                  | 415 0       | 75,000                                                            | 80,000                 | 1,325 0    |
| 8,500                                                              | 8,750                  | 425 0       | 80,000                                                            | 85,000                 | 1,350 0    |
| 8,750                                                              | 9,000                  | 435 0       | 85,000                                                            | 90,000                 | 1,375 0    |
| 9,000                                                              | 9,250                  | 445 0       | 90,000                                                            | 95,000                 | 1,400 0    |
| 9,250                                                              | 9,500                  | 455 0       | 95,000                                                            | 1,00,000               | 1,425 0    |
| 9,500                                                              | 9,750                  | 465 0       | 1,00,000                                                          | 1,05,000               | 1,450 0    |
| 9,750                                                              | 10,000                 | 475 0       | 1,05,000                                                          | 1,10,000               | 1,475 0    |
| 10,000                                                             | 10,500                 | 490 0       | 1,10,000                                                          | 1,15,000               | 1,500 0    |
| 10,500                                                             | 11,000                 | 505 0       | 1,15,000                                                          | 1,20,000               | 1,525 0    |
| 11,000                                                             | 11,500                 | 520 0       | 1,20,000                                                          | 1,25,000               | 1,550 0    |
| 11,500                                                             | 12,000                 | 535 0       | 1,25,000                                                          | 1,30,000               | 1,575 0    |
| 12,000                                                             | 12,500                 | 550 0       | 1,30,000                                                          | 1,35,000               | 1,600 0    |
| 12,500                                                             | 13,000                 | 565 0       | 1,35,000                                                          | 1,40,000               | 1,625 0    |
| 13,000                                                             | 13,500                 | 580 0       | 1,40,000                                                          | 1,45,000               | 1,650 0    |
| 13,500                                                             | 14,000                 | 595 0       | 1,45,000                                                          | 1,50,000               | 1,675 0    |
| 14,000                                                             | 14,500                 | 610 0       | 1,50,000                                                          | 1,55,000               | 1,700 0    |
| 14,500                                                             | 15,000                 | 625 0       | 1,55,000                                                          | 1,60,000               | 1,725 0    |
| 15,000                                                             | 15,500                 | 640 0       | 1,60,000                                                          | 1,65,000               | 1,750 0    |
| 15,500                                                             | 16,000                 | 655 0       | 1,65,000                                                          | 1,70,000               | 1,775 0    |
| 16,000                                                             | 16,500                 | 670 0       | 1,70,000                                                          | 1,75,000               | 1,800 0    |
| 16,500                                                             | 17,000                 | 685 0       | 1,75,000                                                          | 1,80,000               | 1,825 0    |
| 17,000                                                             | 17,500                 | 700 0       | 1,80,000                                                          | 1,85,000               | 1,850 0    |
| 17,500                                                             | 18,000                 | 715 0       | 1,85,000                                                          | 1,90,000               | 1,875 0    |
| 18,000                                                             | 18,500                 | 730 0       | 1,90,000                                                          | 1,95,000               | 1,900 0    |
| 18,500                                                             | 19,000                 | 745 0       | 1,95,000                                                          | 2,00,000               | 1,925 0    |
| 19,000                                                             | 19,000                 | 760 0       | 2,00,000                                                          | 2,05,000               | 1,950 0    |
| 19,500                                                             | 20,000                 | 775 0       | 2,05,000                                                          | 2,10,000               | 1,975 0    |
| 20,000                                                             | 21,000                 | 795 0       | 2,10,000                                                          | 2,15,000               | 2,000 0    |
| 21,000                                                             | 22,000                 | 815 0       | 2,15,000                                                          | 2,20,000               | 2,025 0    |
| 22,000                                                             | 23,000                 | 835 0       | 2,20,000                                                          | 2,25,000               | 2,050 0    |



| When the amount or value of the subject-matter exceeds | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs.                 | Rs A       | Rs                                                     | Rs                  | Rs. A      |
| 2,25,000                                               | 2,30,000            | 2 075 0    | 3 20 000                                               | 3 25,000            | 2,550 0    |
| 2,30,000                                               | 2,35,000            | 2 100 0    | 3,25 000                                               | 3,30,000            | 2,575 0    |
| 2,35,000                                               | 2,40 000            | 2 125 0    | 3,30,000                                               | 3,35,000            | 2,600 0    |
| 2,40 000                                               | 2,45,000            | 2,150 0    | 3,35,000                                               | 3 40,000            | 2,625 0    |
| 2,45,000                                               | 2,50,000            | 2,175 0    | 3 40 000                                               | 3 45,000            | 2,650 0    |
| 2,50,000                                               | 2,55,000            | 2,200 0    | 3 45 000                                               | 3,50,000            | 2 675 0    |
| 2,55,000                                               | 2,60,000            | 2,225 0    | 3,50,000                                               | 3,55,000            | 2,700 0    |
| 2,60,000                                               | 2,65 000            | 2,250 0    | 3,55,000                                               | 3 60,000            | 2,725 0    |
| 2,65,000                                               | 2,70,000            | 2,275 0    | 3 60,000                                               | 3,65,000            | 2,750 0    |
| 2,70,000                                               | 2,75 000            | 2 300 0    | 3,65,000                                               | 3,70 000            | 2,775 0    |
| 2,75,000                                               | 2,80,000            | 2,325 0    | 3,70,000                                               | 3 75,000            | 2,800 0    |
| 2,80,000                                               | 2,85,000            | 2,350 0    | 3 75 000                                               | 3,80,000            | 2,825 0    |
| 2,85,000                                               | 2,90,000            | 2,375 0    | 3,80,000                                               | 3 85 000            | 2,850 0    |
| 2,90 000                                               | 2,95,000            | 2,400 0    | 3 85,000                                               | 3,90,000            | 2,875 0    |
| 2,95,000                                               | 3,00,000            | 2,425 0    | 3,90 000                                               | 3,95,000            | 2 900 0    |
| 3,00,000                                               | 3,05 000            | 2 450 0    | 3 95 000                                               | 4 00,000            | 2,925 0    |
| 3 05,000                                               | 3,10,000            | 2,475 0    | 4,00 000                                               | 4,05,000            | 2 950 0    |
| 3,10,000                                               | 3,15,000            | 2,500 0    | 4,05,000                                               | 4,10,000            | 2,975 0    |
| 3,15,000                                               | 3 20,000            | 2,525 0    | 4,10,000                                               |                     | 3,000 0    |

## SCHEDULE II

*Fixed Fees.*

| Number                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Proper fee |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1 Application or petition | <p>(a) When presented to any officer of the Customs or Magistrate</p> <p>or when presented to any officer of Land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;</p> <p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction,*</p> | One anna   |

\* Here the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No III of 1859," have been omitted, having been repealed by the Cantonments Act (XIII of 1889), s, 2 and Sch I

| Number                                  |                                                                                                                                                                                                                                                                                          | Proper Fee  |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1. Application or petition—<br>(contd.) | or to any Court of Small Causes constituted under Act No XI, of 1865* or under Act No XVI of 1868, section 20,† or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject matter is less than fifty rupees               |             |
|                                         | or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board or officer, or of any other document on record in such Court or Office | One anna    |
|                                         | (d) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code,† arrest without warrant, and presented to any Criminal Court ;                                                                          |             |
|                                         | or when presented to a Civil, Criminal, or Revenue Court or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;                                 | Eight annas |
|                                         | or to deposit in Court revenue or rent,                                                                                                                                                                                                                                                  |             |
|                                         | or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant                                                                                                                                                                                     |             |
|                                         | . . . . .<br>of Commission<br>for by this Act                                                                                                                                                                                                                                            | One rupee   |
|                                         | (d) —When presented to a High Court . . .                                                                                                                                                                                                                                                | Two rupees  |

Application must be in writing.—S N. W P 418

Application for a new trial in a Small Cause Court falls within sub-clause (1) of this article.—7 B H C A C 109

Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons 15 W. R 237. Application for

\* See now the Provincial Small Cause Courts Act (IX of 1887), by which Act XI

Western Provinces, and Assam Civil  
V of 1898)

probate or letters of administration falls under this section 15 W R 40 51 M L J  
 closure or sale should be treated  
 R 100 Application for copy of  
 r this Article 7 W R 455 An  
 profits by way of compensation  
 relates to the execution discharge or satisfaction of the decree is an appeal from an  
 order dismissing the application and *ad viltorem* Court fees need not be paid 18  
 N L R 15

Clause (b)—  
 8 M 15 (F B  
 P R 6, 1873  
 clause 2 B I  
 not be stamped

37=1923 Rang 245

Clause (c)—A memorandum of appeal from an order under s 58 of Act VI of  
 1882 presented to the High Court with a stamp of Rs 2 is sufficiently stamped  
 1885 P J 214

Cause (d)—Appeal to High Court under section 263 of the Succession Act should  
 be stamped under this section (A W N 1889 57) Memorandum or cross objec-  
 tion on question of costs is chargeable under this article 25 C W N 934

| Number                                                                                                                          |                                                                                                                            | Proper Fee,                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| *1A. Application to any Civil Court that records may be called for from another Court                                           | When the Court grants the application and is of opinion that the transmission of such records involves the use of the post | Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of article 1 of this schedule |
| 2 Application for leave to sue as a pauper                                                                                      |                                                                                                                            | Eight annas                                                                                                                            |
| 3 Application for leave to appeal as a pauper                                                                                   | (a)—When presented to a District Court<br>(b)—When presented to a Commissioner or a High Court                             | One rupee<br>Two rupees                                                                                                                |
| 4 Plaint or memorandum of appeal in a suit to obtain possession under Act No XVI of 1838, or the Mamlatdars' Courts Act, 1876 † |                                                                                                                            | Eight annas                                                                                                                            |
| 5 Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy                                        |                                                                                                                            | Eight annas                                                                                                                            |

\* Article 1A, has been inserted by Act 14 of 1911 s 171

† The words quoted have been substituted by the Repealing and Amending Act (XII of 1891) for the words Bombay Act No V of 1854 (*to give Mamlatdars Court jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by courts*)

**Notes**—In a suit to establish or disprove a right of occupancy the plaint or memorandum of appeal should bear a Court fee of eight annas as provided in art 5 40A 358, see also 11 C L R 91, 16 M 310

| Number                                                                                                                                                                                                                                              | Proper Fee  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 6* Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure 1898 or the Code of Civil Procedure 1908 and not otherwise provided for by this Act | Eight annas |

**Notes**—When a bond is given under the order of a Court as security by one party for the costs of another it is subject to two duties (a) one under the Stamp Act and (b) under the article 11A 16 See also 21 C W N 1150, but see 24 M L J 637 68 Ind Cas 730 A security bond filed by a claimant in a claim case, being an instrument of obligation given in pursuance of an order of Court is governed by Schedule II Art 6 of the Court Fees Act 49 C 997=1923 Cal 269

| Number                                                                                                                  | Proper Fee                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 Undertaking under section 49 of the Indian Divorce Act 8 & 9 Repealed by the Repealing and Amending Act (VII of 1891) | Eight annas                                                                                                                                                                                                                                                                                                                                                             |
| 10 Mukh arnama or Vakalatnama                                                                                           | When presented for the conduct of any one case—<br>(a)—to any Civil or Criminal Court other than a High Court or to any Revenue Court or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number<br>(b)—to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the ex- |
|                                                                                                                         | Eight annas                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                         | One rupee                                                                                                                                                                                                                                                                                                                                                               |
|                                                                                                                         | Two Rupees                                                                                                                                                                                                                                                                                                                                                              |

**Notes**—A power of appointment which authorises an advocate to make or do any appearance application or act on behalf of his client must be stamped with a court fee as prescribed in article 10 schedule II of the Court fees Act and not as a

\* Art 6 has been substituted for the original by Act 7 of 1914 The original article ran as follows "Bail bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority"

Power of Attorney under article 48, schedule 1, of the stamp Act The word Vakalatnama in article 10 relates to a power filed by a legal practitioner to conduct a case on behalf of a suitor irrespective of the class to which that legal practitioner belongs 5 Pat 255=94 Ind Cas 841

A power to a vakil authorizing him to present an application for copies to the Collector falls under article 10 Sch II of the Court Fees Act 9 M 146 (F B), See also 1 C W N 11, 8 A L J 378 (F B), 108 P W R 1912, 6 Ind Cas 617, 15 Ind Cas 122, 94 Ind Cas 841

| NUMBER.                                                                                                                  |                                                                                                                                                                              | PROPER FEE  |
|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented— | (a)—to any Civil Court other than a High Court, or to any Revenue Court, or executive officer other than the High Court, or Chief Controlling Revenue or Executive Authority | Eight annas |
|                                                                                                                          | (b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue authority                                                                         | Two rupees  |

Notes—An application to the High Court to set aside an order of a District Court, reversing an order of a Court of first instance directing an award made

should be treated as an application C R 17 On the memorandum of an order of the District Judge under s 224 of

of Rs 2 is payable with reference to art 11 (b), Sch II of the Court Fees Act 17 A 238 An order refusing an application under ss 253 and 336 of the Code of Civil Procedure for recovery of the amount decreed from a surety is not a decree nor an order having the force of decree within the meaning of art 11 of the second schedule to the Court Fees Act 72 P R 1902 An application for mesne profits by defendants against whom the suit had been dismissed is chargeable under this section 11 C L J 541 Under s 588, cl (28) of the Civ. Pro Code, the direction to Lower Court to re-admit a case under s 562 of the Code is an order—it is not a decree under s 2 of the Code, 21 A 178

against an execution appeal from an order dismissing an application for the ascertainment of mesne profits must be stamped with *ad valorem* stamp on the amount claimed 3 Pat L J 101 Appeal against the order of the Land Acquisition Judge rejecting an application claiming compensation is chargeable under this article 8 C W N 321

| NUMBER                                                                                                                                   |    | PROPER FEE   |
|------------------------------------------------------------------------------------------------------------------------------------------|----|--------------|
| 12 Caveat                                                                                                                                |    |              |
| 13 Application under Act No X of 1859, *section 26, or Bengal Act No VI of 1862, † section 9 or Bengal Act No VIII of 1869, † section 37 | .. | Five rupees. |
|                                                                                                                                          |    | Five rupees. |

1883) in  
Chota  
Nagpur  
by Act  
of 1901].

| NUMBER                                                                                                                                                        |  | PROPER FEE  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------|
| 14 Petition in a suit under the Native Converts, Marriage Dissolution Act, 1866 *                                                                             |  | Five rupees |
| 15 <i>(Repealed by Act V of 1908, Sch V)</i>                                                                                                                  |  |             |
| 16 <i>Repealed by the Probate and Administration Act (VI of 1889 s 18)</i>                                                                                    |  |             |
| 17 Plaint or Memorandum of appeal in each of the following suits —                                                                                            |  |             |
| i to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court                      |  | Ten rupees  |
| ii to alter or cancel any entry in a register of the names of proprietors of revenue paying estates                                                           |  |             |
| iii to obtain a declaratory decree where no consequential relief is prayed                                                                                    |  |             |
| iv to set aside an award                                                                                                                                      |  |             |
| v to set aside an adoption                                                                                                                                    |  |             |
| vi every other suit where it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act. |  | Ten rupees  |

\* Act XXI of 1866

\* Ben. Act VI of 1862 has been repealed by the Bengal Tenancy Act (VIII of 1885) in the Lower Provinces to which that Act (except Manbhurn and the Tributary Tenant Procedure Act (Ben. Act 1

\* Ben. Act VIII of 1862 has been repealed by the Bengal Tenancy Act VIII of 1885)

**Notes**—A suit for the reversal of a *palm* sale is not solely for a declaration that the sale is a nullity. It is on the other hand a suit for the reversal or cancellation of sale, on the assumption that if the validity of the sale is not challenged the sale would remain operative between the parties. 51 C 216=81 Ind Cas 731=78 C W N 683. Where the consequential relief is a mere surplusage and the relief sought is merely declaratory court fee charged should be under Schedule 4 art 17 of the Court Fees Act 3 Pat 793. In a suit for assessment of rent *ad valorem* court fee is to be paid. A I R' 1927 P 123.

**Clause (1)**—A plaint to set aside summary order and to declare a will genuine with consequential relief does not fall under the article 16 W R 213. A suit after rejection of claim to attached property is a suit in which consequential relief is charged for and does not fall under this clause. 13 C 162. A suit brought according to the provision of Act VII of 1859 s 246 to establish the right of the person to the property 22 W R 422 to be stamped under this 64 Ind Cas 713. Where for of its ostensible owner attachment the court fee 971. The proper court fee Code is that prescribed by is regards the status of the ce of the tenants settled a suit to contest an order passed under s 282 of the Code of Civil Procedure s rupees ten 1 P L R 1907. Where a plaintiff who obtained a decree for the full amount sued for against one of the defendants appealed with a view to make the other defendants also liable held he was bound to pay *ad valorem* court fee on the amount for which the other defendants were sought to be made liable 46 B 840=24 Bom L R 813.

**Clause (ii)**—A plaint to have a summary order set aside to have a Will declared to be genuine and to be retained in possession of the property of the deceased was held to be one for consequential relief and one not coming under art 17, sch II—16 W R 213. A suit under Order 21 Rule 83 C P Code is one to declare the plaintiff's rights to the property attached and the mere fact that the property has been sold in the meanwhile in execution does not affect the plaintiff's right of suit. The court fee payable upon the suit is Rs 10 under Art 17 Schedule II of the Court Fees Act 70 Ind Cas 332=1 Pat L R 51. A suit by a member of a joint Hindu family for a declaration that a mortgage by his co-parcener of family property is not binding on the same falls under Schedule II Act 17 (iii) 78 Ind Cas 782. A suit for declaration that certain property belongs to the plaintiff and is not liable to be sold in execution of a mortgage decree which has been passed in a suit to which the plaintiff has not been a party does not involve any consequential relief and does not require *ad valorem* court fee 85 Ind Cas 349.

See also 5 Ind Cas 582, 1 O C 123, 70 P R 1877, 19 W R 17 109 P R 1893, 21 P R 1895, 7 M 134, 73 W R 453, 70 P R 1877, 16 W R 259, 1 B 543, 6 A 466, 51 P R 1887, 10 C 599, 22 W R 438, 16 C L J 194, 28 C L J 301, 43 Ind Cas 64, 17 C L J 416, 17 C L J 426, 50 Ind Cas 298, 35 P R 1914, 20 L W 716, 46 M L J 450, A I R 1925 Mad 804.

**Clause IV**—No *ad valorem* fee need be paid when a suit is brought for a declaration that money is jointly due and that the plaintiff does not object to its being received by defendants 1923 Lah 359. For cases under this clause vide also, 12 C W N 169, 75 Ind Cas 774.

**Clause V**—Vide 22 W R 338, 1 B 248.

**Clause VI**—A suit under s 14 of the Religious Endowment Act falls under this clause 19 A 104. A suit for the removal of Karnavan should be stamped under this section 4 M 149, 11 M 206. In suit by two members of a jo

family for money, so far as the question as to who are entitled to receive the money sued for is concerned, the memo of appeal was properly stamped with a court fee of Rs 10 under this article 71 P R 1911. A plaint in which the plaintiff, being jointly in possession of certain property prayed that the plaintiff's share might be partitioned was sufficiently stamped with a court fee stamp of Rs 10 8 A L J 1329. See also 12 C W N 37, 24 B 128, 29 B 79, 15 Ind Cas 57. But when he is not jointly in possession *ad-valorem* court fee should be paid 28 A 348. The court fee payable on appeal to the High Court in suit under s 77 of the Registration Act is ten rupees, irrespective of the value of suit 8 C 515, 31 M 89 (F B). In a suit for restitution of conjugal rights, the memorandum of appeal is not chargeable with *ad-valorem* court fees, but a fee of Rs 10 is payable thereon under art 17 (vi). Court fees Act 8 A L J 889. See also 18 C 378, 8 C W N, 705, 28 A 545. Suit under s 77 of the Registration Act to enforce the registration of a Will should be stamped with a court fee of Rs 10 1 L J 88. To bring a case within the limit at a money value the subject that it is not possible even to state matter in dispute 13 C W. N 815.

expression  
matter in  
approximate  
See also 37 C 914

A ten rupee stamp under this article is required in appeal against propriety of grant of extension of time 7 N L R 41. A suit to establish a title prejudiced by an order in execution proceedings requires only a ten rupee stamp although praying that the plaintiff might be put in possession 1887 P J 36. The proper court fee in a case under section 92 is Rs 10 as it falls under Art 17 cl. 6 of the Court Fees Act and this is so even if there is a prayer for the appointment of the plaintiffs as trustees and also a prayer for accounts 12 C L J 211=14 C W N 932=7 Ind Cas 92. Section 11 of the Court Fees Act does not apply to claim for interest accrued due on a mortgage after decree. Art 17 sub sec 6 applies to a claim 27 A 559. Interpleader suit is to be stamped under his article, 2 Pat L T. 280. The decision of a District Judge granting or refusing probate on an application the meaning of s 2 of aped under this article a partition suit there appellant seeks only to cle 62 Ind Cas 979,

see also 58 Ind Cas 236. Where a Mahomedan co-sharer sues the other co-sharers for partition and possession of her share of her father's properties, alleging that she is in possession of some items indicating a joint possession in law, the suit falls under Sch II Act 17 (6) of the Court Fees Act 1923 M W N 564. A suit for partition pure and simple where the plaintiff is in joint possession of his share title or share falls within Schedule II, Art 17 clause 432=4 Pat L J 257=72 Ind Cas 916 (2). A suit on of certain property asked for a declaration it. He also asked for partition on the basis of 29 C W N 76. In a suit for cancellation of a mortgage the defendant free to institute another suit on the mortgage, the subject matter of the suit is the amount of the decree minus the value of the chance which the defendant has of obtaining decree. The latter not being ascertainable the value of the claim in the suit, cannot be ascertained and the case falls under this article 78 Ind Cas 437. Where the suit is for partition and separate possession of his share in the entire property his claim falls under this article and a fixed fee of Rs 10 only is payable thereon 81 Ind Cas 643=7 N L J 91. This article applies to a suit for cancellation of a mortgage decree the mortgagee being left the right to bring suit on same mortgage A I R 1925 Nag 66. Where in a suit for partition, declaration of title and possession are claimed the suit does not fall under art 17 (6) but an *ad valorem* duty is payable 84 Ind Cas 538. In a suit under s 92 C P Code where one of the reliefs claimed is that the defendants should make good a sum of Rs 11,000 estimated to have been misappropriated, no *ad valorem* court fee is payable thereon 87 Ind Cas 25. For other cases under this article vide, 90 Ind Cas 609, A I R. 1925 Lah 495, 7 Lah L J 364. In suit to set aside decree by reversioner against him as well as widow the subject matter of the suit is the whole of the property comprised in the decree sought to be set aside A I R. 1928 Mad 825.



| Number                                                                                                                                                              | Proper Fee    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 18 Application under section 523* of the Code of Civil Procedure                                                                                                    | Ten rupees    |
| 19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908 †                                                  | Ten rupees    |
| 20 Every petition under the Indian Divorce Act ‡ except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act | Twenty rupees |
| 21. Complaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865§                                                                               | Twenty rupees |

## SCHEDULE III ||

(See section 19 I)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS IF ANY AS MAY BE NECESSARY)

IN THE COURT OF

*Re Probate of the Will of  
and credits of**(or Administration of the Property  
deceased),*

I

{ solemnly affirm  
make oath }

and say that I am the executor *for one of the executors or one of the next-of kin* of deceased and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death and which have come, or are likely to come to my hands

2 I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct

3 I further say that the said assets, exclusive only of such last mentioned items, but inclusive of all rents, interest, dividends, and increased values since the date of the death of the said deceased are under the value of

\* The original reference to s 326 of Act VIII of 1859, is altered to the above section of Act XIV of 1882 See now Rule 17 of the second Schedule to Act V of 1908

† This entry in the first column of art 19 has been substituted for the original by Act V of 1908 Sch IV ‡ Act IV of 1869

§ Act XV of 1865

|| Sch III has been inserted by the Court Fees Amendment Act (VI of 1899) s 3 the original Sch ( 'ENACTMENTS REPEALED ' ) having since been repealed by Act XIV, of 1870

family for money, so far as the question as to who are entitled to receive the money sued for is concerned, the memo of appeal Rs 10 under this article 71 P R, 1911 A possession of certain property prayed that was sufficiently stamped with a court fee stamp of Rs 10 8 A L J 1329 See also 12 C W N 37, 24 B 128, 29 B 79, 15 Ind Cas 57 But when he is not jointly in possession *ad-valorem* court fee should be paid 28 A 348 The court fee payable on appeal to the High Court in suit under s 77 of the Registration Act is ten rupees, irrespective of the value of suit 8 C 515, 31 M 89 (F B) In a suit for restitution of conjugal rights, the memorandum of appeal is not chargeable with *ad-valorem* court fees, but a fee of Rs 10 is payable thereon under art 17 (vi) Court fees Act 8 A L J 889 See also 18 C 378, 8 C W N. 705, 28 A 545 Suit under s 77 of the Registration Act III of 1877 to enforce the registration of a Will should be stamped under this section 12 M L J 88 To bring a case within the expression "where it is not possible to estimate at a money value the subject matter in dispute," it must be established that it is not possible even to state approximately a money value for the subject matter in dispute 13 C W. N 815 See also 37 C 914

A ten rupee stamp under this article is required in appeal against propriety of grant of extension of time 7 N L R 41 A suit to establish a title prejudiced by an order in execution proceedings requires only a ten rupee stamp although praying that the plaintiff might be put in possession 1887 P J 36 The proper court fee in a case under section 92 is Rs 10 as it falls under Art 17 cl. 6 of the Court Fees Act and this is so even if there is a prayer for the appointment of the plaintiffs as trustees and also a prayer for accounts 12 C L J 211=14 C W N 932=7 Ind Cas 92 Section 11 of the Court Fees Act does not apply to claim for interest accrued due on a mortgage after decree Art 17 sub sec 6 applies to a claim, 27 A 559 Interpleader suit is to be stamped under this article, 2 Pat L T 280 The decision of a District Judge granting or refusing probate on an application under s 244 Succession Act amounts to a decree within the meaning of s 2 of C P Code The appeal against such a decree should be stamped under this article 35A 448, see also 22 Ind Cas 98 Where in an appeal from a partition suit there is no dispute as to the respective shares of the parties and appellant seeks only to impeach the mode of partition the case falls within this article 62 Ind Cas 979; see also 58 Ind Cas 236 Where a Mahomedan co sharer sues the other co-sharers for partition and possession of her share of her father's properties, alleging that she is in possession of some items indicating a joint possession in law, the suit falls under Sch II Act 17 (6) of the Court Fees Act 1923 M W N 564 A suit for partition pure and simple where the plaintiff is in joint possession of his share and there is no dispute as to his title or share falls within Schedule II, Art 17 clause (6) of the Court Fees Act 2 Pat 432=4 Pat L J 257=72 Ind Cas 916 (2) A person alleging he was in possession of certain property asked for a declaration of title as doubt had been cast on it He also asked for partition on the basis of title Held Art 17 (vi) applied 29 C W N 76 In a suit for cancellation of a mortgage decree which would still leave the defendant free to institute another suit on the mortgage, the subject-matter of the suit is the amount of the decree *minus* the value of the chance which the defendant has of obtaining decree The latter not being ascertainable the value of the claim in the suit, cannot be ascertained and the case falls under this article 78 Ind Cas 437 Where the suit is for partition and separate possession of his share in the entire property, his claim falls under this article and a fixed fee of Rs 10 only is payable thereon 81 Ind Cas 643=7 N L J 91 This article applies to a suit for cancellation of a mortgage decree the mortgagee being left the right to bring suit on same mortgage A I R 1925 Nag 66 Where in a suit for partition, declaration of title and possession are claimed, the suit does not fall under art 17 (6) but an *ad valorem* duty is payable 84 Ind Cas 538 In a suit under s 92 C P Code where one of the reliefs claimed is that the defendants should make good a sum of Rs 11,000 estimated to have been misappropriated, no *ad valorem* court fee is payable thereon 87 Ind Cas 25 For other cases under this article vide, 90 Ind Cas 629, A. I R. 1925 Lah 495, 7 Lah L J 364 In suit to set aside decree by reversioner against him as well as widow, the subject matter of the suit is the whole of the property comprised in the decree sought to be set aside A I R. 1928 Mad 825

| Number                                                                                                                                                              | Proper Fee    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 18 * Application under section 523* of the Code of Civil Procedure                                                                                                  | Ten rupees    |
| 19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908 †                                                  | Ten rupees    |
| 20 Every petition under the Indian Divorce Act ‡ except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act | Twenty rupees |
| 21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865§                                                                                  | Twenty rupees |

## SCHEDULE III

(See section 19 I)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS IF ANY AS MAY BE NECESSARY)

IN THE COURT OF

*Re Probate of the Will of  
and credits of**(or Administration of the Property  
deceased),*

I

{ solemnly affirm  
make oath }

and say that I am the executor (*or one of the executors or one of the next-of kin*) of *deceased* and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death and which have come or are likely to come, to my hands

2 I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct

3 I further say that the said assets exclusive only of such last mentioned items but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased are under the value of

\* The original reference to s 326 of Act VIII of 1859 is altered to the above section of Act XIV of 1882 See now Rule 17 of the second Schedule to Act V of 1908

† This entry in the first column of art 19 has been substituted for the original by Act V of 1908 Sch IV ‡ Act IV of 1869

§ Act XV of 1865  
|| Sch III has been inserted by the Court Fees Amendment Act (XI of 1899), s 3 the original Sch (ENACTMENTS REPEALED) having since been repealed by Act XIV, of 1870

| ANNEXURE A                                                                                                                                                                                                                                                                                                       | Rs | A. | P |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|---|
| VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF DECEASED                                                                                                                                                                                                                                                      |    |    |   |
| Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, &c                                                                                                                                                                                                                   |    |    |   |
| <i>(State estimated value according to best of Executor's or Administrator's belief)</i>                                                                                                                                                                                                                         |    |    |   |
| Property in Government, securities transferable at the Public Debt Office                                                                                                                                                                                                                                        |    |    |   |
| <i>(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application)</i>                                                                                                                                                                 |    |    |   |
| Immovable property consisting of ..                                                                                                                                                                                                                                                                              |    |    |   |
| <i>(State description, giving, in the case of houses, the assessed value, if any, and the number of years assessment the market value is estimated at, and in the case of land, the area the market value and all rents that have accrued)</i>                                                                   |    |    |   |
| Leasehold property .. .                                                                                                                                                                                                                                                                                          |    |    |   |
| <i>(If the deceased held any leases for years determinable, state the number of years, purchase the profit rents are estimated to be worth, and the value of such inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application)</i> |    |    |   |
| Property in public companies                                                                                                                                                                                                                                                                                     |    |    |   |
| <i>(State the particulars and the value calculated at the price of the day also the interest separately calculating it to the time of making the application)</i>                                                                                                                                                |    |    |   |
| Policy of insurance upon life money out on mortgage and other securities such as bonds mortgages bills, notes, and other securities for money                                                                                                                                                                    |    |    |   |
| <i>(State the amount of the whole also the interest separately, calculating it to the time of making the application)</i>                                                                                                                                                                                        |    |    |   |
| Book debts ...                                                                                                                                                                                                                                                                                                   |    |    |   |
| <i>(Other than bid)</i>                                                                                                                                                                                                                                                                                          |    |    |   |
| Stock in trade .. .                                                                                                                                                                                                                                                                                              |    |    |   |
| <i>(State the estimated value, if any)</i>                                                                                                                                                                                                                                                                       |    |    |   |
| Other property not comprised under the foregoing heads ..                                                                                                                                                                                                                                                        |    |    |   |
| <i>State the estimated value (if any)</i>                                                                                                                                                                                                                                                                        |    |    |   |
| Total ...                                                                                                                                                                                                                                                                                                        |    |    |   |
| Deduct amount shown in Annexure B, not subject to duty ...                                                                                                                                                                                                                                                       |    |    |   |
| NET TOTAL ..                                                                                                                                                                                                                                                                                                     |    |    |   |

## ANNEXURE B

## SCHEDULE OF DEBTS &amp;c

|                                                                                               | Rs | A | P |
|-----------------------------------------------------------------------------------------------|----|---|---|
| Amount of debts due and owing from the deceased payable by law out of the estate              |    |   |   |
| Amount of funeral expenses                                                                    |    |   |   |
| Amount of mortgage incumbrances                                                               |    |   |   |
| Property held in trust not beneficially or with general power to confer a beneficial interest |    |   |   |
| Other property not subject to duty                                                            |    |   |   |
| TOTAL                                                                                         |    |   |   |

## NOTES

The court fee payable in respect of the estate left by the deceased is to be calculated upon the net from the gross value.

The trusts referred from duty are trusts of the deceased, but trust L J 611

Property held in trust within the meaning of Annexure B in the form set out in Schedule III of the Court Fees Act is property held in trust by the testator and not property as to which the testator has created a trust 6 Pat L J 411 - Pat L T 683

## APPENDIX A.

## ASSAM ACT III OF 1932

## THE ASSAM COURT-FEES (AMENDMENT) ACT, 1932-

PUBLISHED IN THE ASSAM GAZETTE OF THE 27TH APRIL 1932

*An Act to amend the Court fees Act 1870*

WHEREAS it is necessary to amend the Court fees Act, 1870, in its application to Assam in the manner hereinafter appearing,

It is hereby enacted as follows —

1 (1) The Act may be called the Assam Court fees (Amendment) Act, 1932

Short title extent and commencement

(2) It extends to the whole of Assam

(3) It shall come into force on the 1st May, 1932

Amendment of section 7 (2) In section 7 of the Court fees Act, 1870\* (hereinafter referred to as the principal Act) —

in sub clause (a) of clause v for the word 'ten' the word "twenty" shall be substituted

Amendment of section 10 (3) For clause 11 of section 10 of the principal Act, the following clause shall be substituted, namely —

'11 In such case—

(a) the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the court shall fix, the suit shall be dismissed, and whether the additional fee is or is not paid,

(b) the court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses of the commission or such portion thereof as the court may think reasonable, be paid by the party in fault to the Government and the order so made shall have the force and effect of a decree passed by the court'

## APPENDIX B

### BENGAL ACT NO. IV OF 1922.

#### THE BENGAL COURT-FEES (AMENDMENT) ACT 1922-

*[Published in the Calcutta Gazette, Extraordinary of the  
29th March, 1922]*

An act to amend the Court fees Act, 1870, and the  
Presidency Small Cause Courts Act, 1882, with  
reference to the scale of court fees  
in Bengal

WHEREAS it is necessary to revise the scale of court fees for Bengal, by amendment of the Court fees Act, 1870,\* and the Presidency Small Cause Courts Act, 1882† in their application to Bengal, in the manner, hereinafter appearing,

It is hereby enacted as follows —

Short title, extent and com-      1 (1) This act may be called the Bengal  
mencement      Court fees (Amendment) Act, 1922

(2) It extends to the whole of Bengal

(3) It shall come into force on the first day of April, 1922.

2 The Court fees Act, 1870,\* as amended by subsequent legislation  
Application of Act      and the Presidency Small Cause Court Act,  
shall be amended in their application to Bengal, in the manner hereinafter  
provided      1882,† as amended by subsequent legislation

Amendment of section 18 of      3 In section 18 of the Court fees Act,  
Act VII of 1870      1870,\* for the words 'a fee of eight annas' the  
words 'a fee of one rupee' shall be substituted

4 In item VIII in section 19 of the same Act for the words "one thousand  
Amendment of section 19      rupees" the words "two thousand rupees" shall be  
substituted

Amendment of Schedule 1      5 For Article 1 in the first schedule to  
Article 1      the same Act the following shall be substituted  
namely —

1. Plaintiff, written  
statement, plead-  
ing a set off or  
counter-claim or  
memorandum of  
appeal (not other-  
wise provided for  
in this Act) or of  
cross-objection pre-  
sented to any  
Civil or Revenue  
Court except those  
mentioned in sec-  
tion 3.

When the amount of value  
of the subject matter in  
dispute does not exceed  
seventy five rupees, for  
every five rupees or part  
thereof of such amount;  
[in] value, and

Six annas

\* VII of 1870

† XV of 1882

† Six—should be read "or"—clerical error

|                               |                                                                                                                                                                                                             |                                 |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1. <i>Plaint, etc —contd.</i> | when such amount or value exceeds seventy five rupees for every five rupees or part thereof in excess of seventy five rupees, up to one hundred rupees,                                                     | Eight annas                     |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to one hundred and fifty rupees                                                | One rupee ten annas             |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds one hundred and fifty rupees for every ten rupees or part thereof up to one thousand rupees                                                                               | One rupee two annas             |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds one thousand rupees for every one hundred rupees or part thereof in excess of one thousand rupees, up to seven thousand five hundred rupees                               | Seven rupees, eight annas       |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds seven thousand five hundred rupees for every two hundred and fifty rupees or part thereof in excess of seven thousand and five hundred rupees, up to ten thousand rupees, | Fifteen rupees                  |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds ten thousand rupees for every five hundred rupees or part thereof, in excess of ten thousand rupees up to twenty thousand rupees                                          | Twenty two rupees eight annas   |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds twenty thousand rupees for every one thousand rupees, or part thereof in excess of twenty thousand rupees up to fifty thousand rupees                                     | Thirty rupees                   |
|                               | and                                                                                                                                                                                                         |                                 |
|                               | when such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof, in excess of fifty thousand rupees                                                                  | Thirty seven rupees eight annas |
|                               | Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees                                                                                                     |                                 |

6 In the third column in Article 6 in same schedule to the same Act—

Amendment of Schedule I, Article 6

- (a) for the words "Four annas" opposite clause (a) in the second column the words 'Six annas' shall be substituted, and
- (b) for the words 'Eight annas' opposite the first item in clause (b) in the second column the words 'Twelve annas' shall be substituted and for the words 'One rupee' opposite the second item in that clause, the words 'One rupee eight annas' shall be substituted.

7. For the entries above the proviso in the second column, and for the Amendment of Schedule 1, Article 11 entries in the third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely —

|                                                                                                                                                                                   |                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees but does not exceed ten thousand rupees          | Two per centum on such amount or value   |
| and                                                                                                                                                                               |                                          |
| when such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees for the portion of such amount or value which is in excess of ten thousand rupees | Three per centum on such amount or value |
| and                                                                                                                                                                               |                                          |
| when such amount or value exceeds fifty thousand rupees but does not exceed a lakh of rupees for the portion of such amount or value which is in excess of fifty thousand rupees  | Four per centum on such amount or value  |
| and                                                                                                                                                                               |                                          |
| when such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of a lakh of rupees                                                 | Five per centum on such amount or value  |

8 For the entry in the second column in Article 12 in the same schedule Amendment of Schedule 1 Article 12 to the same Act, and for the first paragraph in the third column in the said Article, the following shall be substituted, namely —

|                                                                                                                                                                                     |                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees but does not exceed ten thousand rupees        | Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act             |
| and                                                                                                                                                                                 |                                                                                                                                                                                         |
| when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees | Three per centum on such amount or value and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act |
| and                                                                                                                                                                                 |                                                                                                                                                                                         |
| when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees, | Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act              |
| and                                                                                                                                                                                 |                                                                                                                                                                                         |
| when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees                                                  | Five per centum on such amount or value and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act |



9. For the table of rates of *ad valorem* fees leviable on the institution of suits at the end of the same schedule to the same Amendment of table of rates of *ad valorem* fees Act, the table set forth in the schedule to this Act shall be substituted.

Amendment of Schedule II, Article 1, clauses (a) (b) and (c) 10. In Article 1 in the second schedule to the same Act—

(a) in clause (a) after words "Municipal Commissioner" in the third entry in the second column the words "or member of a District Board" shall be inserted ;

(b) for the words "One anna , opposite clause (a) in the second column, the words "Two annas ' shall be substituted ,

(ii) for words "Eight annas ' , opposite clause (b) in the second column, the followings shall be substituted namely —

"In the case of a complaint or charge of an offence presented to a criminal court one rupee, and in other cases twelve annas" and

(iii) for the words 'One rupee,' opposite clause (c) in the second column, the words "One rupee, eight annas shall be substituted

11 For clause (d) in the second column in Article 1 in the same schedule Amendment of Schedule II Article 1 clause d) to the same Act and for the entries opposite that clause in the third column thereof, the following clause and entries shall be substituted namely —

"(d) (i) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908\* for revision of an order—

(a) when the value of the suit to which the order relates does not exceed Rs 1,000 Five rupees

(b) when the value of the suit ... ten rupees exceeds Rs 1,000

(ii) When presented to the High Court otherwise than under that section Two rupees "

Amendment of Schedule II Article 10 13 In the third column in Article 10 the same schedule to the same Act,—

(1) for the words "Eight annas," opposite clause (a) in the second column, the words "one rupee" shall be substituted and

(2) for the words "one rupee," opposite clause (b) in the second column, the words 'One rupee eight annas' shall be substituted

Amendment of Schedule II Article 11 12 For Article 11 in the same schedule to the same Act the following shall be substituted :—

- 11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—
- (1) (i) to any revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority Eight annas
  - (ii) in any Civil Court other than a High Court One rupee.
  - (2) to a Chief Controlling Executive or Revenue Authority Two rupees
  - (3) to a High Court Five rupees

14 Above the words 'Five rupees' where they occur in the third column, opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted

15 (1) The words 'Ten rupees' in the third column opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted

(2) In the third column in the said article—

(a) opposite entries 1, II, IV and VI, the words "Fifteen rupees" shall be inserted, and

(b) opposite entries III and V, the words "Twenty rupees" shall be inserted

Amendment of section 71 of Act XV of 1882 16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (1) for the words "five hundred rupees" the words "fifty rupees" shall be substituted

(2) after clause (a) the following shall be inserted, namely —

"(b) when the amount or value of the subject matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees,"

(3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words 'sixty two rupees eight annas' the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued

Exemption of certain probates letters of administration and certificates

## THE SCHEDULE

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE ON

## THE INSTITUTION OF SUITS.

[See section 9 of the Bengal Court fees (Amendment) Act, 1922]

| When the amount or value of the subject matter exceeds— | But does not exceed— | Proper Fee | When the amount or value of the subject matter exceed— | But does not exceed— | Proper fee |
|---------------------------------------------------------|----------------------|------------|--------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                   | Rs A       | Rs                                                     | Rs                   | Rs A       |
| 5                                                       | 5                    | 0 9        | 340                                                    | 350                  | 39 6       |
| 10                                                      | 10                   | 0 12       | 350                                                    | 360                  | 40 8       |
| 15                                                      | 15                   | 1 2        | 360                                                    | 370                  | 41 10      |
| 20                                                      | 20                   | 1 8        | 370                                                    | 380                  | 42 12      |
| 25                                                      | 25                   | 1 14       | 380                                                    | 390                  | 43 14      |
| 30                                                      | 30                   | 2 4        | 390                                                    | 400                  | 45 0       |
| 35                                                      | 35                   | 2 10       | 400                                                    | 410                  | 46 2       |
| 40                                                      | 40                   | 3 0        | 410                                                    | 420                  | 47 4       |
| 45                                                      | 45                   | 3 6        | 420                                                    | 430                  | 48 6       |
| 50                                                      | 50                   | 3 12       | 430                                                    | 440                  | 49 8       |
| 55                                                      | 55                   | 4 2        | 440                                                    | 450                  | 50 10      |
| 60                                                      | 60                   | 4 8        | 450                                                    | 460                  | 51 12      |
| 65                                                      | 65                   | 4 14       | 460                                                    | 470                  | 52 14      |
| 70                                                      | 70                   | 5 4        | 470                                                    | 480                  | 54 0       |
| 75                                                      | 75                   | 5 10       | 480                                                    | 490                  | 55 2       |
| 80                                                      | 80                   | 6 2        | 490                                                    | 500                  | 56 4       |
| 85                                                      | 85                   | 6 10       | 500                                                    | 510                  | 57 6       |
| 90                                                      | 90                   | 7 2        | 510                                                    | 520                  | 58 8       |
| 95                                                      | 95                   | 7 10       | 520                                                    | 530                  | 59 10      |
| 100                                                     | 100                  | 8 2        | 530                                                    | 540                  | 60 12      |
| 110                                                     | 110                  | 9 12       | 540                                                    | 550                  | 61 14      |
| 120                                                     | 120                  | 11 6       | 550                                                    | 560                  | 63 0       |
| 130                                                     | 130                  | 13 0       | 560                                                    | 570                  | 64 2       |
| 140                                                     | 140                  | 14 10      | 570                                                    | 580                  | 65 4       |
| 150                                                     | 150                  | 16 4       | 580                                                    | 590                  | 66 6       |
| 160                                                     | 160                  | 18 0       | 590                                                    | 600                  | 67 8       |
| 170                                                     | 170                  | 19 2       | 600                                                    | 610                  | 68 10      |
| 180                                                     | 180                  | 20 4       | 610                                                    | 620                  | 69 12      |
| 190                                                     | 190                  | 21 6       | 620                                                    | 630                  | 70 14      |
| 200                                                     | 200                  | 22 8       | 630                                                    | 640                  | 72 0       |
| 210                                                     | 210                  | 23 10      | 640                                                    | 650                  | 73 2       |
| 220                                                     | 220                  | 24 12      | 650                                                    | 660                  | 74 4       |
| 230                                                     | 230                  | 25 14      | 660                                                    | 670                  | 75 6       |
| 240                                                     | 240                  | 27 0       | 670                                                    | 680                  | 76 8       |
| 250                                                     | 250                  | 28 2       | 680                                                    | 690                  | 77 10      |
| 260                                                     | 260                  | 29 4       | 690                                                    | 700                  | 78 12      |
| 270                                                     | 270                  | 30 6       | 700                                                    | 710                  | 79 14      |
| 280                                                     | 280                  | 31 8       | 710                                                    | 720                  | 81 0       |
| 290                                                     | 290                  | 32 10      | 720                                                    | 730                  | 82 2       |
| 300                                                     | 300                  | 33 12      | 730                                                    | 740                  | 83 4       |
| 310                                                     | 310                  | 34 14      | 740                                                    | 750                  | 84 6       |
| 320                                                     | 320                  | 36 0       | 750                                                    | 760                  | 85         |
| 330                                                     | 330                  | 37 2       | 760                                                    | 770                  | 86         |
| 340                                                     | 340                  | 38 4       | 770                                                    | 780                  |            |

|                                                                                                                         |                                                                                                                                   |             |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------|
| 11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented— | { (a) (i) to any revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority | Light annas |
|                                                                                                                         |                                                                                                                                   |             |
|                                                                                                                         | (ii) to any Civil Court other than a High Court                                                                                   | One rupee   |
|                                                                                                                         | (b) to a Chief Controlling Executive or Revenue Authority                                                                         | Two rupees  |
|                                                                                                                         | (c) to a High Court                                                                                                               | Five rupees |

14 Above the words 'Five rupees' where they occur in the third column opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted

15 (1) The words 'Ten rupees' in the third column opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted

(2) In the third column in the said article—

(a) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted, and

(b) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

Amendment of section 71 of Act XV of 1882

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (a) for the words "five hundred rupees" the words "fifty rupees" shall be substituted

(2) after clause (a) the following shall be inserted, namely —

"(b) when the amount or value of the subject matter exceeds fifty rupees but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees,"

(3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words 'sixty two rupees eight annas' the words "ninety rupees ten annas" shall be substituted, and after the words 'one anna' the words "six pies" shall be inserted

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued

Exemption of certain probates letters of administration and certificates

## THE SCHEDULE.

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE ON  
THE INSTITUTION OF SUITS.

[See section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

| When the<br>amount or<br>value of the<br>subject matter<br>exceeds— | But does<br>not exceed— | Proper Fee | When the<br>amount or<br>value of the<br>subject-matter<br>exceed— | But does not<br>exceeds— | Proper fee. |
|---------------------------------------------------------------------|-------------------------|------------|--------------------------------------------------------------------|--------------------------|-------------|
| Rs                                                                  | Rs                      | Rs A       | Rs                                                                 | Rs                       | Rs A        |
| .                                                                   | 5                       | 0 9        | 340                                                                | 350                      | 39 6        |
| 5                                                                   | 10                      | 0 12       | 350                                                                | 360                      | 40 8        |
| 10                                                                  | 15                      | 1 2        | 360                                                                | 370                      | 41 10       |
| 15                                                                  | 20                      | 1 8        | 370                                                                | 380                      | 42 12       |
| 20                                                                  | 25                      | 1 14       | 380                                                                | 390                      | 43 14       |
| 25                                                                  | 30                      | 2 4        | 390                                                                | 400                      | 45 0        |
| 30                                                                  | 35                      | 2 10       | 400                                                                | 410                      | 46 2        |
| 35                                                                  | 40                      | 3 0        | 410                                                                | 420                      | 47 4        |
| 40                                                                  | 45                      | 3 6        | 420                                                                | 430                      | 48 6        |
| 45                                                                  | 50                      | 3 12       | 430                                                                | 440                      | 49 8        |
| 50                                                                  | 55                      | 4 2        | 440                                                                | 450                      | 50 10       |
| 55                                                                  | 60                      | 4 8        | 450                                                                | 460                      | 51 12       |
| 60                                                                  | 65                      | 4 14       | 460                                                                | 470                      | 52 14       |
| 65                                                                  | 70                      | 5 4        | 470                                                                | 480                      | 54 0        |
| 70                                                                  | 75                      | 5 10       | 480                                                                | 490                      | 55 2        |
| 75                                                                  | 80                      | 6 2        | 490                                                                | 500                      | 56 4        |
| 80                                                                  | 85                      | 6 10       | 500                                                                | 510                      | 57 6        |
| 85                                                                  | 90                      | 7 2        | 510                                                                | 520                      | 58 8        |
| 90                                                                  | 95                      | 7 10       | 520                                                                | 530                      | 59 10       |
| 95                                                                  | 100                     | 8 2        | 530                                                                | 540                      | 60 12       |
| 100                                                                 | 110                     | 9 12       | 540                                                                | 550                      | 61 14       |
| 110                                                                 | 120                     | 11 6       | 550                                                                | 560                      | 63 0        |
| 120                                                                 | 130                     | 13 0       | 560                                                                | 570                      | 64 2        |
| 130                                                                 | 140                     | 14 10      | 570                                                                | 580                      | 65 4        |
| 140                                                                 | 150                     | 16 4       | 580                                                                | 590                      | 66 6        |
| 150                                                                 | 160                     | 18 0       | 590                                                                | 600                      | 67 8        |
| 160                                                                 | 170                     | 19 2       | 600                                                                | 610                      | 68 10       |
| 170                                                                 | 180                     | 20 4       | 610                                                                | 620                      | 69 12       |
| 180                                                                 | 190                     | 21 6       | 620                                                                | 630                      | 70 14       |
| 190                                                                 | 200                     | 22 8       | 630                                                                | 640                      | 72 0        |
| 200                                                                 | 210                     | 23 10      | 640                                                                | 650                      | 73 2        |
| 210                                                                 | 220                     | 24 12      | 650                                                                | 660                      | 74 4        |
| 220                                                                 | 230                     | 25 14      | 660                                                                | 670                      | 75 6        |
| 230                                                                 | 240                     | 27 0       | 670                                                                | 680                      | 76 8        |
| 240                                                                 | 250                     | 28 2       | 680                                                                | 690                      | 77 10       |
| 250                                                                 | 260                     | 29 4       | 690                                                                | 700                      | 78 12       |
| 260                                                                 | 270                     | 30 6       | 700                                                                | 710                      | 79 14       |
| 270                                                                 | 280                     | 31 8       | 710                                                                | 720                      | 80 16       |
| 280                                                                 | 290                     | 32 10      | 720                                                                | 730                      | 81 18       |
| 290                                                                 | 300                     | 33 12      | 730                                                                | 740                      | 82 20       |
| 300                                                                 | 310                     | 34 14      | 740                                                                | 750                      | 83 22       |
| 310                                                                 | 320                     | 36 0       | 750                                                                | 760                      | 84 24       |
| 320                                                                 | 330                     | 37 2       | 760                                                                | 770                      | 85 26       |
| 330                                                                 | 340                     | 38 4       | 770                                                                |                          | 86 28       |

| When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee | When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee |
|---------------------------------------------------------|----------------------|------------|---------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                   | Rs A       | Rs                                                      | Rs                   | Rs As      |
| 780                                                     | 790                  | 88 14      | 4 300                                                   | 4 400                | 367 8      |
| 790                                                     | 800                  | 90 0       | 4 400                                                   | 4 500                | 375 0      |
| 800                                                     | 810                  | 91 0       | 4 500                                                   | 4 600                | 382 8      |
| 810                                                     | 8 0                  | 92 4       | 4 600                                                   | 4 700                | 390 0      |
| 820                                                     | 830                  | 93 6       | 4 700                                                   | 4 800                | 397 8      |
| 830                                                     | 840                  | 94 8       | 4 800                                                   | 4 900                | 405 0      |
| 840                                                     | 850                  | 95 10      | 4 900                                                   | 5 000                | 412 8      |
| 850                                                     | 860                  | 96 12      | 5 000                                                   | 5 100                | 420 0      |
| 860                                                     | 870                  | 97 14      | 5 100                                                   | 5 200                | 427 8      |
| 870                                                     | 880                  | 99 0       | 5 200                                                   | 5 300                | 435 0      |
| 880                                                     | 890                  | 100 2      | 5 300                                                   | 5 400                | 442 8      |
| 890                                                     | 900                  | 101 4      | 5 400                                                   | 5 500                | 450 0      |
| 900                                                     | 910                  | 10 6       | 5 500                                                   | 5 600                | 457 8      |
| 910                                                     | 920                  | 10 8       | 5 600                                                   | 5 700                | 465 0      |
| 920                                                     | 930                  | 101 10     | 5 700                                                   | 5 800                | 47 8       |
| 930                                                     | 940                  | 105 12     | 5 800                                                   | 5 900                | 480 0      |
| 940                                                     | 950                  | 106 14     | 5 900                                                   | 6 000                | 487 8      |
| 950                                                     | 960                  | 108 0      | 6 000                                                   | 6 100                | 495 0      |
| 960                                                     | 970                  | 109 2      | 6 100                                                   | 6 200                | 502 8      |
| 970                                                     | 980                  | 110 4      | 6 200                                                   | 6 300                | 510 0      |
| 980                                                     | 990                  | 111 6      | 6 300                                                   | 6 400                | 517 8      |
| 990                                                     | 1 000                | 112 8      | 6 400                                                   | 6 500                | 525 0      |
| 1 000                                                   | 1 100                | 120 0      | 6 500                                                   | 6 600                | 532 8      |
| 1 100                                                   | 1 200                | 127 8      | 6 600                                                   | 6 700                | 540 0      |
| 1 200                                                   | 1 300                | 135 0      | 6 700                                                   | 6 800                | 547 8      |
| 1 300                                                   | 1 400                | 142 8      | 6 800                                                   | 6 900                | 555 0      |
| 1 400                                                   | 1 500                | 150 0      | 6 900                                                   | 7 000                | 562 8      |
| 1 500                                                   | 1 600                | 157 8      | 7 000                                                   | 7 100                | 570 0      |
| 1 600                                                   | 1 700                | 165 0      | 7 100                                                   | 7 200                | 577 8      |
| 1 700                                                   | 1 800                | 172 8      | 7 200                                                   | 7 300                | 585 0      |
| 1 800                                                   | 1 900                | 180 0      | 7 300                                                   | 7 400                | 59 8       |
| 1 900                                                   | 2 000                | 187 8      | 7 400                                                   | 7 500                | 600 0      |
| 2 000                                                   | 2 100                | 195 0      | 7 500                                                   | 7 750                | 615 0      |
| 2 100                                                   | 2 200                | 202 8      | 7 750                                                   | 8 000                | 630 0      |
| 2 200                                                   | 2 300                | 210 0      | 8 000                                                   | 8 250                | 645 0      |
| 2 300                                                   | 2 400                | 217 8      | 8 250                                                   | 8 500                | 660 0      |
| 2 400                                                   | 2 500                | 2 5 0      | 8 500                                                   | 8 750                | 675 0      |
| 2 500                                                   | 2 600                | 232 8      | 8 750                                                   | 9 000                | 690 0      |
| 2 600                                                   | 2 700                | 240 0      | 9 000                                                   | 9 250                | 705 0      |
| 2 700                                                   | 2 800                | 247 8      | 9 250                                                   | 9 500                | 720 0      |
| 2 800                                                   | 2 900                | 255 0      | 9 500                                                   | 9 750                | 735 0      |
| 2 900                                                   | 3 000                | 262 8      | 9 750                                                   | 10 000               | 750 0      |
| 3 0 0                                                   | 3 100                | 270 0      | 10 000                                                  | 10 500               | 772 8      |
| 3 100                                                   | 3 200                | 277 8      | 10 500                                                  | 11 000               | 795 0      |
| 3 200                                                   | 3 300                | 285 0      | 11 000                                                  | 11 500               | 817 8      |
| 3 300                                                   | 3 400                | 292 8      | 11 500                                                  | 12 000               | 840 0      |
| 3 400                                                   | 3 500                | 300 0      | 12 000                                                  | 12 500               | 862 8      |
| 3 500                                                   | 3 600                | 307 8      | 12 500                                                  | 13 000               | 885 0      |
| 3 600                                                   | 3 700                | 315 0      | 13 000                                                  | 13 500               | 907 8      |
| 3 700                                                   | 3 800                | 322 8      | 13 500                                                  | 14 000               | 930 0      |
| 3 800                                                   | 3 900                | 330 0      | 14 000                                                  | 14 500               | 952 8      |
| 3 900                                                   | 4 000                | 337 8      | 14 500                                                  | 15 000               | 975 0      |
| 4 000                                                   | 4 100                | 345 0      | 15 000                                                  | 15 500               | 997 8      |
| 4 100                                                   | 4 200                | 352 8      | 15 500                                                  | 16 000               | 1 020 0    |
| 4 200                                                   | 4 300                | 360 0      | 16 000                                                  | 16,500               | 1 042 8    |

| When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee | When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee |
|---------------------------------------------------------|----------------------|------------|---------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                   | Rs A       | Rs                                                      | Rs                   |            |
| 16,500                                                  | 17,000               | 1 065 0    | 47 000                                                  | 48 000               | 2,040 0    |
| 17,000                                                  | 17,500               | 1,087 8    | 48,000                                                  | 49 000               | 2 070 0    |
| 17,500                                                  | 18 000               | 1,110 0    | 49 000                                                  | 50,000               | 2,100 0    |
| 18 000                                                  | 18 500               | 1,132 8    | 50,000                                                  | 55 000               | 2 137 8    |
| 18 500                                                  | 19 000               | 1,155 0    | 55 000                                                  | 60 000               | 2 175 0    |
| 19,000                                                  | 19 500               | 1 177 8    | 60 000                                                  | 65 000               | 2 212 8    |
| 19,500                                                  | 20 000               | 1 200 0    | 65 000                                                  | 70 000               | 2,250 0    |
| 20,000                                                  | 21,000               | 1,230 0    | 70 000                                                  | 75,000               | 2,287 8    |
| 21,000                                                  | 22,000               | 1 260 0    | 75 000                                                  | 80,000               | 2 325 0    |
| 22,000                                                  | 23 000               | 1,290 0    | 80,000                                                  | 85 000               | 2,362 8    |
| 23 000                                                  | 24,000               | 1 320 0    | 85,000                                                  | 90,000               | 2 400 0    |
| 24 000                                                  | 25 000               | 1,350 0    | 90 000                                                  | 95 000               | 2 437 8    |
| 25 000                                                  | 26 000               | 1,380 0    | 95 000                                                  | 1,00 000             | 2,475 0    |
| 26 000                                                  | 27 000               | 1 410 0    | 1,00 000                                                | 1 05 000             | 2 512 8    |
| 27 000                                                  | 28 000               | 1 440 0    | 1,05,000                                                | 1 10 000             | 2 550 0    |
| 28 000                                                  | 29 000               | 1 470 0    | 1,10 000                                                | 1,15 000             | 2,587 8    |
| 29 000                                                  | 30 000               | 1 500 0    | 1,15 000                                                | 1 20 000             | 2 625 0    |
| 30,000                                                  | 31,000               | 1,530 0    | 1,20 000                                                | 1,25 000             | 2 662 8    |
| 31,000                                                  | 32 000               | 1 560 0    | 1 25 000                                                | 1 30 000             | 2 700 0    |
| 32 000                                                  | 33 000               | 1 590 0    | 1 30 000                                                | 1 35 000             | 2 737 8    |
| 33 000                                                  | 34 000               | 1 620 0    | 1 35 000                                                | 1 40 000             | 2 775 0    |
| 34 000                                                  | 35 000               | 1 650 0    | 1 40 000                                                | 1 45 000             | 2,812 8    |
| 35 000                                                  | 36 000               | 1 680 0    | 1 45 000                                                | 1 50 000             | 2 850 0    |
| 36,000                                                  | 37,000               | 1 710 0    | 1 50,000                                                | 1,55 000             | 2 887 8    |
| 37 000                                                  | 38 000               | 1,740 0    | 1,55 000                                                | 1 60,000             | 2 925 0    |
| 38 000                                                  | 39 000               | 1 770 0    | 1,60 0 0                                                | 1,65 000             | 2,962 8    |
| 39 000                                                  | 40,000               | 1 800 0    | 1 65 000                                                | 1 70,000             | 3 000 0    |
| 40 000                                                  | 41 000               | 1 830 0    | 1 70 000                                                | 1 75 000             | 3 037 8    |
| 41 000                                                  | 42,000               | 1 860 0    | 1 75 000                                                | 1,80,000             | 3 075 0    |
| 42 000                                                  | 43 000               | 1 890 0    | 1,80 000                                                | 1 85 000             | 3 112 8    |
| 43 000                                                  | 44 000               | 1 920 0    | 1 85 000                                                | 1 90 000             | 3,150 0    |
| 44 000                                                  | 45 000               | 1,950 0    | 1 90 000                                                | 1,95,000             | 3 187 8    |
| 45 000                                                  | 46 000               | 1 980 0    | 1,95 000                                                | 2 00 000             | 3,225 0    |
| 46,000                                                  | 47 000               | 2 010 0    | 2 00,000                                                | 2 05 000             | 3 262 8    |

and the fee increases at the rate of thirty seven rupees eight annas for every five thousand rupees or part thereof, up to a maximum fee of ten thousand rupees, for example—

| Rs        | Rs A    |
|-----------|---------|
| 3 00 000  | 4,012 8 |
| 4 00 000  | 4,762 8 |
| 5 00,000  | 5,512 8 |
| 6 00 000  | 6,262 8 |
| 7 00 000  | 7 012 8 |
| 8 00 000  | 7,762 8 |
| 9 00,000  | 8 512 8 |
| 10,00,000 | 9 262 8 |
| 11 00 000 | 10 000  |

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1  
1  
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## APPENDIX C.

THE BIHAR AND ORISSA COURT-FEES  
(AMENDMENT) ACT, 1922

B &amp; O ACT NO II OF 1922

PASSED BY THE LEGISLATIVE COUNCIL OF THE GOVERNOR OF  
BIHAR AND ORISSA*[The assent of the Governor General, to this Act was published in the  
Bihar and Orissa Gazette Extraordinary of the  
21st August, 1912]**An Act to amend the Court fees Act 1870*

WHEREAS it is expedient to amend the Court fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing,

It is hereby enacted as follows —

Short title extent and com- 1. (1) This act may be called the  
mencement Bihar and Orissa Court fees (Amendment)  
Act, 1922

(2) It extends to the whole of Bihar and Orissa including Santhal Parganas

(3) It shall come into force on the twenty fourth day of August, 1922.

2 In paragraph 3 of section 4 of the Court fees Act, 1870 as amended  
Amendment of section 4 by subsequent legislation and hereinafter called  
the principal Act for the word "two" shall be  
substituted the word "one"

3 In clause (a) of section 7 (v) of the principal Act for the word  
Amendment of sect on 7 "ten" shall be substituted the word "twenty"  
and in clause (b) of the said section for the  
word "five" shall be substituted the word "ten"

4 In section 17 of the principal Act, after the words "of appeal" in  
Amendment of section 17 both places where they occur the words "or  
of cross objection" shall be inserted

5 In section 18 of the principal Act, for the words "a fee of eight annas"  
Amendment of section 18 the words "a fee of twelve annas" shall be  
substituted

6 In item (viii) of section 19 of the principal Act, for the words "one  
Amendment of section 19 thousand rupees" the words "two thousand  
rupees" shall be substituted

7 (1) In Article 1 of Schedule I of the principal Act for the entry in  
Amendment of Article 1 of the first column the following entry shall be  
Schedule I substituted namely —

"1. Plaint, written statement, pleading a set off or counter claim or memorandum of appeal or of cross objection not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3"



(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article I in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

(3) The proviso in Article I of the said Schedule I shall be omitted.

8 For the "proper fees" set out in Schedule I of the principal Act for Amendment of Articles 6 7 Articles 6, 7, 8 and 9 and shown in Schedule 8 and 9 of Schedule I A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

9 For the entries above the proviso in the second column, and for the Amendment of Article 11 of entries in the third column, in Article 11 of Schedule I of the principal Act the following shall be substituted, namely —

|                                                                                                                                                                                       |                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| "When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees, | Two per centum   |
| and                                                                                                                                                                                   |                  |
| when such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees                    | Three per centum |
| and                                                                                                                                                                                   |                  |
| when such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,                  | Four per centum  |
| and                                                                                                                                                                                   |                  |
| when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees                                                    | Five per centum  |

10 For the entry in the second column of Article 12 of Schedule I of the Amendment of Article 12 of principal Act, and for the first paragraph in Schedule I the third column of the said Article, the following shall be substituted namely —

|                                                                                                                                                                                         |                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees, | Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act three per centum           |
| and                                                                                                                                                                                     |                                                                                                                                                                |
| when such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees                      | Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of Act, four and a half per centum. |
| and                                                                                                                                                                                     |                                                                                                                                                                |
| when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,                   | Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum           |

## APPENDIX C.

THE BIHAR AND ORISSA COURT-FEES  
(AMENDMENT) ACT, 1922

B &amp; O ACT NO II OF 1922.

PASSED BY THE LEGISLATIVE COUNCIL OF THE GOVERNOR OF  
BIHAR AND ORISSA*[The assent of the Governor General, to this Act was published in the  
Bihar and Orissa Gazette Extraordinary of the  
21st August, 1922]**An Act to amend the Court fees Act 1870*

WHEREAS it is expedient to amend the Court fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing,

It is hereby enacted as follows —

Short title extent and com- 1. (1) This act may be called the  
mencement Bihar and Orissa Court fees (Amendment)  
Act, 1922

(2) It extends to the whole of Bihar and Orissa including Santhal  
Parganas

(3) It shall come into force on the twenty fourth day of August,  
1922.

2 In paragraph 3 of section 4 of the Court fees Act, 1870, as amended  
Amendment of section 4 by subsequent legislation and hereinafter called  
the principal Act, for the word "two" shall be  
substituted the word "one"

3 In clause (a) of section 7 (v) of the principal Act, for the word  
Amendment of section 7 "ten" shall be substituted the word "twenty"  
and in clause (b) of the said section for the  
word "five" shall be substituted the word "ten"

4 In section 17 of the principal Act after the words "of appeal" in  
Amendment of section 17 both places where they occur the words "or  
of cross objection" shall be inserted

5 In section 18 of the principal Act, for the words "a fee of eight annas"  
Amendment of section 18 the words "a fee of twelve annas" shall be  
substituted

6 In item (viii) of section 19 of the principal Act, for the words "one  
Amendment of section 19 thousand rupees" the words "two thousand  
rupees" shall be substituted

7 (1) In Article 1 of Schedule I of the principal Act, for the entry in  
Amendment of Article 1 of the first column the following entry shall be  
Schedule I substituted namely —

"1. Plaint, written statement, pleading a set off or counter claim or  
memorandum of appeal or of cross objection not otherwise provided for in  
this Act, presented to any Civil or Revenue Court except those mentioned in  
section 3".

(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article I in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

(3) The proviso in Article I of the said Schedule I shall be omitted.

8 For the "proper fees" set out in Schedule I of the principal Act for Amendment of Articles 6, 7, 8 and 9 of Schedule I Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

9 For the entries above the proviso in the second column and for the Amendment of Article 11 of Schedule I of the principal Act : the following shall be substituted, namely —

|                                                                                                                                                                                      |                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees, | Two per centum   |
| and                                                                                                                                                                                  |                  |
| when such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,                  | Three per centum |
| and                                                                                                                                                                                  |                  |
| when such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,                 | Four per centum  |
| and                                                                                                                                                                                  |                  |
| when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees                                                   | Five per centum  |

10 For the entry in the second column of Article 12 of Schedule I of the Amendment of Article 12 of principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted namely —

|                                                                                                                                                                                         |                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees, | Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum          |
| and                                                                                                                                                                                     |                                                                                                                                                                |
| when such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees                      | Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of Act, four and a half per centum. |
| and                                                                                                                                                                                     |                                                                                                                                                                |
| when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,                   | Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum           |

## APPENDIX C.

THE BIHAR AND ORISSA COURT-FEES  
(AMENDMENT) ACT, 1922

B &amp; O ACT NO II OF 1922

PASSED BY THE LEGISLATIVE COUNCIL OF THE GOVERNOR OF  
BIHAR AND ORISSA*[The assent of the Governor General, to this Act was published in the  
Bihar and Orissa Gazette Extraordinary of the  
21st August, 1922]**An Act to amend the Court fees Act 1870*

WHEREAS it is expedient to amend the Court fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing,

It is hereby enacted as follows —

Short title extent and com- 1. (1) This act may be called the  
mencement Bihar and Orissa Court fees (Amendment)  
Act, 1922

(2) It extends to the whole of Bihar and Orissa including Santhal  
Paraganas

(3) It shall come into force on the twenty fourth day of August,  
1922.

2 In paragraph 3 of section 4 of the Court fees Act, 1870 as amended  
Amendment of section 4 by subsequent legislation and hereinafter called  
the principal Act for the word "two" shall be  
substituted the word "one"

3 In clause (a) of section 7 (2) of the principal Act for the word  
Amendment of sect on 7 "ten" shall be substituted the word "twenty"  
and in clause (b) of the said section for the  
word "five" shall be substituted the word "ten"

4 In section 17 of the principal Act after the words 'of appeal' in  
Amendment of section 17 both places where they occur the words "or  
of cross objection" shall be inserted

5 In section 18 of the principal Act, for the words "a fee of eight annas"  
Amendment of section 18 the words "a fee of twelve annas" shall be  
substituted

6 In item (viii) of section 19 of the principal Act, for the words "one  
Amendment of section 19 thousand rupees the words 'two thousand  
rupees" shall be substituted

7 (1) In Article 1 of Schedule I of the principal Act for the entry in  
Amendment of Article 1 of the first column the following entry shall be  
Schedule I substituted namely —

"1. Plaint written statement, pleading a set off or counter claim or  
memorandum of appeal or of cross objection not otherwise provided for in  
this Act, presented to any Civil or Revenue Court except those mentioned in  
section 3"

(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article I in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

(3) The proviso in Article I of the said Schedule I shall be omitted.

8. For the "proper fees" set out in Schedule I of the principal Act for Amendment of Articles 6, 7, 8 and 9 of Schedule I Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted

9 For the entries above the proviso in the second column, and for the Amendment of Article 11 of entries in the third column, in Article 11 of Schedule I of the principal Act the following shall be substituted, namely —

|                                                                                                                                                                                     |                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees | Two per centum   |
| and                                                                                                                                                                                 |                  |
| when such amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,                 | Three per centum |
| and                                                                                                                                                                                 |                  |
| when such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,                | Four per centum  |
| and                                                                                                                                                                                 |                  |
| when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees                                                  | Five per centum  |

10 For the entry in the second column of Article 12 of Schedule I of the Amendment of Article 12 of principal Act, and for the first paragraph in Schedule I the third column of the said Article, the following shall be substituted namely —

|                                                                                                                                                                                        |                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees | Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act three per centum           |
| and                                                                                                                                                                                    |                                                                                                                                                                |
| when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,                   | Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of Act, four and a half per centum. |
| and                                                                                                                                                                                    |                                                                                                                                                                |
| when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh or rupees,                  | Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum           |

and  
when such amount or value exceeds 1 lakh of rupees, on the portion of such amount of value, which is in excess of one lakh of rupees

Five per centum, or and on the amount value of any debt or security to which the certificate is extended under section 10 of the Act seven and a half per centum

Amendment of table of rates in Schedule I substituted

11 For the table of rates of *ad valorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be

12 (1) In the first column of the said Schedule II and after the words "memorandum of appeal in Articles 5, 11, 17, 20 and 21 the words "or of cross objection" shall be inserted

Amendment of Schedule II

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the said second column of the said Schedule C shall be substituted

13 Nothing in this Act, shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889 in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which

Exemption of certain probates letters of administration and certificates have not issued

### SCHEDULE A

[See sections 7 (3) and 8 of the Bihar and Orissa Court fees (Amendment) Act 1922]

| Proper fees set out in Schedule I of the principal Act |                    | Proper fees to be substituted       |
|--------------------------------------------------------|--------------------|-------------------------------------|
| Article 1                                              | Twelve annas       | One rupee                           |
|                                                        | Five rupees        | Seven rupees and eight annas        |
|                                                        | Ten rupees         | Fifteen rupees                      |
|                                                        | Fifteen rupees     | Twenty two rupees and eight annas   |
|                                                        | Twenty rupees      | Thirty rupees                       |
| Article 6                                              | Twenty five rupees | Thirty seven rupees and eight annas |
|                                                        | Four annas         | Six annas                           |
|                                                        | Eight annas        | Twelve annas                        |
|                                                        | One rupee          | One rupee and eight annas           |

| Proper fees set out in Schedule I of the principal Act |     |                                                    |        | Proper fees to be substituted                                          |
|--------------------------------------------------------|-----|----------------------------------------------------|--------|------------------------------------------------------------------------|
| Article 7                                              | ... | Eight annas                                        | .. ... | Twelve annas                                                           |
|                                                        |     | One rupee                                          | ... .. | One rupee and eight annas                                              |
|                                                        |     | Four rupees                                        | ... .. | Six rupees                                                             |
| Article 8                                              | ..  | The amount of the duty chargeable on the original. |        | One and a half times the amount of the duty chargeable on the original |
|                                                        |     | Eight annas                                        | ... .. | Twelve annas                                                           |
| Article 9                                              |     | Eight annas                                        | .. ..  | Twelve annas                                                           |

## SCHEDULE B.

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE ON THE INSTITUTION OF SUITS

[ See section 11 of the Bihar and Orissa Court-fees (Amendment) Act, 1922. ]

| When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs, A      |
| ...                                                    | 5                   | 0 6        | 180                                                    | 190                 | 16 8       |
| 5                                                      | 10                  | 0 12       | 190                                                    | 200                 | 17 8       |
| 10                                                     | 15                  | 1 2        | 200                                                    | 210                 | 18 8       |
| 15                                                     | 20                  | 1 8        | 210                                                    | 220                 | 19 8       |
| 20                                                     | 25                  | 1 14       | 220                                                    | 230                 | 20 8       |
| 25                                                     | 30                  | 2 4        | 230                                                    | 240                 | 21 8       |
| 30                                                     | 35                  | 2 10       | 240                                                    | 250                 | 22 8       |
| 35                                                     | 40                  | 3 0        | 250                                                    | 260                 | 23 8       |
| 40                                                     | 45                  | 3 6        | 260                                                    | 270                 | 24 8       |
| 45                                                     | 50                  | 3 12       | 270                                                    | 280                 | 25 8       |
| 50                                                     | 55                  | 4 2        | 280                                                    | 290                 | 26 8       |
| 55                                                     | 60                  | 4 8        | 290                                                    | 300                 | 27 8       |
| 60                                                     | 65                  | 4 14       | 300                                                    | 310                 | 28 8       |
| 65                                                     | 70                  | 5 4        | 310                                                    | 320                 | 29 8       |
| 70                                                     | 75                  | 5 10       | 320                                                    | 330                 | 30 8       |
| 75                                                     | 80                  | 6 0        | 330                                                    | 340                 | 31 8       |
| 80                                                     | 85                  | 6 6        | 340                                                    | 350                 | 32 8       |
| 85                                                     | 90                  | 6 12       | 350                                                    | 360                 | 33 8       |
| 90                                                     | 95                  | 7 2        | 360                                                    | 370                 | 34 8       |
| 95                                                     | 100                 | 7 8        | 370                                                    | 380                 | 35 8       |
| 100                                                    | 110                 | 8 8        | 380                                                    | 390                 | 36 8       |
| 110                                                    | 120                 | 9 8        | 390                                                    | 400                 | 37 8       |
| 120                                                    | 130                 | 10 8       | 400                                                    | 410                 | 38 8       |
| 130                                                    | 140                 | 11 8       | 410                                                    | 420                 | 39 8       |
| 140                                                    | 150                 | 12 8       | 420                                                    | 430                 | 40 8       |
| 150                                                    | 160                 | 13 8       | 430                                                    | 440                 | 41 8       |
| 160                                                    | 170                 | 14 8       | 440                                                    | 450                 | 42 8       |
| 170                                                    | 180                 | 15 8       | 450                                                    | 460                 | 43 8       |

and when such amount or value exceeds a lakh of rupees, or the portion of such amount of value, which is in excess of one lakh of rupees, five per centum, or and on the amount of any debt or security to which the certificate is extended under section 10 of the Act, seven-and-a-half per centum.

Amendment of table of rates in Schedule I

substituted.

11 For the table of rates of and whereof fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be

12 (1) In the first column of the said Schedule II and after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words "or of cross-objection" shall be inserted

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the said second column of the said Schedule C shall be substituted.

13 Nothing in this Act, shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889 in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued

### SCHEDULE A

[See sections 7 (3) and 8 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

| Proper fees set out in Schedule I of the principal Act. |                    | Proper fees to be substituted.       |
|---------------------------------------------------------|--------------------|--------------------------------------|
| Article 1                                               | Twelve annas       | One rupee                            |
|                                                         | Five rupees        | Seven rupees and eight annas         |
|                                                         | Ten rupees ...     | Fifteen rupees.                      |
|                                                         | Fifteen rupees .   | Twenty-two rupees and eight annas.   |
|                                                         | Twenty rupees      | Thirty rupees                        |
| Article 6                                               | Twenty five rupees | Thirty seven rupees and eight annas. |
|                                                         | Four annas         | Six annas.                           |
|                                                         | Eight annas .      | Twelve annas.                        |
|                                                         | One rupee ..       | One rupee and eight annas.           |



| Proper fees set out in Schedule I of the<br>principal Act. |     |   |                                                    | Proper fees to be<br>substituted                                       |
|------------------------------------------------------------|-----|---|----------------------------------------------------|------------------------------------------------------------------------|
| Article 7                                                  | ... | { | Eight annas . . .                                  | Twelve annas                                                           |
|                                                            |     |   | One rupee ...                                      | One rupee and eight annas                                              |
|                                                            |     |   | Four rupees ...                                    | Six rupees                                                             |
| Article 8                                                  | ... | { | The amount of the duty chargeable on the original. | One and a half times the amount of the duty chargeable on the original |
|                                                            |     |   | Eight annas . . .                                  | Twelve annas                                                           |
| Article 9                                                  | .   |   | Eight annas . . .                                  | Twelve annas                                                           |

## SCHEDULE B.

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE  
ON THE INSTITUTION OF SUITS[ See section 11 of the Bihar and Orissa Court fees  
(Amendment) Act, 1922. ]

| When the<br>amount or<br>value of the<br>subject matter<br>exceeds | But does not<br>exceed | Proper Fee | When the<br>amount or<br>value of the<br>subject-matter<br>exceeds | But does not<br>exceed | Proper Fee |
|--------------------------------------------------------------------|------------------------|------------|--------------------------------------------------------------------|------------------------|------------|
| Rs                                                                 | Rs                     | Rs A       | Rs                                                                 | Rs                     | Rs, A      |
| ...                                                                | 5                      | 0 6        | 180                                                                | 190                    | 16 8       |
| 5                                                                  | 10                     | 0 12       | 190                                                                | 200                    | 17 8       |
| 10                                                                 | 15                     | 1 2        | 200                                                                | 210                    | 18 8       |
| 15                                                                 | 20                     | 1 8        | 210                                                                | 220                    | 19 8       |
| 20                                                                 | 25                     | 1 14       | 220                                                                | 230                    | 20 8       |
| 25                                                                 | 30                     | 2 4        | 230                                                                | 240                    | 21 8       |
| 30                                                                 | 35                     | 2 10       | 240                                                                | 250                    | 22 8       |
| 35                                                                 | 40                     | 3 0        | 250                                                                | 260                    | 23 8       |
| 40                                                                 | 45                     | 3 6        | 260                                                                | 270                    | 24 8       |
| 45                                                                 | 50                     | 3 12       | 270                                                                | 280                    | 25 8       |
| 50                                                                 | 55                     | 4 2        | 280                                                                | 290                    | 26 8       |
| 55                                                                 | 60                     | 4 8        | 290                                                                | 300                    | 27 8       |
| 60                                                                 | 65                     | 4 14       | 300                                                                | 310                    | 28 8       |
| 65                                                                 | 70                     | 5 4        | 310                                                                | 320                    | 29 8       |
| 70                                                                 | 75                     | 5 10       | 320                                                                | 330                    | 30 8       |
| 75                                                                 | 80                     | 6 0        | 330                                                                | 340                    | 31 8       |
| 80                                                                 | 85                     | 6 6        | 340                                                                | 350                    | 32 8       |
| 85                                                                 | 90                     | 6 12       | 350                                                                | 360                    | 33 8       |
| 90                                                                 | 95                     | 7 2        | 360                                                                | 370                    | 34 8       |
| 95                                                                 | 100                    | 7 8        | 370                                                                | 380                    | 35 8       |
| 100                                                                | 110                    | 8 8        | 380                                                                | 390                    | 36 8       |
| 110                                                                | 120                    | 9 8        | 390                                                                | 400                    | 37 8       |
| 120                                                                | 130                    | 10 8       | 400                                                                | 410                    | 38 8       |
| 130                                                                | 140                    | 11 8       | 410                                                                | 420                    | 39 8       |
| 140                                                                | 150                    | 12 8       | 420                                                                | 430                    | 40 8       |
| 150                                                                | 160                    | 13 8       | 430                                                                | 440                    | 41 8       |
| 160                                                                | 170                    | 14 8       | 440                                                                | 450                    | 42 8       |
| 170                                                                | 180                    | 15 8       | 450                                                                | 460                    | 43 8       |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 460                                                    | 470                 | 44 8       | 1 100                                                  | 1 200               | 112 8      |
| 470                                                    | 480                 | 45 8       | 1 200                                                  | 1 300               | 120 0      |
| 480                                                    | 490                 | 46 8       | 1 300                                                  | 1 400               | 127 8      |
| 490                                                    | 500                 | 47 8       | 1 400                                                  | 1 500               | 135 0      |
| 500                                                    | 510                 | 48 8       | 1 500                                                  | 1 600               | 142 8      |
| 510                                                    | 520                 | 49 8       | 1 600                                                  | 1 700               | 150 0      |
| 520                                                    | 530                 | 50 8       | 1 700                                                  | 1 800               | 157 8      |
| 530                                                    | 540                 | 51 8       | 1 800                                                  | 1 900               | 165 0      |
| 540                                                    | 550                 | 52 8       | 1 900                                                  | 2 000               | 172 8      |
| 550                                                    | 560                 | 53 8       | 2 000                                                  | 2 100               | 180 0      |
| 560                                                    | 570                 | 54 8       | 2 100                                                  | 2 200               | 187 8      |
| 570                                                    | 580                 | 55 8       | 2 200                                                  | 2 300               | 195 0      |
| 580                                                    | 590                 | 56 8       | 2 300                                                  | 2 400               | 202 8      |
| 590                                                    | 600                 | 57 8       | 2 400                                                  | 2 500               | 210 0      |
| 600                                                    | 610                 | 58 8       | 2 500                                                  | 2 600               | 217 8      |
| 610                                                    | 620                 | 59 8       | 2 600                                                  | 2 700               | 225 0      |
| 620                                                    | 630                 | 60 8       | 2 700                                                  | 2 800               | 232 8      |
| 630                                                    | 640                 | 61 8       | 2 800                                                  | 2 900               | 240 0      |
| 640                                                    | 650                 | 62 8       | 2 900                                                  | 3 000               | 247 8      |
| 650                                                    | 660                 | 63 8       | 3 000                                                  | 3 100               | 255 0      |
| 660                                                    | 670                 | 64 8       | 3 100                                                  | 3 200               | 262 8      |
| 670                                                    | 680                 | 65 8       | 3 200                                                  | 3 300               | 270 0      |
| 680                                                    | 690                 | 66 8       | 3 300                                                  | 3 400               | 277 8      |
| 690                                                    | 700                 | 67 8       | 3 400                                                  | 3 500               | 285 0      |
| 700                                                    | 710                 | 68 8       | 3 500                                                  | 3 600               | 292 8      |
| 710                                                    | 720                 | 69 8       | 3 600                                                  | 3 700               | 300 0      |
| 720                                                    | 730                 | 70 8       | 3 700                                                  | 3 800               | 307 8      |
| 730                                                    | 740                 | 71 8       | 3 800                                                  | 3 900               | 315 0      |
| 740                                                    | 750                 | 72 8       | 3 900                                                  | 4 000               | 322 8      |
| 750                                                    | 760                 | 73 8       | 4 000                                                  | 4 100               | 330 0      |
| 760                                                    | 770                 | 74 8       | 4 100                                                  | 4 200               | 337 8      |
| 770                                                    | 780                 | 75 8       | 4 200                                                  | 4 300               | 345 0      |
| 780                                                    | 790                 | 76 8       | 4 300                                                  | 4 400               | 352 8      |
| 790                                                    | 800                 | 77 8       | 4 400                                                  | 4 500               | 360 0      |
| 800                                                    | 810                 | 78 8       | 4 500                                                  | 4 600               | 367 8      |
| 810                                                    | 820                 | 79 8       | 4 600                                                  | 4 700               | 375 0      |
| 820                                                    | 830                 | 80 8       | 4 700                                                  | 4 800               | 382 8      |
| 830                                                    | 840                 | 81 8       | 4 800                                                  | 4 900               | 390 0      |
| 840                                                    | 850                 | 82 8       | 4 900                                                  | 5 000               | 397 8      |
| 850                                                    | 860                 | 83 8       | 5 000                                                  | 5 250               | 412 8      |
| 860                                                    | 870                 | 84 8       | 5 250                                                  | 5 500               | 427 8      |
| 870                                                    | 880                 | 85 8       | 5 500                                                  | 5 750               | 442 3      |
| 880                                                    | 890                 | 86 8       | 5 750                                                  | 6 000               | 457 8      |
| 890                                                    | 900                 | 87 8       | 6 000                                                  | 6 250               | 472 8      |
| 900                                                    | 910                 | 88 8       | 6 250                                                  | 6 500               | 487 8      |
| 910                                                    | 920                 | 89 8       | 6 500                                                  | 6 750               | 502 8      |
| 920                                                    | 930                 | 90 8       | 6 750                                                  | 7 000               | 517 8      |
| 930                                                    | 940                 | 91 8       | 7 000                                                  | 7 250               | 532 8      |
| 940                                                    | 950                 | 92 8       | 7 250                                                  | 7 500               | 547 8      |
| 950                                                    | 960                 | 93 8       | 7 500                                                  | 7 750               | 562 8      |
| 960                                                    | 970                 | 94 8       | 7 750                                                  | 8 000               | 577 1      |
| 970                                                    | 980                 | 95 8       | 8 000                                                  | 8 250               | 592 8      |
| 980                                                    | 990                 | 96 8       | 8 250                                                  | 8 500               | 607 8      |
| 990                                                    | 1 000               | 97 8       | 8 500                                                  | 8 750               | 622 8      |
| 1 000                                                  | 1 100               | 105 0      | 8 750                                                  | 9 000               | 637 8      |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 9,000                                                  | 9,250               | 65 8       | 38,000                                                 | 40,000              | 1,597 8    |
| 9,250                                                  | 9,500               | 66 8       | 40,000                                                 | 42,000              | 1,627 8    |
| 9,500                                                  | 9,750               | 68 8       | 42,000                                                 | 44,000              | 1,657 8    |
| 9,750                                                  | 10,000              | 69 8       | 44,000                                                 | 46,000              | 1,687 8    |
| 10,000                                                 | 10,500              | 70 0       | 46,000                                                 | 48,000              | 1,717 8    |
| 10,500                                                 | 11,000              | 74 8       | 48,000                                                 | 50,000              | 1,747 8    |
| 11,000                                                 | 11,500              | 76 0       | 50,000                                                 | 52,000              | 1,785 0    |
| 11,500                                                 | 12,000              | 78 8       | 52,000                                                 | 60,000              | 1,822 8    |
| 12,000                                                 | 12,500              | 81 0       | 60,000                                                 | 62,000              | 1,860 0    |
| 12,500                                                 | 13,000              | 83 8       | 62,000                                                 | 70,000              | 1,897 8    |
| 13,000                                                 | 13,500              | 85 0       | 70,000                                                 | 75,000              | 1,935 0    |
| 13,500                                                 | 14,000              | 87 8       | 72,000                                                 | 80,000              | 1,972 8    |
| 14,000                                                 | 14,500              | 90 0       | 80,000                                                 | 82,000              | 2,010 0    |
| 14,500                                                 | 15,000              | 92 8       | 82,000                                                 | 90,000              | 2,047 8    |
| 15,000                                                 | 15,500              | 94 0       | 90,000                                                 | 1,00,000            | 2,085 0    |
| 15,500                                                 | 16,000              | 97 8       | 92,000                                                 | 1,02,000            | 2,122 8    |
| 16,000                                                 | 16,500              | 100 0      | 1,00,000                                               | 1,04,000            | 2,160 0    |
| 16,500                                                 | 17,000              | 102 8      | 1,02,000                                               | 1,06,000            | 2,197 8    |
| 17,000                                                 | 17,500              | 105 0      | 1,04,000                                               | 1,08,000            | 2,235 0    |
| 17,500                                                 | 18,000              | 107 8      | 1,06,000                                               | 1,10,000            | 2,272 8    |
| 18,000                                                 | 18,500              | 110 0      | 1,08,000                                               | 1,12,000            | 2,310 0    |
| 18,500                                                 | 19,000              | 112 8      | 1,10,000                                               | 1,14,000            | 2,347 8    |
| 19,000                                                 | 19,500              | 115 0      | 1,12,000                                               | 1,16,000            | 2,385 0    |
| 19,500                                                 | 20,000              | 117 8      | 1,14,000                                               | 1,18,000            | 2,422 8    |
| 20,000                                                 | 21,000              | 120 0      | 1,16,000                                               | 1,20,000            | 2,460 0    |
| 21,000                                                 | 22,000              | 122 8      | 1,18,000                                               | 1,22,000            | 2,497 8    |
| 22,000                                                 | 23,000              | 125 0      | 1,20,000                                               | 1,24,000            | 2,535 0    |
| 23,000                                                 | 24,000              | 127 8      | 1,22,000                                               | 1,26,000            | 2,572 8    |
| 24,000                                                 | 25,000              | 130 0      | 1,24,000                                               | 1,28,000            | 2,610 0    |
| 25,000                                                 | 26,000              | 132 8      | 1,26,000                                               | 1,30,000            | 2,647 8    |
| 26,000                                                 | 27,000              | 135 0      | 1,28,000                                               | 1,32,000            | 2,685 0    |
| 27,000                                                 | 28,000              | 137 8      | 1,30,000                                               | 1,34,000            | 2,722 8    |
| 28,000                                                 | 29,000              | 140 0      | 1,32,000                                               | 1,36,000            | 2,760 0    |
| 29,000                                                 | 30,000              | 142 8      | 1,34,000                                               | 1,38,000            | 2,797 8    |
| 30,000                                                 | 31,000              | 145 0      | 1,36,000                                               | 1,40,000            | 2,835 0    |
| 31,000                                                 | 32,000              | 147 8      | 1,38,000                                               | 1,42,000            | 2,872 8    |
| 32,000                                                 | 33,000              | 150 0      | 1,40,000                                               | 1,44,000            | 2,910 0    |
| 33,000                                                 | 34,000              | 152 8      | 1,42,000                                               | 1,46,000            | 2,947 8    |
| 34,000                                                 | 35,000              | 155 0      | 1,44,000                                               | 1,48,000            | 2,985 0    |
| 35,000                                                 | 36,000              | 157 8      | 1,46,000                                               | 1,50,000            | 3,022 8    |
| 36,000                                                 | 37,000              | 160 0      | 1,48,000                                               | 1,52,000            | 3,060 0    |
| 37,000                                                 | 38,000              | 162 8      | 1,50,000                                               | 1,54,000            | 3,097 8    |
| 38,000                                                 |                     |            | 1,52,000                                               | 1,56,000            | 3,135 0    |
|                                                        |                     |            | 1,54,000                                               | 1,58,000            | 3,172 8    |
|                                                        |                     |            | 1,56,000                                               | 1,60,000            | 3,210 0    |
|                                                        |                     |            | 1,58,000                                               | 1,62,000            | 3,247 8    |
|                                                        |                     |            | 1,60,000                                               | 1,64,000            | 3,285 0    |
|                                                        |                     |            | 1,62,000                                               | 1,66,000            | 3,322 8    |
|                                                        |                     |            | 1,64,000                                               | 1,68,000            | 3,360 0    |
|                                                        |                     |            | 1,66,000                                               | 1,70,000            | 3,397 8    |
|                                                        |                     |            | 1,68,000                                               | 1,72,000            | 3,435 0    |
|                                                        |                     |            | 1,70,000                                               | 1,74,000            | 3,472 8    |
|                                                        |                     |            | 1,72,000                                               | 1,76,000            | 3,510 0    |
|                                                        |                     |            | 1,74,000                                               | 1,78,000            | 3,547 8    |
|                                                        |                     |            | 1,76,000                                               | 1,80,000            | 3,585 0    |
|                                                        |                     |            | 1,78,000                                               | 1,82,000            | 3,622 8    |
|                                                        |                     |            | 1,80,000                                               | 1,84,000            | 3,660 0    |
|                                                        |                     |            | 1,82,000                                               | 1,86,000            | 3,697 8    |
|                                                        |                     |            | 1,84,000                                               | 1,88,000            | 3,735 0    |
|                                                        |                     |            | 1,86,000                                               | 1,90,000            | 3,772 8    |
|                                                        |                     |            | 1,88,000                                               | 1,92,000            | 3,810 0    |
|                                                        |                     |            | 1,90,000                                               | 1,94,000            | 3,847 8    |
|                                                        |                     |            | 1,92,000                                               | 1,96,000            | 3,885 0    |
|                                                        |                     |            | 1,94,000                                               | 1,98,000            | 3,922 8    |
|                                                        |                     |            | 1,96,000                                               | 2,00,000            | 3,960 0    |
|                                                        |                     |            | 1,98,000                                               | 2,02,000            | 3,997 8    |
|                                                        |                     |            | 2,00,000                                               | 2,04,000            | 4,035 0    |
|                                                        |                     |            | 2,02,000                                               | 2,06,000            | 4,072 8    |
|                                                        |                     |            | 2,04,000                                               | 2,08,000            | 4,110 0    |
|                                                        |                     |            | 2,06,000                                               | 2,10,000            | 4,147 8    |
|                                                        |                     |            | 2,08,000                                               | 2,12,000            | 4,185 0    |
|                                                        |                     |            | 2,10,000                                               | 2,14,000            | 4,222 8    |
|                                                        |                     |            | 2,12,000                                               | 2,16,000            | 4,260 0    |
|                                                        |                     |            | 2,14,000                                               | 2,18,000            | 4,297 8    |
|                                                        |                     |            | 2,16,000                                               | 2,20,000            | 4,335 0    |
|                                                        |                     |            | 2,18,000                                               | 2,22,000            | 4,372 8    |
|                                                        |                     |            | 2,20,000                                               | 2,24,000            | 4,410 0    |
|                                                        |                     |            | 2,22,000                                               | 2,26,000            | 4,447 8    |
|                                                        |                     |            | 2,24,000                                               | 2,28,000            | 4,485 0    |
|                                                        |                     |            | 2,26,000                                               | 2,30,000            | 4,522 8    |
|                                                        |                     |            | 2,28,000                                               | 2,32,000            | 4,560 0    |
|                                                        |                     |            | 2,30,000                                               | 2,34,000            | 4,597 8    |
|                                                        |                     |            | 2,32,000                                               | 2,36,000            | 4,635 0    |
|                                                        |                     |            | 2,34,000                                               | 2,38,000            | 4,672 8    |
|                                                        |                     |            | 2,36,000                                               | 2,40,000            | 4,710 0    |
|                                                        |                     |            | 2,38,000                                               | 2,42,000            | 4,747 8    |
|                                                        |                     |            | 2,40,000                                               | 2,44,000            | 4,785 0    |
|                                                        |                     |            | 2,42,000                                               | 2,46,000            | 4,822 8    |
|                                                        |                     |            | 2,44,000                                               | 2,48,000            | 4,860 0    |
|                                                        |                     |            | 2,46,000                                               | 2,50,000            | 4,897 8    |
|                                                        |                     |            | 2,48,000                                               | 2,52,000            | 4,935 0    |
|                                                        |                     |            | 2,50,000                                               | 2,54,000            | 4,972 8    |
|                                                        |                     |            | 2,52,000                                               | 2,56,000            | 5,010 0    |
|                                                        |                     |            | 2,54,000                                               | 2,58,000            | 5,047 8    |
|                                                        |                     |            | 2,56,000                                               | 2,60,000            | 5,085 0    |
|                                                        |                     |            | 2,58,000                                               | 2,62,000            | 5,122 8    |
|                                                        |                     |            | 2,60,000                                               | 2,64,000            | 5,160 0    |
|                                                        |                     |            | 2,62,000                                               | 2,66,000            | 5,197 8    |
|                                                        |                     |            | 2,64,000                                               | 2,68,000            | 5,235 0    |
|                                                        |                     |            | 2,66,000                                               | 2,70,000            | 5,272 8    |
|                                                        |                     |            | 2,68,000                                               | 2,72,000            | 5,310 0    |
|                                                        |                     |            | 2,70,000                                               | 2,74,000            | 5,347 8    |
|                                                        |                     |            | 2,72,000                                               | 2,76,000            | 5,385 0    |
|                                                        |                     |            | 2,74,000                                               | 2,78,000            | 5,422 8    |
|                                                        |                     |            | 2,76,000                                               | 2,80,000            | 5,460 0    |
|                                                        |                     |            | 2,78,000                                               | 2,82,000            | 5,497 8    |
|                                                        |                     |            | 2,80,000                                               | 2,84,000            | 5,535 0    |
|                                                        |                     |            | 2,82,000                                               | 2,86,000            | 5,572 8    |
|                                                        |                     |            | 2,84,000                                               | 2,88,000            | 5,610 0    |
|                                                        |                     |            | 2,86,000                                               | 2,90,000            | 5,647 8    |
|                                                        |                     |            | 2,88,000                                               | 2,92,000            | 5,685 0    |
|                                                        |                     |            | 2,90,000                                               | 2,94,000            | 5,722 8    |
|                                                        |                     |            | 2,92,000                                               | 2,96,000            | 5,760 0    |
|                                                        |                     |            | 2,94,000                                               | 2,98,000            | 5,797 8    |
|                                                        |                     |            | 2,96,000                                               | 3,00,000            | 5,835 0    |
|                                                        |                     |            | 2,98,000                                               | 3,02,000            | 5,872 8    |
|                                                        |                     |            | 3,00,000                                               | 3,04,000            | 5,910 0    |
|                                                        |                     |            | 3,02,000                                               | 3,06,000            | 5,947 8    |
|                                                        |                     |            | 3,04,000                                               | 3,08,000            | 5,985 0    |
|                                                        |                     |            | 3,06,000                                               | 3,10,000            | 6,022 8    |
|                                                        |                     |            | 3,08,000                                               | 3,12,000            | 6,060 0    |
|                                                        |                     |            | 3,10,000                                               | 3,14,000            | 6,097 8    |
|                                                        |                     |            | 3,12,000                                               | 3,16,000            | 6,135 0    |
|                                                        |                     |            | 3,14,000                                               | 3,18,000            | 6,172 8    |
|                                                        |                     |            | 3,16,000                                               | 3,20,000            | 6,210 0    |
|                                                        |                     |            | 3,18,000                                               | 3,22,000            | 6,247 8    |
|                                                        |                     |            | 3,20,000                                               | 3,24,000            | 6,285 0    |
|                                                        |                     |            | 3,22,000                                               | 3,26,000            | 6,322 8    |
|                                                        |                     |            | 3,24,000                                               | 3,28,000            | 6,360 0    |
|                                                        |                     |            | 3,26,000                                               | 3,30,000            | 6,397 8    |
|                                                        |                     |            | 3,28,000                                               | 3,32,000            | 6,435 0    |
|                                                        |                     |            | 3,30,000                                               | 3,34,000            | 6,472 8    |
|                                                        |                     |            | 3,32,000                                               | 3,36,000            | 6,510 0    |
|                                                        |                     |            | 3,34,000                                               | 3,38,000            | 6,547 8    |
|                                                        |                     |            | 3,36,000                                               | 3,40,000            | 6,585 0    |
|                                                        |                     |            | 3,38,000                                               | 3,42,000            | 6,622 8    |
|                                                        |                     |            | 3,40,000                                               | 3,44,000            | 6,660 0    |
|                                                        |                     |            | 3,42,000                                               | 3,46,000            | 6,697 8    |
|                                                        |                     |            | 3,44,000                                               | 3,48,000            | 6,735 0    |
|                                                        |                     |            | 3,46,000                                               | 3,50,000            | 6,772 8    |
|                                                        |                     |            | 3,48,000                                               | 3,52,000            | 6,810 0    |
|                                                        |                     |            | 3,50,000                                               | 3,54,000            | 6,847 8    |
|                                                        |                     |            | 3,52,000                                               | 3,56,000            | 6,885 0    |
|                                                        |                     |            | 3,54,000                                               | 3,58,000            | 6,922 8    |
|                                                        |                     |            | 3,56,000                                               | 3,60,000            | 6,960 0    |
|                                                        |                     |            | 3,58,000                                               | 3,62,000            | 6,997 8    |
|                                                        |                     |            | 3,60,000                                               | 3,64,000            | 7,035 0    |
|                                                        |                     |            | 3,62,000                                               | 3,66,000            | 7,072 8    |
|                                                        |                     |            | 3,64,000                                               | 3,68,000            | 7,110 0    |
|                                                        |                     |            | 3,66,000                                               | 3,70,000            | 7,147 8    |
|                                                        |                     |            | 3,68,000                                               | 3,72,000            | 7,185 0    |
|                                                        |                     |            | 3,70,000                                               | 3,74,000            | 7,222 8    |
|                                                        |                     |            | 3,72,000                                               | 3,76,000            | 7,260 0    |
|                                                        |                     |            | 3,74,000                                               | 3,78,000            | 7,297 8    |
|                                                        |                     |            | 3,76,000                                               | 3,80,000            | 7,335 0    |
|                                                        |                     |            | 3,78,000                                               | 3,82,000            | 7,372 8    |
|                                                        |                     |            | 3,80,000                                               | 3,84,000            | 7,410 0    |
|                                                        |                     |            | 3,82,000                                               | 3,86,000            | 7,447 8    |
|                                                        |                     |            | 3,84,000                                               | 3,88,000            | 7,485 0    |
|                                                        |                     |            | 3,86,000                                               | 3,90,000            | 7,522 8    |
|                                                        |                     |            | 3,88,000                                               | 3,92,000            | 7,560 0    |
|                                                        |                     |            | 3,90,000                                               | 3,94,000            | 7,597 8    |
|                                                        |                     |            | 3,92,000                                               | 3,96,000            | 7,635 0    |
|                                                        |                     |            | 3,94,000                                               | 3,98,000            | 7,672 8    |
|                                                        |                     |            | 3,96,000                                               | 4,00,000            | 7,710 0    |
|                                                        |                     |            | 3,98,000                                               | 4,02,000            | 7,747 8    |
|                                                        |                     |            | 4,00,000                                               | 4,04,000            | 7,785 0    |
|                                                        |                     |            | 4,02,000                                               | 4,06,000            | 7,822 8    |
|                                                        |                     |            | 4,04,000                                               | 4,08,000            | 7,860 0    |
|                                                        |                     |            | 4,06,000                                               | 4,10,000            | 7,897 8    |
|                                                        |                     |            | 4,08,000                                               | 4,12,000            | 7,935 0    |
|                                                        |                     |            | 4,10,000                                               | 4,14,000            | 7,972 8    |
|                                                        |                     |            | 4,12,000                                               | 4,16,000            | 8,010 0    |
|                                                        |                     |            | 4,14,000                                               | 4,18,000            | 8,047 8    |
|                                                        |                     |            | 4,16,000                                               | 4,20,000            | 8,085 0    |
|                                                        |                     |            | 4,18,000                                               | 4,22,000            | 8,122 8    |
|                                                        |                     |            | 4,20,000                                               | 4,24,000            | 8,160 0    |
|                                                        |                     |            | 4,22,000                                               | 4,26,000            | 8,197 8    |
|                                                        |                     |            | 4,24,000                                               | 4,28,000            | 8,235 0    |
|                                                        |                     |            | 4,26,000                                               | 4,30,000            | 8,272 8    |
|                                                        |                     |            | 4,28,000                                               | 4,32,000            | 8,310 0    |
|                                                        |                     |            | 4,30,000                                               | 4,34,000            | 8,347 8    |
|                                                        |                     |            | 4,32,000                                               | 4,36,000            | 8,385 0    |
|                                                        |                     |            | 4,34,000                                               | 4,38,000            | 8,422 8    |
|                                                        |                     |            | 4,36,000                                               | 4,40,000            | 8,460 0    |
|                                                        |                     |            | 4,38,000                                               | 4,42,000            | 8,497 8    |
|                                                        |                     |            | 4,40,000                                               | 4,44,000            | 8,535 0    |
|                                                        |                     |            | 4,42,000                                               | 4,46,000            | 8,572 8    |
|                                                        |                     |            | 4,44,000                                               | 4,48,000            | 8,610 0    |
|                                                        |                     |            | 4,46,000                                               | 4,50,000            | 8,647 8    |
|                                                        |                     |            | 4,48,000                                               | 4,52,000            | 8,685 0    |
|                                                        |                     |            | 4,50,000                                               | 4,54,000            | 8,722 8    |
|                                                        |                     |            | 4,52,000                                               | 4,56,000            | 8,760 0    |
|                                                        |                     |            | 4,54,000                                               | 4,58,000            | 8,797 8    |
|                                                        |                     |            | 4,56,000                                               | 4,60,000            | 8,835 0    |
|                                                        |                     |            | 4,58,000                                               | 4,62,000            | 8,872 8    |
|                                                        |                     |            | 4,60,000                                               | 4,64,000            | 8,910 0    |
|                                                        |                     |            | 4,62,000                                               | 4,66,000            | 8,947 8    |
|                                                        |                     |            | 4,64,000                                               | 4,68,000            | 8,985 0    |
|                                                        |                     |            | 4,66,000                                               | 4,70,000            | 9,022 8    |
|                                                        |                     |            | 4,68,000                                               | 4,72,000            | 9,060 0    |
|                                                        |                     |            | 4,70,000                                               | 4,74,000            | 9,097 8    |
|                                                        |                     |            | 4,72,000                                               | 4,76,000            | 9,135 0    |
|                                                        |                     |            | 4,74,000                                               | 4,78,000            | 9,172 8    |
|                                                        |                     |            | 4,76,000                                               | 4,80,000            | 9,210 0    |
|                                                        |                     |            | 4,78,000                                               | 4,82,000            | 9,247 8    |
|                                                        |                     |            | 4,80,000                                               | 4,84,000            | 9,28       |

| When the<br>amount or<br>value of the<br>subject matter<br>exceeds | But does not<br>exceed. | Proper fee | When the<br>amount or<br>value of the<br>subject-matter<br>exceeds | But does not<br>exceed. | Proper Fee. |
|--------------------------------------------------------------------|-------------------------|------------|--------------------------------------------------------------------|-------------------------|-------------|
| Rs                                                                 | Rs.                     | Rs A.      | Rs                                                                 | Rs                      | Rs A        |
| 460                                                                | 470                     | 44 8       | 1,100                                                              | 1,200                   | 112 8       |
| 470                                                                | 480                     | 45 8       | 1,200                                                              | 1,300                   | 120 0       |
| 480                                                                | 490                     | 46 8       | 1,300                                                              | 1,400                   | 127 8       |
| 490                                                                | 500                     | 47 8       | 1,400                                                              | 1,500                   | 135 0       |
| 500                                                                | 510                     | 48 8       | 1,500                                                              | 1,600                   | 142 8       |
| 510                                                                | 520                     | 49 8       | 1,600                                                              | 1,700                   | 150 0       |
| 520                                                                | 530                     | 50 8       | 1,700                                                              | 1,800                   | 157 8       |
| 530                                                                | 540                     | 51 8       | 1,800                                                              | 1,900                   | 165 0       |
| 540                                                                | 550                     | 52 8       | 1,900                                                              | 2,000                   | 172 8       |
| 550                                                                | 560                     | 53 8       | 2,000                                                              | 2,100                   | 180 0       |
| 560                                                                | 570                     | 54 8       | 2,100                                                              | 2,200                   | 187 8       |
| 570                                                                | 580                     | 55 8       | 2,200                                                              | 2,300                   | 195 0       |
| 580                                                                | 590                     | 56 8       | 2,300                                                              | 2,400                   | 202 8       |
| 590                                                                | 600                     | 57 8       | 2,400                                                              | 2,500                   | 210 0       |
| 600                                                                | 610                     | 58 8       | 2,500                                                              | 2,600                   | 217 8       |
| 610                                                                | 620                     | 59 8       | 2,600                                                              | 2,700                   | 225 0       |
| 620                                                                | 630                     | 60 8       | 2,700                                                              | 2,800                   | 232 8       |
| 630                                                                | 640                     | 61 8       | 2,800                                                              | 2,900                   | 240 0       |
| 640                                                                | 650                     | 62 8       | 2,900                                                              | 3,000                   | 247 8       |
| 650                                                                | 660                     | 63 8       | 3,000                                                              | 3,100                   | 255 0       |
| 660                                                                | 670                     | 64 8       | 3,100                                                              | 3,200                   | 262 8       |
| 670                                                                | 680                     | 65 8       | 3,200                                                              | 3,300                   | 270 0       |
| 680                                                                | 690                     | 66 8       | 3,300                                                              | 3,400                   | 277 8       |
| 690                                                                | 700                     | 67 8       | 3,400                                                              | 3,500                   | 285 0       |
| 700                                                                | 710                     | 68 8       | 3,500                                                              | 3,600                   | 292 8       |
| 710                                                                | 720                     | 69 8       | 3,600                                                              | 3,700                   | 300 0       |
| 720                                                                | 730                     | 70 8       | 3,700                                                              | 3,800                   | 307 8       |
| 730                                                                | 740                     | 71 8       | 3,800                                                              | 3,900                   | 315 0       |
| 740                                                                | 750                     | 72 8       | 3,900                                                              | 4,000                   | 322 8       |
| 750                                                                | 760                     | 73 8       | 4,000                                                              | 4,100                   | 330 0       |
| 760                                                                | 770                     | 74 8       | 4,100                                                              | 4,200                   | 337 8       |
| 770                                                                | 780                     | 75 8       | 4,200                                                              | 4,300                   | 345 0       |
| 780                                                                | 790                     | 76 8       | 4,300                                                              | 4,400                   | 352 8       |
| 790                                                                | 800                     | 77 8       | 4,400                                                              | 4,500                   | 360 0       |
| 800                                                                | 810                     | 78 8       | 4,500                                                              | 4,600                   | 367 8       |
| 810                                                                | 820                     | 79 8       | 4,600                                                              | 4,700                   | 375 0       |
| 820                                                                | 830                     | 80 8       | 4,700                                                              | 4,800                   | 382 8       |
| 830                                                                | 840                     | 81 8       | 4,800                                                              | 4,900                   | 390 0       |
| 840                                                                | 850                     | 82 8       | 4,900                                                              | 5,000                   | 397 8       |
| 850                                                                | 860                     | 83 8       | 5,000                                                              | 5,250                   | 412 8       |
| 860                                                                | 870                     | 84 8       | 5,250                                                              | 5,500                   | 427 8       |
| 870                                                                | 880                     | 85 8       | 5,500                                                              | 5,750                   | 442 3       |
| 880                                                                | 890                     | 86 8       | 5,750                                                              | 6,000                   | 457 8       |
| 890                                                                | 900                     | 87 8       | 6,000                                                              | 6,250                   | 472 8       |
| 900                                                                | 910                     | 88 8       | 6,250                                                              | 6,500                   | 487 8       |
| 910                                                                | 920                     | 89 8       | 6,500                                                              | 6,750                   | 502 8       |
| 920                                                                | 930                     | 90 8       | 6,750                                                              | 7,000                   | 517 8       |
| 930                                                                | 940                     | 91 8       | 7,000                                                              | 7,250                   | 532 8       |
| 940                                                                | 950                     | 92 8       | 7,250                                                              | 7,500                   | 547 8       |
| 950                                                                | 960                     | 93 8       | 7,500                                                              | 7,750                   | 562 8       |
| 960                                                                | 970                     | 94 8       | 7,750                                                              | 8,000                   | 577 1       |
| 970                                                                | 980                     | 95 8       | 8,000                                                              | 8,250                   | 592 8       |
| 980                                                                | 990                     | 96 8       | 8,250                                                              | 8,500                   | 607 8       |
| 990                                                                | 1,000                   | 97 8       | 8,500                                                              | 8,750                   | 622 8       |
| 1,000                                                              | 1,100                   | 105 0      | 8,750                                                              | 9,000                   | 637 8       |

| When the<br>amount or<br>value of the<br>subject-matter<br>exceeds | But does not<br>exceed. | Proper Fee. | When the<br>amount or<br>value of the<br>subject-matter<br>exceeds. | But does not<br>exceed | Proper Fee. |
|--------------------------------------------------------------------|-------------------------|-------------|---------------------------------------------------------------------|------------------------|-------------|
| Rs.                                                                | Rs.                     | Rs. A.      | Rs.                                                                 | Rs.                    | Rs. A.      |
| 9,000                                                              | 9,250                   | 652 8       | 38,000                                                              | 40,000                 | 1,597 8     |
| 9,250                                                              | 9,500                   | 667 8       | 40,000                                                              | 42,000                 | 1,627 8     |
| 9,500                                                              | 9,750                   | 682 8       | 42,000                                                              | 44,000                 | 1,657 8     |
| 9,750                                                              | 10,000                  | 697 8       | 44,000                                                              | 46,000                 | 1,687 8     |
| 10,000                                                             | 10,500                  | 720 0       | 46,000                                                              | 48,000                 | 1,717 8     |
| 10,500                                                             | 11,000                  | 742 8       | 48,000                                                              | 50,000                 | 1,747 8     |
| 11,000                                                             | 11,500                  | 765 0       | 50,000                                                              | 55,000                 | 1,785 0     |
| 11,500                                                             | 12,000                  | 787 8       | 55,000                                                              | 60,000                 | 1,822 8     |
| 12,000                                                             | 12,500                  | 810 0       | 60,000                                                              | 65,000                 | 1,860 0     |
| 12,500                                                             | 13,000                  | 832 8       | 65,000                                                              | 70,000                 | 1,897 8     |
| 13,000                                                             | 13,500                  | 855 0       | 70,000                                                              | 75,000                 | 1,935 0     |
| 13,500                                                             | 14,000                  | 877 8       | 75,000                                                              | 80,000                 | 1,972 8     |
| 14,000                                                             | 14,500                  | 900 0       | 80,000                                                              | 85,000                 | 2,010 0     |
| 14,500                                                             | 15,000                  | 922 8       | 85,000                                                              | 90,000                 | 2,047 8     |
| 15,000                                                             | 15,500                  | 945 0       | 90,000                                                              | 95,000                 | 2,085 0     |
| 15,500                                                             | 16,000                  | 967 8       | 95,000                                                              | 1,00,000               | 2,122 8     |
| 16,000                                                             | 16,500                  | 990 0       | 1,00,000                                                            | 1,05,000               | 2,160 0     |
| 16,500                                                             | 17,000                  | 1,012 8     | 1,05,000                                                            | 1,10,000               | 2,197 8     |
| 17,000                                                             | 17,500                  | 1,035 0     | 1,10,000                                                            | 1,15,000               | 2,235 0     |
| 17,500                                                             | 18,000                  | 1,057 8     | 1,15,000                                                            | 1,20,000               | 2,272 8     |
| 18,000                                                             | 18,500                  | 1,080 0     | 1,20,000                                                            | 1,25,000               | 2,310 0     |
| 18,500                                                             | 19,000                  | 1,102 8     | 1,25,000                                                            | 1,30,000               | 2,347 8     |
| 19,000                                                             | 19,500                  | 1,125 0     | 1,30,000                                                            | 1,35,000               | 2,385 0     |
| 19,500                                                             | 20,000                  | 1,147 8     | 1,35,000                                                            | 1,40,000               | 2,422 8     |
| 20,000                                                             | 21,000                  | 1,177 8     | 1,40,000                                                            | 1,45,000               | 2,460 0     |
| 21,000                                                             | 22,000                  | 1,207 8     | 1,45,000                                                            | 1,50,000               | 2,497 8     |
| 22,000                                                             | 23,000                  | 1,237 8     | 1,50,000                                                            | 1,55,000               | 2,535 0     |
| 23,000                                                             | 24,000                  | 1,267 8     | 1,55,000                                                            | 1,60,000               | 2,572 8     |
| 24,000                                                             | 25,000                  | 1,297 8     | 1,60,000                                                            | 1,65,000               | 2,610 0     |
| 25,000                                                             | 26,000                  | 1,327 8     | 1,65,000                                                            | 1,70,000               | 2,647 8     |
| 26,000                                                             | 27,000                  | 1,357 8     | 1,70,000                                                            | 1,75,000               | 2,685 0     |
| 27,000                                                             | 28,000                  | 1,387 8     | 1,75,000                                                            | 1,80,000               | 2,722 8     |
| 28,000                                                             | 29,000                  | 1,417 8     | 1,80,000                                                            | 1,85,000               | 2,760 0     |
| 29,000                                                             | 30,000                  | 1,447 8     | 1,85,000                                                            | 1,90,000               | 2,797 8     |
| 30,000                                                             | 32,000                  | 1,477 8     | 1,90,000                                                            | 1,95,000               | 2,835 0     |
| 32,000                                                             | 34,000                  | 1,507 8     | 1,95,000                                                            | 2,00,000               | 2,872 8     |
| 34,000                                                             | 36,000                  | 1,537 8     | 2,00,000                                                            | 2,05,000               | 2,910 0     |
| 36,000                                                             | 38,000                  | 1,567 8     |                                                                     |                        |             |

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, for example, when the amount or value of the subject-matter exceeds.

|          |     |         |           |     |         |
|----------|-----|---------|-----------|-----|---------|
| 3,00,000 | ... | 3,660 0 | 8,00,000  | ... | 7,410 0 |
| 4,00,000 | ... | 4,410 0 | 9,00,000  | ... | 8,160 0 |
| 5,00,000 | ... | 5,160 0 | 10,00,000 | ... | 8,910 0 |
| 6,00,000 | ... | 5,910 0 | 11,00,000 | ... | 9,660 0 |
| 7,00,000 | ... | 6,660 0 |           |     |         |

| When the amount or value of the estate is estimated | When the amount or value of the estate is estimated | When the amount or value of the estate is estimated | When the amount or value of the estate is estimated | When the amount or value of the estate is estimated | When the amount or value of the estate is estimated |
|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|
| Rs.                                                 | Pais.                                               | Rs. A.                                              | Rs.                                                 | Pais.                                               | Rs. A.                                              |
| 150                                                 | 150                                                 | 15 0                                                | 150                                                 | 150                                                 | 15 0                                                |
| 155                                                 | 155                                                 | 15 5                                                | 155                                                 | 155                                                 | 15 5                                                |
| 160                                                 | 160                                                 | 16 0                                                | 160                                                 | 160                                                 | 16 0                                                |
| 165                                                 | 165                                                 | 16 5                                                | 165                                                 | 165                                                 | 16 5                                                |
| 170                                                 | 170                                                 | 17 0                                                | 170                                                 | 170                                                 | 17 0                                                |
| 175                                                 | 175                                                 | 17 5                                                | 175                                                 | 175                                                 | 17 5                                                |
| 180                                                 | 180                                                 | 18 0                                                | 180                                                 | 180                                                 | 18 0                                                |
| 185                                                 | 185                                                 | 18 5                                                | 185                                                 | 185                                                 | 18 5                                                |
| 190                                                 | 190                                                 | 19 0                                                | 190                                                 | 190                                                 | 19 0                                                |
| 195                                                 | 195                                                 | 19 5                                                | 195                                                 | 195                                                 | 19 5                                                |
| 200                                                 | 200                                                 | 20 0                                                | 200                                                 | 200                                                 | 20 0                                                |
| 205                                                 | 205                                                 | 20 5                                                | 205                                                 | 205                                                 | 20 5                                                |
| 210                                                 | 210                                                 | 21 0                                                | 210                                                 | 210                                                 | 21 0                                                |
| 215                                                 | 215                                                 | 21 5                                                | 215                                                 | 215                                                 | 21 5                                                |
| 220                                                 | 220                                                 | 22 0                                                | 220                                                 | 220                                                 | 22 0                                                |
| 225                                                 | 225                                                 | 22 5                                                | 225                                                 | 225                                                 | 22 5                                                |
| 230                                                 | 230                                                 | 23 0                                                | 230                                                 | 230                                                 | 23 0                                                |
| 235                                                 | 235                                                 | 23 5                                                | 235                                                 | 235                                                 | 23 5                                                |
| 240                                                 | 240                                                 | 24 0                                                | 240                                                 | 240                                                 | 24 0                                                |
| 245                                                 | 245                                                 | 24 5                                                | 245                                                 | 245                                                 | 24 5                                                |
| 250                                                 | 250                                                 | 25 0                                                | 250                                                 | 250                                                 | 25 0                                                |
| 255                                                 | 255                                                 | 25 5                                                | 255                                                 | 255                                                 | 25 5                                                |
| 260                                                 | 260                                                 | 26 0                                                | 260                                                 | 260                                                 | 26 0                                                |
| 265                                                 | 265                                                 | 26 5                                                | 265                                                 | 265                                                 | 26 5                                                |
| 270                                                 | 270                                                 | 27 0                                                | 270                                                 | 270                                                 | 27 0                                                |
| 275                                                 | 275                                                 | 27 5                                                | 275                                                 | 275                                                 | 27 5                                                |
| 280                                                 | 280                                                 | 28 0                                                | 280                                                 | 280                                                 | 28 0                                                |
| 285                                                 | 285                                                 | 28 5                                                | 285                                                 | 285                                                 | 28 5                                                |
| 290                                                 | 290                                                 | 29 0                                                | 290                                                 | 290                                                 | 29 0                                                |
| 295                                                 | 295                                                 | 29 5                                                | 295                                                 | 295                                                 | 29 5                                                |
| 300                                                 | 300                                                 | 30 0                                                | 300                                                 | 300                                                 | 30 0                                                |
| 305                                                 | 305                                                 | 30 5                                                | 305                                                 | 305                                                 | 30 5                                                |
| 310                                                 | 310                                                 | 31 0                                                | 310                                                 | 310                                                 | 31 0                                                |
| 315                                                 | 315                                                 | 31 5                                                | 315                                                 | 315                                                 | 31 5                                                |
| 320                                                 | 320                                                 | 32 0                                                | 320                                                 | 320                                                 | 32 0                                                |
| 325                                                 | 325                                                 | 32 5                                                | 325                                                 | 325                                                 | 32 5                                                |
| 330                                                 | 330                                                 | 33 0                                                | 330                                                 | 330                                                 | 33 0                                                |
| 335                                                 | 335                                                 | 33 5                                                | 335                                                 | 335                                                 | 33 5                                                |
| 340                                                 | 340                                                 | 34 0                                                | 340                                                 | 340                                                 | 34 0                                                |
| 345                                                 | 345                                                 | 34 5                                                | 345                                                 | 345                                                 | 34 5                                                |
| 350                                                 | 350                                                 | 35 0                                                | 350                                                 | 350                                                 | 35 0                                                |
| 355                                                 | 355                                                 | 35 5                                                | 355                                                 | 355                                                 | 35 5                                                |
| 360                                                 | 360                                                 | 36 0                                                | 360                                                 | 360                                                 | 36 0                                                |
| 365                                                 | 365                                                 | 36 5                                                | 365                                                 | 365                                                 | 36 5                                                |
| 370                                                 | 370                                                 | 37 0                                                | 370                                                 | 370                                                 | 37 0                                                |
| 375                                                 | 375                                                 | 37 5                                                | 375                                                 | 375                                                 | 37 5                                                |
| 380                                                 | 380                                                 | 38 0                                                | 380                                                 | 380                                                 | 38 0                                                |
| 385                                                 | 385                                                 | 38 5                                                | 385                                                 | 385                                                 | 38 5                                                |
| 390                                                 | 390                                                 | 39 0                                                | 390                                                 | 390                                                 | 39 0                                                |
| 395                                                 | 395                                                 | 39 5                                                | 395                                                 | 395                                                 | 39 5                                                |
| 400                                                 | 400                                                 | 40 0                                                | 400                                                 | 400                                                 | 40 0                                                |
| 405                                                 | 405                                                 | 40 5                                                | 405                                                 | 405                                                 | 40 5                                                |
| 410                                                 | 410                                                 | 41 0                                                | 410                                                 | 410                                                 | 41 0                                                |
| 415                                                 | 415                                                 | 41 5                                                | 415                                                 | 415                                                 | 41 5                                                |
| 420                                                 | 420                                                 | 42 0                                                | 420                                                 | 420                                                 | 42 0                                                |
| 425                                                 | 425                                                 | 42 5                                                | 425                                                 | 425                                                 | 42 5                                                |
| 430                                                 | 430                                                 | 43 0                                                | 430                                                 | 430                                                 | 43 0                                                |
| 435                                                 | 435                                                 | 43 5                                                | 435                                                 | 435                                                 | 43 5                                                |
| 440                                                 | 440                                                 | 44 0                                                | 440                                                 | 440                                                 | 44 0                                                |
| 445                                                 | 445                                                 | 44 5                                                | 445                                                 | 445                                                 | 44 5                                                |
| 450                                                 | 450                                                 | 45 0                                                | 450                                                 | 450                                                 | 45 0                                                |
| 455                                                 | 455                                                 | 45 5                                                | 455                                                 | 455                                                 | 45 5                                                |
| 460                                                 | 460                                                 | 46 0                                                | 460                                                 | 460                                                 | 46 0                                                |
| 465                                                 | 465                                                 | 46 5                                                | 465                                                 | 465                                                 | 46 5                                                |
| 470                                                 | 470                                                 | 47 0                                                | 470                                                 | 470                                                 | 47 0                                                |
| 475                                                 | 475                                                 | 47 5                                                | 475                                                 | 475                                                 | 47 5                                                |
| 480                                                 | 480                                                 | 48 0                                                | 480                                                 | 480                                                 | 48 0                                                |
| 485                                                 | 485                                                 | 48 5                                                | 485                                                 | 485                                                 | 48 5                                                |
| 490                                                 | 490                                                 | 49 0                                                | 490                                                 | 490                                                 | 49 0                                                |
| 495                                                 | 495                                                 | 49 5                                                | 495                                                 | 495                                                 | 49 5                                                |
| 500                                                 | 500                                                 | 50 0                                                | 500                                                 | 500                                                 | 50 0                                                |
| 505                                                 | 505                                                 | 50 5                                                | 505                                                 | 505                                                 | 50 5                                                |
| 510                                                 | 510                                                 | 51 0                                                | 510                                                 | 510                                                 | 51 0                                                |
| 515                                                 | 515                                                 | 51 5                                                | 515                                                 | 515                                                 | 51 5                                                |
| 520                                                 | 520                                                 | 52 0                                                | 520                                                 | 520                                                 | 52 0                                                |
| 525                                                 | 525                                                 | 52 5                                                | 525                                                 | 525                                                 | 52 5                                                |
| 530                                                 | 530                                                 | 53 0                                                | 530                                                 | 530                                                 | 53 0                                                |
| 535                                                 | 535                                                 | 53 5                                                | 535                                                 | 535                                                 | 53 5                                                |
| 540                                                 | 540                                                 | 54 0                                                | 540                                                 | 540                                                 | 54 0                                                |
| 545                                                 | 545                                                 | 54 5                                                | 545                                                 | 545                                                 | 54 5                                                |
| 550                                                 | 550                                                 | 55 0                                                | 550                                                 | 550                                                 | 55 0                                                |
| 555                                                 | 555                                                 | 55 5                                                | 555                                                 | 555                                                 | 55 5                                                |
| 560                                                 | 560                                                 | 56 0                                                | 560                                                 | 560                                                 | 56 0                                                |
| 565                                                 | 565                                                 | 56 5                                                | 565                                                 | 565                                                 | 56 5                                                |
| 570                                                 | 570                                                 | 57 0                                                | 570                                                 | 570                                                 | 57 0                                                |
| 575                                                 | 575                                                 | 57 5                                                | 575                                                 | 575                                                 | 57 5                                                |
| 580                                                 | 580                                                 | 58 0                                                | 580                                                 | 580                                                 | 58 0                                                |
| 585                                                 | 585                                                 | 58 5                                                | 585                                                 | 585                                                 | 58 5                                                |
| 590                                                 | 590                                                 | 59 0                                                | 590                                                 | 590                                                 | 59 0                                                |
| 595                                                 | 595                                                 | 59 5                                                | 595                                                 | 595                                                 | 59 5                                                |
| 600                                                 | 600                                                 | 60 0                                                | 600                                                 | 600                                                 | 60 0                                                |
| 605                                                 | 605                                                 | 60 5                                                | 605                                                 | 605                                                 | 60 5                                                |
| 610                                                 | 610                                                 | 61 0                                                | 610                                                 | 610                                                 | 61 0                                                |
| 615                                                 | 615                                                 | 61 5                                                | 615                                                 | 615                                                 | 61 5                                                |
| 620                                                 | 620                                                 | 62 0                                                | 620                                                 | 620                                                 | 62 0                                                |
| 625                                                 | 625                                                 | 62 5                                                | 625                                                 | 625                                                 | 62 5                                                |
| 630                                                 | 630                                                 | 63 0                                                | 630                                                 | 630                                                 | 63 0                                                |
| 635                                                 | 635                                                 | 63 5                                                | 635                                                 | 635                                                 | 63 5                                                |
| 640                                                 | 640                                                 | 64 0                                                | 640                                                 | 640                                                 | 64 0                                                |
| 645                                                 | 645                                                 | 64 5                                                | 645                                                 | 645                                                 | 64 5                                                |
| 650                                                 | 650                                                 | 65 0                                                | 650                                                 | 650                                                 | 65 0                                                |
| 655                                                 | 655                                                 | 65 5                                                | 655                                                 | 655                                                 | 65 5                                                |
| 660                                                 | 660                                                 | 66 0                                                | 660                                                 | 660                                                 | 66 0                                                |
| 665                                                 | 665                                                 | 66 5                                                | 665                                                 | 665                                                 | 66 5                                                |
| 670                                                 | 670                                                 | 67 0                                                | 670                                                 | 670                                                 | 67 0                                                |
| 675                                                 | 675                                                 | 67 5                                                | 675                                                 | 675                                                 | 67 5                                                |
| 680                                                 | 680                                                 | 68 0                                                | 680                                                 | 680                                                 | 68 0                                                |
| 685                                                 | 685                                                 | 68 5                                                | 685                                                 | 685                                                 | 68 5                                                |
| 690                                                 | 690                                                 | 69 0                                                | 690                                                 | 690                                                 | 69 0                                                |
| 695                                                 | 695                                                 | 69 5                                                | 695                                                 | 695                                                 | 69 5                                                |
| 700                                                 | 700                                                 | 70 0                                                | 700                                                 | 700                                                 | 70 0                                                |
| 705                                                 | 705                                                 | 70 5                                                | 705                                                 | 705                                                 | 70 5                                                |
| 710                                                 | 710                                                 | 71 0                                                | 710                                                 | 710                                                 | 71 0                                                |
| 715                                                 | 715                                                 | 71 5                                                | 715                                                 | 715                                                 | 71 5                                                |
| 720                                                 | 720                                                 | 72 0                                                | 720                                                 | 720                                                 | 72 0                                                |
| 725                                                 | 725                                                 | 72 5                                                | 725                                                 | 725                                                 | 72 5                                                |
| 730                                                 | 730                                                 | 73 0                                                | 730                                                 | 730                                                 | 73 0                                                |
| 735                                                 | 735                                                 | 73 5                                                | 735                                                 | 735                                                 | 73 5                                                |
| 740                                                 | 740                                                 | 74 0                                                | 740                                                 | 740                                                 | 74 0                                                |
| 745                                                 | 745                                                 | 74 5                                                | 745                                                 | 745                                                 | 74 5                                                |
| 750                                                 | 750                                                 | 75 0                                                | 750                                                 | 750                                                 | 75 0                                                |
| 755                                                 | 755                                                 | 75 5                                                | 755                                                 | 755                                                 | 75 5                                                |
| 760                                                 | 760                                                 | 76 0                                                | 760                                                 | 760                                                 | 76 0                                                |
| 765                                                 | 765                                                 | 76 5                                                | 765                                                 | 765                                                 | 76 5                                                |
| 770                                                 | 770                                                 | 77 0                                                | 770                                                 | 770                                                 | 77 0                                                |
| 775                                                 | 775                                                 | 77 5                                                | 775                                                 | 775                                                 | 77 5                                                |
| 780                                                 | 780                                                 | 78 0                                                | 780                                                 | 780                                                 | 78 0                                                |
| 785                                                 | 785                                                 | 78 5                                                | 785                                                 | 785                                                 | 78 5                                                |
| 790                                                 | 790                                                 | 79 0                                                | 790                                                 | 790                                                 | 79 0                                                |
| 795                                                 | 795                                                 | 79 5                                                | 795                                                 | 795                                                 | 79 5                                                |
| 800                                                 | 800                                                 | 80 0                                                | 800                                                 | 800                                                 | 80 0                                                |
| 805                                                 | 805                                                 | 80 5                                                | 805                                                 | 805                                                 | 80 5                                                |
| 810                                                 | 810                                                 | 81 0                                                | 810                                                 | 810                                                 | 81 0                                                |
| 815                                                 | 815                                                 | 81 5                                                | 815                                                 | 815                                                 | 81 5                                                |
| 820                                                 | 820                                                 | 82 0                                                | 820                                                 | 820                                                 | 82 0                                                |
| 825                                                 | 825                                                 | 82 5                                                | 825                                                 | 825                                                 | 82 5                                                |
| 830                                                 | 830                                                 | 83 0                                                | 830                                                 | 830                                                 | 83 0                                                |
| 835                                                 | 835                                                 | 83 5                                                | 835                                                 | 835                                                 | 83 5                                                |
| 840                                                 | 840                                                 | 84 0                                                | 840                                                 | 840                                                 | 84 0                                                |
| 845                                                 | 845                                                 | 84 5                                                | 845                                                 | 845                                                 | 84 5                                                |
| 850                                                 | 850                                                 | 85 0                                                | 850                                                 | 850                                                 | 85 0                                                |
| 855                                                 | 855                                                 | 85 5                                                | 855                                                 | 855                                                 | 85 5                                                |
| 860                                                 | 860                                                 | 86 0                                                | 860                                                 | 860                                                 | 86 0                                                |
| 865                                                 | 865                                                 | 86 5                                                | 865                                                 | 865                                                 | 86 5                                                |
| 870                                                 | 870                                                 | 87 0                                                | 870                                                 | 870                                                 | 87 0                                                |
| 875                                                 | 875                                                 | 87 5                                                | 875                                                 | 875                                                 | 87 5                                                |
| 880                                                 | 880                                                 | 88 0                                                | 880                                                 | 880                                                 | 88 0                                                |
| 885                                                 | 885                                                 | 88 5                                                | 885                                                 | 885                                                 | 88 5                                                |
| 890                                                 | 890                                                 | 89 0                                                | 890                                                 | 890                                                 | 89 0                                                |
| 895                                                 | 895                                                 | 89 5                                                | 895                                                 | 895                                                 | 89 5                                                |
| 900                                                 | 900                                                 | 90 0                                                | 900                                                 | 900                                                 | 90 0                                                |
| 905                                                 | 905                                                 | 90 5                                                | 905                                                 | 905                                                 | 90 5                                                |
| 910                                                 | 910                                                 | 91 0                                                | 910                                                 | 910                                                 | 91 0                                                |
| 915                                                 | 915                                                 | 91 5                                                | 915                                                 | 915                                                 | 91 5                                                |
| 920                                                 | 920                                                 | 92 0                                                | 920                                                 | 920                                                 | 92 0                                                |
| 925                                                 | 925                                                 | 92 5                                                | 925                                                 | 925                                                 | 92 5                                                |
| 930                                                 | 930                                                 | 93 0                                                | 930                                                 | 930                                                 | 93 0                                                |
| 935                                                 | 935                                                 | 93 5                                                | 935                                                 | 935                                                 | 93 5                                                |
| 940                                                 | 940                                                 | 94 0                                                | 940                                                 | 940                                                 | 94 0                                                |
| 945                                                 | 945                                                 | 94 5                                                | 945                                                 | 945                                                 | 94 5                                                |
| 950                                                 | 950                                                 | 95 0                                                | 950                                                 | 950                                                 | 95 0                                                |
| 955                                                 | 955                                                 | 95 5                                                | 955                                                 | 955                                                 | 95 5                                                |
| 960                                                 | 960                                                 | 96 0                                                | 960                                                 | 960                                                 | 96 0                                                |
| 965                                                 | 965                                                 | 96 5                                                | 965                                                 | 965                                                 | 96 5                                                |
| 970                                                 | 970                                                 | 97 0                                                | 970                                                 | 970                                                 | 97 0                                                |
| 975                                                 | 975                                                 | 97 5                                                | 975                                                 | 975                                                 | 97 5                                                |
| 980                                                 | 980                                                 | 98 0                                                | 980                                                 | 980                                                 | 98 0                                                |
| 985                                                 | 985                                                 | 98 5                                                | 985                                                 | 985                                                 | 98 5                                                |
| 990                                                 | 990                                                 | 99 0                                                | 990                                                 | 990                                                 | 99 0                                                |
| 995                                                 | 995                                                 | 99 5                                                | 995                                                 | 995                                                 | 99 5                                                |
| 1,000                                               | 1,000                                               | 100 0                                               | 1,000                                               | 1,000                                               | 100 0                                               |

| When the amount or value of the subject-matter exceeds | But does not exceed. | Proper Fee. | When the amount or value of the subject-matter exceeds. | But does not exceed | Proper Fee. |
|--------------------------------------------------------|----------------------|-------------|---------------------------------------------------------|---------------------|-------------|
| Rs.                                                    | Rs.                  | Rs. A.      | Rs.                                                     | Rs.                 | Rs. A.      |
| 9,000                                                  | 9,250                | 652 8       | 38,000                                                  | 40,000              | 1,597 8     |
| 9,250                                                  | 9,500                | 667 8       | 40,000                                                  | 42,000              | 1,627 8     |
| 9,500                                                  | 9,750                | 682 8       | 42,000                                                  | 44,000              | 1,657 8     |
| 9,750                                                  | 10,000               | 697 8       | 44,000                                                  | 46,000              | 1,687 8     |
| 10,000                                                 | 10,500               | 720 0       | 46,000                                                  | 48,000              | 1,717 8     |
| 10,500                                                 | 11,000               | 742 8       | 48,000                                                  | 50,000              | 1,747 8     |
| 11,000                                                 | 11,500               | 765 0       | 50,000                                                  | 55,000              | 1,785 0     |
| 11,500                                                 | 12,000               | 787 8       | 55,000                                                  | 60,000              | 1,822 8     |
| 12,000                                                 | 12,500               | 810 0       | 60,000                                                  | 65,000              | 1,860 0     |
| 12,500                                                 | 13,000               | 832 8       | 65,000                                                  | 70,000              | 1,897 8     |
| 13,000                                                 | 13,500               | 855 0       | 70,000                                                  | 75,000              | 1,935 0     |
| 13,500                                                 | 14,000               | 877 8       | 75,000                                                  | 80,000              | 1,972 8     |
| 14,000                                                 | 14,500               | 900 0       | 80,000                                                  | 85,000              | 2,010 0     |
| 14,500                                                 | 15,000               | 922 8       | 85,000                                                  | 90,000              | 2,047 8     |
| 15,000                                                 | 15,500               | 945 0       | 90,000                                                  | 95,000              | 2,085 0     |
| 15,500                                                 | 16,000               | 967 8       | 95,000                                                  | 1,00,000            | 2,122 8     |
| 16,000                                                 | 16,500               | 990 0       | 1,00,000                                                | 1,05,000            | 2,160 0     |
| 16,500                                                 | 17,000               | 1,012 8     | 1,05,000                                                | 1,10,000            | 2,197 8     |
| 17,000                                                 | 17,500               | 1,035 0     | 1,10,000                                                | 1,15,000            | 2,235 0     |
| 17,500                                                 | 18,000               | 1,057 8     | 1,15,000                                                | 1,20,000            | 2,272 8     |
| 18,000                                                 | 18,500               | 1,080 0     | 1,20,000                                                | 1,25,000            | 2,310 0     |
| 18,500                                                 | 19,000               | 1,102 8     | 1,25,000                                                | 1,30,000            | 2,347 8     |
| 19,000                                                 | 19,500               | 1,125 0     | 1,30,000                                                | 1,35,000            | 2,385 0     |
| 19,500                                                 | 20,000               | 1,147 8     | 1,35,000                                                | 1,40,000            | 2,422 8     |
| 20,000                                                 | 21,000               | 1,177 8     | 1,40,000                                                | 1,45,000            | 2,460 0     |
| 21,000                                                 | 22,000               | 1,207 8     | 1,45,000                                                | 1,50,000            | 2,497 8     |
| 22,000                                                 | 23,000               | 1,237 8     | 1,50,000                                                | 1,55,000            | 2,535 0     |
| 23,000                                                 | 24,000               | 1,267 8     | 1,55,000                                                | 1,60,000            | 2,572 8     |
| 24,000                                                 | 25,000               | 1,297 8     | 1,60,000                                                | 1,65,000            | 2,610 0     |
| 25,000                                                 | 26,000               | 1,327 8     | 1,65,000                                                | 1,70,000            | 2,647 8     |
| 26,000                                                 | 27,000               | 1,357 8     | 1,70,000                                                | 1,75,000            | 2,685 0     |
| 27,000                                                 | 28,000               | 1,387 8     | 1,75,000                                                | 1,80,000            | 2,722 8     |
| 28,000                                                 | 29,000               | 1,417 8     | 1,80,000                                                | 1,85,000            | 2,760 0     |
| 29,000                                                 | 30,000               | 1,447 8     | 1,85,000                                                | 1,90,000            | 2,797 8     |
| 30,000                                                 | 32,000               | 1,477 8     | 1,90,000                                                | 1,95,000            | 2,835 0     |
| 32,000                                                 | 34,000               | 1,507 8     | 1,95,000                                                | 2,00,000            | 2,872 8     |
| 34,000                                                 | 36,000               | 1,537 8     | 2,00,000                                                | 2,05,000            | 2,910 0     |
| 36,000                                                 | 38,000               | 1,567 8     |                                                         |                     |             |

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, for example, when the amount or value of the subject-matter exceeds

|          |     |         |           |     |         |
|----------|-----|---------|-----------|-----|---------|
| 3,00,000 | ... | 3,660 0 | 8,00,000  | ... | 7,410 0 |
| 4,00,000 | ... | 4,410 0 | 9,00,000  | ... | 8,160 0 |
| 5,00,000 | ... | 5,160 0 | 10,00,000 | ... | 8,910 0 |
| 6,00,000 | ... | 5,910 0 | 11,00,000 | ... | 9,660 0 |
| 7,00,000 | ... | 6,660 0 |           |     |         |

## SCHEDULE C

[See section 12 (4) of the Bihar and Orissa Court fees  
(Amendment) Act, 1922]

| Proper fees set out in Schedule I of the principal Act |                                                                                                                                                                                                                                                                                                 | Proper fees to be substituted                                                                                                      |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| Article 1                                              | <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">           One anna<br/>Eight annas<br/>One rupee<br/><br/>Two rupees         </div>                                                                            | Two annas<br>Twelve annas<br>One rupee and eight annas<br>Three rupees                                                             |
| Article 1A                                             | <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">           Twelve annas in addition to any fee levied on the application under clause (a) clause (b) or clause (d) of Article 1 of this Schedule         </div> | One rupee in addition to any fee levied on the application under clause (a) clause (b) or clause (d) of Article 1 of this Schedule |
| Article 10                                             | <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">           Eight annas<br/>One rupee<br/>Two rupees         </div>                                                                                              | One rupee<br>Two rupees<br>Three rupees                                                                                            |
| Article 12                                             | <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">           Eight annas<br/><br/>Two rupees         </div>                                                                                                       | One rupee<br><br>Four rupees                                                                                                       |
| Article 12                                             | Five rupees                                                                                                                                                                                                                                                                                     | Ten rupees                                                                                                                         |
| Article 14                                             | Five rupees                                                                                                                                                                                                                                                                                     | Ten rupees                                                                                                                         |
| Articles 17 18 and 19                                  | Ten rupees                                                                                                                                                                                                                                                                                      | Fifteen rupees                                                                                                                     |
| Articles 20 and 21                                     | Twenty rupees                                                                                                                                                                                                                                                                                   | Thirty rupees                                                                                                                      |

## APPENDIX D

THE MADRAS COURT-FEES (AMENDMENT)  
ACT, 1922

## ACT V OF 1922.

*Passed by the Legislative Council of the Governor of Madras*

*Received the assent of the Governor on the 30th March 1922, and that of the Governor-General on the 17th April 1922, and published in Part IV of the Madras Gazette, dated the 18th April 1922,*

*An Act to amend the Court Fees Act, 1870*

Whereas it is expedient to amend the Court Fees Act, 1870, in its application to the Presidency of Madras, It is hereby enacted as follows —

Short title and application      1 (a) This Act may be called the Madras Court Fees (Amendment) Act, 1922

(b) It extends to the whole of the Presidency of Madras

Interpretation Clause 1870      2 (1) In this Act 'the Principal Act' shall mean 'the Court Fees Act, 1870'



(2) In this Act and in the principal Act, unless there is anything repugnant in the subject or context, "Memorandum of appeal" shall include memorandum of cross-objection

3 In the second paragraph of section 5 of the principal Act, the words 'Registrar' and 'Chief Judge' shall be substituted for 'clerk of the Court' and 'first Judge' respectively

4 In section 7 of the principal Act, the words "except suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908," shall be added between the words "mentioned" and "shall"

5 In section 7 (ii) of the principal Act, after the words "shall be deemed to be" the words "in suits for maintenance, the amount claimed to be payable for one year and in other suits" shall be added

6 The following shall be added after the words, "Memorandum of appeal" in section 7, paragraph (iv) of the principal Act —

"Provided that in suits coming under sub clause (c) in cases where the relief sought is with reference to any immovable property such valuation shall not be less than half the value of the immovable property calculated in the manner provided for by paragraph (v) of this section

7 In section 7 of the principal Act between paragraph (iv) and (v) the following paragraph shall be added as (iv) A —

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value, according to the value of the subject matter of the suit, and such value shall be deemed to be—

If the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property."

8 In section 7 (v) of the principal Act —

Amendment of section 7 (v) in (a) for the word "ten" the word "twenty" shall be substituted,

in (b) for the word "five" the word "ten" shall be substituted, and after clause (d) the following proviso shall be substituted for the existing proviso —

"Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph"

9 For the second paragraph of section 11 of the principal Act the following paragraph shall be substituted —

which have accrued of the suit if the s claimed, no fina actually paid comprised t

of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

'Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.'

Amendment of section 18  
shall be substituted

10 In section 18 of the principal Act for the words "eight annas" the words "one rupee"

Amendment of Schedules I and II

11 For Schedules I and II of the principal Act, the following Schedules shall be substituted —

### SCHEDULE I

#### *Ad valorem Fees*

| Number |                                                                                                                                                                                                               | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Plaint, or written statement pleading a set off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3 | <p>When the amount or value of the subject matter in dispute does not exceed five rupees</p> <p>Eight annas</p> <p>When such amount or value exceeds five rupees for every five rupees or part thereof in excess of five rupees up to one hundred rupees</p> <p>Nine annas</p> <p>When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to one thousand rupees</p> <p>One rupee two annas</p> <p>When such amount or value exceeds one thousand rupees for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees</p> <p>Seven rupees eight annas</p> <p>When such amount or value exceeds five thousand rupees for every two thousand and fifty rupees or part thereof in excess of five thousand rupees up to ten thousand rupees</p> <p>Fifteen rupees</p> <p>When such amount or value exceeds ten thousand rupees for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees</p> <p>Twenty two rupees eight annas</p> <p>When such amount or value exceeds twenty thousand rupees for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees</p> <p>Thirty rupees</p> |

| Number |                                                                                                                                                                                                                                                    | Proper fee                                                                                                                                                                                                                                                                                                                                                            |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | When such amount or value exceeds thirty thousand rupees for every two thousand rupees, or part thereof in excess of thirty thousand rupees up to fifty thousand rupees                                                                            | Thirty rupees                                                                                                                                                                                                                                                                                                                                                         |
|        | When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof, in excess of fifty thousand rupees                                                                                                         | Thirty rupees                                                                                                                                                                                                                                                                                                                                                         |
| 2      | Plaint or written statement pleading a set off or counter claim presented to Court outside the Presidency Town in any suit of the nature cognizable by Court of Small Causes when the amount or value of the subject matter does not exceed Rs 500 | When the amount or value of the subject matter in dispute does not exceed five rupees<br>Six annas                                                                                                                                                                                                                                                                    |
|        | When such amount or value exceeds five rupees for every five rupees or part thereof, in excess of five rupees up to one hundred rupees                                                                                                             | Six annas                                                                                                                                                                                                                                                                                                                                                             |
|        | When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees                                                                                                | Twelve annas                                                                                                                                                                                                                                                                                                                                                          |
| 3      | Plaint in a suit for possession under (the Specific Relief Act 1877, Section 9)                                                                                                                                                                    | An amount of one half the scale of fee prescribed in article 1 above                                                                                                                                                                                                                                                                                                  |
| 4      | Application for review of judgment, if presented on or after the nineteenth day from the date of the decree                                                                                                                                        | The fee leviable on the plaint or memorandum of appeal                                                                                                                                                                                                                                                                                                                |
| 5      | Application for review of judgment if presented before the nineteenth day from the date of the decree                                                                                                                                              | One half of the fee leviable on the plaint or memorandum of appeal                                                                                                                                                                                                                                                                                                    |
| 6      | Copy or translation of a judgment or order not being or having the force of a decree                                                                                                                                                               | When such judgment or order is passed by any Civil Court other than a High Court or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—<br>(a) If the amount or value of the subject matter is fifty or less than fifty rupees<br>(b) If such amount or value exceeds fifty rupees<br>Six annas<br>Twelve annas |
|        | When such judgment or order is passed by a High Court                                                                                                                                                                                              | One rupee eight annas                                                                                                                                                                                                                                                                                                                                                 |
| 6A     | Copy of translation of a judgment or order of a Criminal Court                                                                                                                                                                                     | Eight annas                                                                                                                                                                                                                                                                                                                                                           |

| Number                                                                                                                                                                                                                                                                                                           | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 Copy of a decree or order having the force of a decree                                                                                                                                                                                                                                                         | <p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees Eight annas</p> <p>(b) If such amount or value exceeds fifty rupees One rupee</p> <p>When such decree or order is made by a High Court Four rupees</p>                                                                                                                                                               |
| 8 Copy of any document liable to stamp duty under the Indian Stamp Act, 1899 when left by any party to a suit or proceeding in place of the original with drawn                                                                                                                                                  | <p>(a) When the stamp duty chargeable on the original does not exceed eight annas The amount of the duty chargeable on the original</p> <p>(b) In any other case Eight annas</p>                                                                                                                                                                                                                                                                                                                                                                                           |
| 9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account statement report or the like, taken out of any Civil or Criminal or Revenue Court or office or from the office of any chief officer charged with the executive administration of a division | <p>For every three hundred and sixty words or fraction of three hundred and sixty words Eight annas</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 10 <i>(Repealed by the Guardians and Wards Act, 1890 VIII of 1890)</i>                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11 Probate of a will or letters of administration with or without will annexed                                                                                                                                                                                                                                   | <p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees Two per centum on such amount or value</p> <p>When such amount or value exceeds five thousand rupees, Three per centum on such amount or value</p> <p>Provided, that, when after the grant of a certificate under the Succession Certificate Act 1889 or under the Regulation of the Bombay Code, No VIII of 1827 in respect of any property included in an estate, a grant of probate or</p> |

| Number                                                    |                                                                                                                                                                                                                                                                                                                                                           | Proper fee                                                                                                                                                                                      |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 Certificate under the Succession Certificate Act, 1889 | <p>letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant</p> <p>When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees</p> | <p>Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act</p>             |
|                                                           | <p>When such amount or value exceeds five thousand rupees</p>                                                                                                                                                                                                                                                                                             | <p>Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act</p> |

| Number                                                                                                                                                                                                                                                                                                             | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 Copy of a decree or order having the force of a decree                                                                                                                                                                                                                                                           | <p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees</p> <p>(b) If such amount or value exceeds fifty-rupees</p> <p>When such decree or order is made by a High Court</p> <p>Eight annas</p> <p>One rupee</p> <p>Four rupees</p>                                                                                                                                                          |
| 8 Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899 when left by any party to a suit or proceeding in place of the original with drawn                                                                                                                                                    | <p>(a) When the stamp duty chargeable on the original does not exceed eight annas</p> <p>(b) In any other case</p> <p>The amount of the duty chargeable on the original</p> <p>Eight annas</p>                                                                                                                                                                                                                                                                                                                                                                                             |
| 9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a division | <p>For every three hundred and sixty words or fraction of three hundred and sixty words</p> <p>Eight annas</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 10 <i>(Repealed by the Guardians and Wards Act, 1890 VIII of 1890)</i>                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11 Probate of a will or letters of administration with or without will annexed                                                                                                                                                                                                                                     | <p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees</p> <p>Two per centum on such amount or value</p> <p>When such amount or value exceeds five thousand rupees,</p> <p>Three per centum on such amount or value</p> <p>Provided, that, when after the grant of a certificate under the Succession Certificate Act 1889, or under the Regulation of the Bombay Code, No VIII of 1827 in respect of any property included in an estate, a grant of probate or</p> |

| Number                                                    |                                                                                                                                                                                                                                                                                                                                                           | Proper fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 Certificate under the Succession Certificate Act, 1889 | <p>letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant</p> <p>When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees</p> | <p>Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act</p>                                                                                                                                                                                                                                                                                                                                                    |
|                                                           | <p>When such amount or value exceeds five thousand rupees</p>                                                                                                                                                                                                                                                                                             | <p>Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act</p> <p>Note (1), The amount of a debt is its amount including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where</p> |

| Number                                                                                                                                                                                                                                                                                                           | Proper fee                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 Copy of a decree or order having the force of a decree                                                                                                                                                                                                                                                         | When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                  | (a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees                                                                                               |
|                                                                                                                                                                                                                                                                                                                  | (b) If such amount or value exceeds fifty rupees                                                                                                                                                                                   |
|                                                                                                                                                                                                                                                                                                                  | When such decree or order is made by a High Court                                                                                                                                                                                  |
| 8 Copy of any document liable to stamp duty under the Indian Stamp Act 1899, when left by any party to a suit or proceeding in place of the original with drawn                                                                                                                                                  | (a) When the stamp duty chargeable on the original does not exceed eight annas                                                                                                                                                     |
|                                                                                                                                                                                                                                                                                                                  | (b) In any other case                                                                                                                                                                                                              |
| 9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement report or the like taken out of any Civil or Criminal or Revenue Court or office or from the office of any chief officer charged with the executive administration of a division | For every three hundred and sixty words or fraction of three hundred and sixty words                                                                                                                                               |
| 10 <i>(Repealed by the Guardians and Wards Act 1890 VIII of 1890)</i>                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                    |
| 11 Probate of a will or letters of administration with or without will annexed                                                                                                                                                                                                                                   | When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees                                                          |
|                                                                                                                                                                                                                                                                                                                  | When such amount or value exceeds five thousand rupees,                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                                  | Provided, that, when after the grant of a certificate under the Succession Certificate Act 1889, or under the Regulation of the Bombay Code No VIII of 1827 in respect of any property included in an estate a grant of probate or |



| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 20                                                     | 230                 | 25 13      | 770                                                    | 780                 | 87 11      |
| 230                                                    | 240                 | 26 15      | 780                                                    | 790                 | 88 13      |
| 240                                                    | 250                 | 28 1       | 790                                                    | 800                 | 89 15      |
| 250                                                    | 60                  | 29 3       | 800                                                    | 810                 | 91 1       |
| 260                                                    | 70                  | 30 5       | 810                                                    | 820                 | 9 3        |
| 270                                                    | 80                  | 31 7       | 820                                                    | 830                 | 93 5       |
| 280                                                    | 90                  | 32 9       | 830                                                    | 840                 | 94 7       |
| 290                                                    | 100                 | 33 1       | 840                                                    | 850                 | 95 9       |
| 300                                                    | 110                 | 34 13      | 850                                                    | 860                 | 96 11      |
| 310                                                    | 3 0                 | 35 15      | 860                                                    | 870                 | 97 13      |
| 3 0                                                    | 350                 | 37 1       | 875                                                    | 880                 | 98 15      |
| 350                                                    | 360                 | 38 3       | 880                                                    | 890                 | 100 1      |
| 360                                                    | 370                 | 39 5       | 890                                                    | 900                 | 101 3      |
| 370                                                    | 380                 | 40 7       | 900                                                    | 910                 | 102 5      |
| 380                                                    | 390                 | 41 9       | 910                                                    | 9 0                 | 103 7      |
| 390                                                    | 400                 | 42 11      | 920                                                    | 104 9               | 104 9      |
| 400                                                    | 410                 | 43 13      | 930                                                    | 940                 | 05 11      |
| 410                                                    | 420                 | 44 15      | 940                                                    | 950                 | 106 13     |
| 420                                                    | 430                 | 46 1       | 950                                                    | 960                 | 107 15     |
| 430                                                    | 440                 | 47 3       | 960                                                    | 970                 | 109 1      |
| 440                                                    | 450                 | 48 5       | 970                                                    | 980                 | 110 3      |
| 450                                                    | 460                 | 49 7       | 980                                                    | 990                 | 111 5      |
| 460                                                    | 470                 | 50 9       | 990                                                    | 1 000               | 112 7      |
| 470                                                    | 480                 | 51 11      | 1 000                                                  | 1 100               | 119 15     |
| 480                                                    | 490                 | 52 13      | 1 100                                                  | 1 200               | 127 7      |
| 490                                                    | 500                 | 53 15      | 1 200                                                  | 1 300               | 134 15     |
| 500                                                    | 510                 | 55 1       | 1 300                                                  | 1 400               | 142 7      |
| 510                                                    | 520                 | 56 3       | 1 400                                                  | 1 500               | 149 15     |
| 520                                                    | 530                 | 57 5       | 1 500                                                  | 1 600               | 157 7      |
| 530                                                    | 540                 | 58 7       | 1 600                                                  | 1 700               | 164 15     |
| 540                                                    | 550                 | 59 9       | 1 700                                                  | 1 800               | 172 7      |
| 550                                                    | 560                 | 60 11      | 1 800                                                  | 1 900               | 179 15     |
| 560                                                    | 570                 | 61 13      | 1 900                                                  | 2 000               | 187 7      |
| 570                                                    | 580                 | 62 15      | 2 000                                                  | 2 100               | 194 15     |
| 580                                                    | 590                 | 64 1       | 2 100                                                  | 2 200               | 202 7      |
| 590                                                    | 600                 | 65 3       | 2 200                                                  | 2 300               | 209 15     |
| 600                                                    | 610                 | 66 5       | 2 300                                                  | 2 400               | 217 7      |
| 610                                                    | 620                 | 67 7       | 2 400                                                  | 2 500               | 224 15     |
| 620                                                    | 630                 | 68 9       | 2 500                                                  | 2 600               | 23 7       |
| 630                                                    | 640                 | 69 11      | 2 600                                                  | 2 700               | 239 15     |
| 640                                                    | 650                 | 70 13      | 2 700                                                  | 2 800               | 247 7      |
| 650                                                    | 660                 | 71 15      | 2 800                                                  | 2 900               | 254 15     |
| 660                                                    | 670                 | 73 1       | 2 900                                                  | 3 000               | 262 7      |
| 670                                                    | 680                 | 74 3       | 3 000                                                  | 3 100               | 269 15     |
| 680                                                    | 690                 | 75 5       | 3 100                                                  | 3 200               | 277 7      |
| 690                                                    | 700                 | 76 7       | 3 200                                                  | 3 300               | 284 15     |
| 700                                                    | 710                 | 77 9       | 3 300                                                  | 3 400               | 292 7      |
| 710                                                    | 720                 | 78 11      | 3 400                                                  | 3 500               | 299 15     |
| 720                                                    | 730                 | 79 13      | 3 500                                                  | 3 600               | 307 7      |
| 730                                                    | 740                 | 80 15      | 3 600                                                  | 3 700               | 314 15     |
| 740                                                    | 750                 | 81 1       | 3 700                                                  | 3 800               | 322 7      |
| 750                                                    | 760                 | 83 3       | 3 800                                                  | 3 900               | 329 15     |
| 760                                                    | 770                 | 84 5       | 3 900                                                  | 4 000               | 337 7      |
|                                                        |                     | 85 7       | 4 000                                                  | 4 100               | 344 15     |
|                                                        |                     | 86 9       | 4 100                                                  | 4 200               | 35 7       |

| Number                       | Proper fee                                                                                                                                                                                                                                                                                                                                             |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Certificate etc<br>(concl'd) | such a power has been so conferred Whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained |

## SCHEDULE I

*Table of Rates of Ad valorem Fees leviable*

(a) On plaints etc, mentioned in Article 1 of that Schedule

| When the amount or value of the subject matter exceeds | But does not exceed | Proper fee | When the amount or value of the subject-matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | R A        | Rs                                                     | Rs                  | Rs A       |
| 0                                                      | 5                   | 0 8        | 80                                                     | 85                  | 9 8        |
| 5                                                      | 10                  | 1 1        | 85                                                     | 90                  | 10 1       |
| 10                                                     | 15                  | 1 10       | 90                                                     | 95                  | 10 10      |
| 15                                                     | 20                  | 2 3        | 95                                                     | 100                 | 11 3       |
| 20                                                     | 25                  | 2 12       | 100                                                    | 110                 | 12 5       |
| 25                                                     | 30                  | 3 5        | 110                                                    | 120                 | 13 7       |
| 30                                                     | 35                  | 3 14       | 120                                                    | 130                 | 14 9       |
| 35                                                     | 40                  | 4 7        | 130                                                    | 140                 | 15 11      |
| 40                                                     | 45                  | 5 0        | 140                                                    | 150                 | 16 13      |
| 45                                                     | 50                  | 5 9        | 150                                                    | 160                 | 17 15      |
| 50                                                     | 55                  | 6 2        | 160                                                    | 170                 | 19 1       |
| 55                                                     | 60                  | 6 11       | 170                                                    | 180                 | 20 3       |
| 60                                                     | 65                  | 7 4        | 180                                                    | 190                 | 21 5       |
| 65                                                     | 70                  | 7 13       | 190                                                    | 200                 | 22 7       |
| 70                                                     | 75                  | 8 6        | 200                                                    | 210                 | 23 9       |
| 75                                                     | 80                  | 8 15       | 210                                                    | 220                 | 24 11      |

| When the amount or value of the subject matter exceeds | But does not exceed. | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|----------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs.                  | Rs A       | Rs                                                     | Rs                  | Rs As      |
| 50                                                     | 55                   | 4 2        | 250                                                    | 260                 | 19 8       |
| 55                                                     | 60                   | 4 8        | 260                                                    | 270                 | 20 4       |
| 60                                                     | 65                   | 4 14       | 270                                                    | 280                 | 21 0       |
| 65                                                     | 70                   | 5 1        | 280                                                    | 290                 | 21 12      |
| 70                                                     | 75                   | 5 10       | 290                                                    | 300                 | 22 8       |
| 75                                                     | 80                   | 6 0        | 300                                                    | 310                 | 23 4       |
| 80                                                     | 85                   | 6 6        | 310                                                    | 320                 | 24 0       |
| 85                                                     | 90                   | 6 12       | 320                                                    | 330                 | 24 12      |
| 90                                                     | 95                   | 7 2        | 330                                                    | 340                 | 25 8       |
| 95                                                     | 100                  | 7 8        | 340                                                    | 350                 | 26 4       |
| 100                                                    | 110                  | 8 4        | 350                                                    | 360                 | 27 0       |
| 110                                                    | 120                  | 9 0        | 360                                                    | 370                 | 27 12      |
| 120                                                    | 130                  | 9 12       | 370                                                    | 380                 | 28 8       |
| 130                                                    | 140                  | 10 8       | 380                                                    | 390                 | 29 4       |
| 140                                                    | 150                  | 11 4       | 390                                                    | 400                 | 30 0       |
| 150                                                    | 160                  | 12 0       | 400                                                    | 410                 | 30 12      |
| 160                                                    | 170                  | 12 12      | 410                                                    | 420                 | 31 8       |
| 170                                                    | 180                  | 13 8       | 420                                                    | 430                 | 32 4       |
| 180                                                    | 190                  | 14 4       | 430                                                    | 440                 | 33 0       |
| 190                                                    | 200                  | 15 0       | 440                                                    | 450                 | 33 12      |
| 200                                                    | 210                  | 15 12      | 450                                                    | 460                 | 34 8       |
| 210                                                    | 220                  | 16 8       | 460                                                    | 470                 | 35 4       |
| 220                                                    | 230                  | 17 4       | 470                                                    | 480                 | 36 0       |
| 230                                                    | 240                  | 18 0       | 480                                                    | 490                 | 36 12      |
| 240                                                    | 250                  | 18 12      | 490                                                    | 500                 | 37 8       |

## SCHEDULE II

### Fixed Fees

| Number                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Proper Fee                              |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| 1. Application or petition | (a) Where presented to any officer of the Customs or Excise Department or<br>dealings,<br>or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject matter of the application or petition relates exclusively to such engagement,<br>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement, | One anna<br><br>Two annas<br><br>One an |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 4 200                                                  | 4 300               | 359 15     | 13 000                                                 | 13 500              | 869 15     |
| 4 300                                                  | 4 400               | 367 7      | 13 500                                                 | 14 000              | 892 7      |
| 4 400                                                  | 4 500               | 374 15     | 14 000                                                 | 14 500              | 914 15     |
| 4 500                                                  | 4 600               | 382 7      | 14 500                                                 | 15 000              | 937 7      |
| 4 600                                                  | 4 700               | 389 15     | 15 000                                                 | 15 500              | 959 15     |
| 4 700                                                  | 4 800               | 397 7      | 15 500                                                 | 16 000              | 982 7      |
| 4 800                                                  | 4 900               | 404 15     | 16 000                                                 | 16 500              | 1 004 15   |
| 4 900                                                  | 5 000               | 412 7      | 16 500                                                 | 17 000              | 1 027 7    |
| 5 000                                                  | 5 250               | 427 7      | 17 000                                                 | 17 500              | 1 049 15   |
| 5 250                                                  | 5 500               | 442 7      | 17 500                                                 | 18 000              | 1 072 7    |
| 5 500                                                  | 5 750               | 457 7      | 18 000                                                 | 18 500              | 1 094 15   |
| 5 750                                                  | 6 000               | 472 7      | 18 500                                                 | 19 000              | 1 117 7    |
| 6 000                                                  | 6 50                | 487 7      | 19 000                                                 | 19 500              | 1 139 15   |
| 6 250                                                  | 6 500               | 502 7      | 19 500                                                 | 20 000              | 1 162 7    |
| 6 500                                                  | 6 750               | 517 7      | 20 000                                                 | 21 000              | 1 192 7    |
| 6 750                                                  | 7 000               | 532 7      | 21 000                                                 | 22 000              | 1 222 7    |
| 7 000                                                  | 7 250               | 547 7      | 22 000                                                 | 23 000              | 1 252 7    |
| 7 250                                                  | 7 500               | 562 7      | 23 000                                                 | 24 000              | 1 282 7    |
| 7 500                                                  | 7 750               | 577 7      | 24 000                                                 | 25 000              | 1 312 7    |
| 7 750                                                  | 8 000               | 592 7      | 25 000                                                 | 26 000              | 1 342 7    |
| 8 000                                                  | 8 250               | 607 7      | 26 000                                                 | 27 000              | 1 372 7    |
| 8 250                                                  | 8 500               | 622 7      | 27 000                                                 | 28 000              | 1 402 7    |
| 8 500                                                  | 8 750               | 637 7      | 28 000                                                 | 29 000              | 1 432 7    |
| 8 750                                                  | 9 000               | 652 7      | 29 000                                                 | 30 000              | 1 462 7    |
| 9 000                                                  | 9 250               | 667 7      | 30 000                                                 | 32 000              | 1 492 7    |
| 9 250                                                  | 9 500               | 682 7      | 32 000                                                 | 34 000              | 1 522 7    |
| 9 500                                                  | 9 750               | 697 7      | 34 000                                                 | 36 000              | 1 552 7    |
| 9 750                                                  | 10 000              | 712 7      | 36 000                                                 | 38 000              | 1 582 7    |
| 10 000                                                 | 10 500              | 734 15     | 38 000                                                 | 40 000              | 1 612 7    |
| 10 500                                                 | 11 000              | 757 7      | 40 000                                                 | 42 000              | 1 642 7    |
| 11 000                                                 | 11 500              | 779 15     | 42 000                                                 | 44 000              | 1 672 7    |
| 11 500                                                 | 12 000              | 802 7      | 44 000                                                 | 46 000              | 1 702 7    |
| 12 000                                                 | 12 500              | 824 15     | 46 000                                                 | 48 000              | 1 732 7    |
| 12 500                                                 | 13 000              | 847 7      | 48 000                                                 | 50 000              | 1 762 7    |

When the amount or value of the subject matter exceeds Rs 50 000 for every five thousand rupees or part thereof in excess of fifty thousand rupees —thirty rupees

### SCHEDULE I (concluded)

(b) On plaints etc mentioned in article 2 of this Schedule

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 5                                                      | 5                   | 0 6        | 25                                                     | 30                  | 2 4        |
| 5                                                      | 10                  | 0 12       | 30                                                     | 35                  | 2 10       |
| 10                                                     | 15                  | 1 2        | 35                                                     | 40                  | 3 0        |
| 15                                                     | 20                  | 1 8        | 40                                                     | 45                  | 3 6        |
| 20                                                     | 25                  | 1 14       | 45                                                     | 50                  | 3 12       |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs.                 | Rs A       | Rs                                                     | Rs                  | Rs As      |
| 50                                                     | 55                  | 4 2        | 250                                                    | 260                 | 19 8       |
| 55                                                     | 60                  | 4 8        | 260                                                    | 270                 | 20 4       |
| 60                                                     | 65                  | 4 14       | 270                                                    | 280                 | 21 0       |
| 65                                                     | 70                  | 5 4        | 280                                                    | 290                 | 21 12      |
| 70                                                     | 75                  | 5 10       | 290                                                    | 300                 | 22 8       |
| 75                                                     | 80                  | 6 0        | 300                                                    | 310                 | 23 4       |
| 80                                                     | 85                  | 6 6        | 310                                                    | 320                 | 24 0       |
| 85                                                     | 90                  | 6 12       | 320                                                    | 330                 | 24 12      |
| 90                                                     | 95                  | 7 2        | 330                                                    | 340                 | 25 8       |
| 95                                                     | 100                 | 7 8        | 340                                                    | 350                 | 26 4       |
| 100                                                    | 110                 | 8 4        | 350                                                    | 360                 | 27 0       |
| 110                                                    | 120                 | 9 0        | 360                                                    | 370                 | 27 12      |
| 120                                                    | 130                 | 9 12       | 370                                                    | 380                 | 28 8       |
| 130                                                    | 140                 | 10 8       | 380                                                    | 390                 | 29 4       |
| 140                                                    | 150                 | 11 4       | 390                                                    | 400                 | 30 0       |
| 150                                                    | 160                 | 12 0       | 400                                                    | 410                 | 30 12      |
| 160                                                    | 170                 | 12 12      | 410                                                    | 420                 | 31 8       |
| 170                                                    | 180                 | 13 8       | 420                                                    | 430                 | 32 4       |
| 180                                                    | 190                 | 14 4       | 430                                                    | 440                 | 33 0       |
| 190                                                    | 200                 | 15 0       | 440                                                    | 450                 | 33 12      |
| 200                                                    | 210                 | 15 12      | 450                                                    | 460                 | 34 8       |
| 210                                                    | 220                 | 16 8       | 460                                                    | 470                 | 35 4       |
| 220                                                    | 230                 | 17 4       | 470                                                    | 480                 | 36 0       |
| 230                                                    | 240                 | 18 0       | 480                                                    | 490                 | 36 12      |
| 240                                                    | 250                 | 18 12      | 490                                                    | 500                 | 37 8       |

## SCHEDULE II

*Fixed Fees*

| Number                    |                                                                                                                                                                                                                                             | Proper Fee |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1 Application or petition | (a) Where presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government and when the subject matter of such application relates exclusively to those dealings,        | One anna   |
|                           | or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject matter of the application or petition relates exclusively to such engagement, | Two annas  |
|                           | or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement,                | One anna   |

| Number                                |                                                                                                                                                                                                                                                                                                                                    | Proper Fee                                                                       |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Application or petition— <i>contd</i> | or when presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any court of Small Causes constituted under Act No IX of 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject matter is less than fifty rupees , | Two annas                                                                        |
|                                       | or when presented to any Civil Criminal or Revenue Court or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment or decree or order passed by such Court Board or officer or of any other document on record in such Court or office                                               | Two annas                                                                        |
|                                       | (b) When containing a complaint or charge of any offence other than an offence for which police officers may under the Criminal Procedure Code arrest without warrant and presented to any Criminal Court ,                                                                                                                        | In the case of of a criminal complaint one rupee and in other cases twelve annas |
|                                       | or when presented to a Civil Criminal or Revenue Court or to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act                                                                                 |                                                                                  |
|                                       | or to deposit in Court revenue or rent                                                                                                                                                                                                                                                                                             | Eight annas                                                                      |
|                                       | or for determination by a Court of the amount of compensation to be paid by landlord to his tenant                                                                                                                                                                                                                                 | Eight annas                                                                      |
|                                       | (c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority, or to a Commissioner of Revenue or Circuit or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act                                                        | One rupee eight annas                                                            |
|                                       | (d) (i) When presented to a High Court under Section 115 of the Code of Civil Procedure 1908 for revision of an order—                                                                                                                                                                                                             |                                                                                  |
|                                       | (a) When the value of the suit or proceeding to which the order relates does not exceed one thousand rupees                                                                                                                                                                                                                        | Five rupees                                                                      |

| Number                                                                                                                                                                                                                                                 |                                                                                                                            | Proper fee                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application or petition—(contd)                                                                                                                                                                                                                        | (b) when the value of the suit or proceeding exceeds one thousand rupees                                                   | Ten rupees                                                                                                                                           |
|                                                                                                                                                                                                                                                        | (ii) When presented to a High Court otherwise than under that section                                                      | Two rupees                                                                                                                                           |
| 1A. Application to any Civil Court that records may be called for from another Court                                                                                                                                                                   | When the Court grants the application and is of opinion that the transmission of such records involves the use of the post | Twelve annas in addition to any fee levied on the application under clause (a) clause (b) or clause (d) of article 1 of this Schedule<br>Eight annas |
| 2 Application for leave to sue as a pauper                                                                                                                                                                                                             |                                                                                                                            |                                                                                                                                                      |
| 3 Application for leave to appeal as a pauper                                                                                                                                                                                                          | (a) When presented to a District Court or a Sub court                                                                      | One rupee                                                                                                                                            |
|                                                                                                                                                                                                                                                        | (b) When presented to a Commissioner or a High Court                                                                       | Two rupees                                                                                                                                           |
| 4 (Omitted)                                                                                                                                                                                                                                            |                                                                                                                            |                                                                                                                                                      |
| 5 Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy                                                                                                                                                               |                                                                                                                            |                                                                                                                                                      |
| 6 Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1908, or the Code of Civil Procedure, 1908; and not otherwise provided for in this Act |                                                                                                                            | Eight annas                                                                                                                                          |
| 7 Undertaking under section 49 of the Indian Divorce Act, 1869                                                                                                                                                                                         |                                                                                                                            |                                                                                                                                                      |
| 8 [Repealed by the Repealing and Amending Act, 1891 (XII of 1891)]                                                                                                                                                                                     |                                                                                                                            |                                                                                                                                                      |

| Number                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Proper fee                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 9 [Repealed by Act XII of 1891]                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |
| 10 Mukhtarnama, Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party                                                                      | <p>When presented for the conduct of any one case—</p> <p>(a) to any Civil or Criminal Court other than a High Court or Revenue Court, or to any Revenue Court, or to any of those of this number,</p> <p>(b) to a Commissioner of Revenue, circuit or customs or to any officer charged with the executive administration of a Division not being the Chief Revenue or Executive Authority,</p> <p>(c) to a High Court, Chief Commissioner Board of Revenue, or other Chief Controlling Revenue or Executive Authority</p> | <p>One rupee</p> <p>One rupee eight annas</p> <p>Three rupees</p> |
| 11 Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure 1908 and is presented | <p>(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority</p> <p>(b) to a High Court or Chief Commissioner or other Chief Controlling Executive or Revenue Authority</p>                                                                                                                                                                                                                                 | <p>One rupee</p> <p>Two rupees</p>                                |
| 12 Caveat                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Ten rupees                                                        |
| 13 [Omitted]                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |
| 14 Petition in a suit under the Native Converts Marriage Dissolution Act 1866                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Five rupees                                                       |
| 15 [Rep by Act 5 of 1903]                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |
| 16 [Rep by Act 6 of 1889, s 18(1)]                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |
| 17 Plaint or memorandum of appeal in a suit—                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |



| Number                                                                                                                                                                                     | Proper fees                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court,                                                | Fifteen rupees.                                                                                                                                                                                   |
| (ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates;                                                                                     | Fifty rupees                                                                                                                                                                                      |
| (iii) for relief under section 14 of the Religious Endowments Act 1863 or under section 91 or section 92 of the Code of Civil Procedure 1908                                               |                                                                                                                                                                                                   |
| 17A. Plaint or memorandum of appeal in a suit—                                                                                                                                             |                                                                                                                                                                                                   |
| (i) to obtain a declaratory decree where no consequential relief is prayed,<br>(ii) to set aside an award,                                                                                 | When the plaint is presented to or the memorandum of appeal is against the decree of—<br><br>a District Munsiff's Court or the City Civil Court                                                   |
| (iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid                                         | a District Court or a Sub Court                                                                                                                                                                   |
| 17 B. Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act | When the plaint is presented to or the memorandum of appeal is against the decree of—<br>a Revenue Court<br>a District Munsiff's Court or the City Civil Court<br>a District Court or a Sub Court |
|                                                                                                                                                                                            | Fifteen rupees                                                                                                                                                                                    |
|                                                                                                                                                                                            | One Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees, five hundred rupees if such value is ten thousand rupees or upwards                                |
|                                                                                                                                                                                            | Ten rupees<br>Fifteen rupees.                                                                                                                                                                     |
|                                                                                                                                                                                            | One hundred rupees                                                                                                                                                                                |

| Number                                                                                                                                                                 |                                                                      | Proper fees        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------|
| 18 Applications under section 17 or section 20 of the Second Schedule of the Code of Civil Procedure 1908                                                              | When presented to a District Munsiff's Court or the City Civil Court | Fifteen rupees     |
| 19 Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908                                                        | When presented to a District Court or a Sub-court                    | One hundred rupees |
| 20 Every petition under the Indian Divorce Act 1869, except petitions under Section 44 of the same Act and every memorandum of appeal under section 55 of the same Act |                                                                      | Twenty rupees      |
| 21 Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act 1865                                                                                        |                                                                      |                    |

## APPENDIX E.

## PUNJAB ACT. VII OF 1922

AS AMENDED BY

Punjab Acts I and VI of 1926

*An Act to amend the Court fees Act, 1870, with reference to the scale of Court fees in the Punjab*

WHEREAS it is necessary to revise the scale of court fees provided in the Court fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing.

It is hereby enacted as follows —

Short title, extent and commencement      1 (1) This Act may be called the Court fees (Punjab Amendment) Act, 1922

(2) It extends to the Punjab

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf

2 (1) The Court fees Act 1870, shall be amended in its application to the Punjab in the manner hereinafter provided.

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court fees Act, 1870, unless it shall appear to the contrary

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".  
Amendment of section 4

4. In section 18 between the word "of" and the word "unless" for the words "eight annas" the words "one rupee" shall be substituted.  
Amendment of section 18

5. (1) For Article I of Schedule 1 the following Article shall be substituted, namely :—

| Number.                                                                                                                                                                                                                             |                                                                                                                                                                                                   | Proper fee                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 1. Plaint, written-statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or revenue Court except those mentioned in section 3 | When the amount or value of the subject matter in dispute does not exceed five rupees                                                                                                             | Nine annas                     |
|                                                                                                                                                                                                                                     | When such amount or value exceeds five rupees, but does not exceed one hundred rupees, for every five rupees or part thereof, in excess of five rupees up to one hundred rupees                   | Nine annas                     |
|                                                                                                                                                                                                                                     | When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to the five hundred rupees | One rupee two annas            |
|                                                                                                                                                                                                                                     | When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof, up to one thousand rupees                                                                            | One rupee two annas            |
|                                                                                                                                                                                                                                     | When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees                                   | Seven rupees eight annas       |
|                                                                                                                                                                                                                                     | When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees                      | Fifteen rupees                 |
|                                                                                                                                                                                                                                     | When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees                             | Twenty two rupees eight annas. |
|                                                                                                                                                                                                                                     | When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees                          | Thirty rupees                  |

| Number |                              | Proper fee                                                                                                                                                                                                                                                                                                                                                                  |
|--------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2      | Plaint etc— <i>concluded</i> | <p>Where such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees up to fifty thousand rupees</p> <p>Thirty rupees</p> <p>When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof, in excess of fifty thousand rupees</p> <p>Thirty rupees</p> |

(2) The proviso as to the maximum, after the ninth entry in the second column of the said article in the same schedule, shall be omitted.

6 Article 13 of the Punjab Courts Act, 1926, in so far as it affected the re-enactment and amendment of Schedule I Article 1, shall be omitted, save that for the words, "High Court of Judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figures "1918" shall be substituted, and the words and figures "as amended by the Punjab Courts Act, 1899" shall be omitted.

7 For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of Schedule I, the table set forth in the Schedule to this Act shall be substituted.

8 In article 1 of Schedule II—

Amendment of Schedule I Article clauses (a) and (b) substituted, (1) For the words "one anna" in the third column, opposite clause (a) in the second column, the words "two annas" shall be substituted,

(2) for the words 'eight annas' in the third column opposite clause (b) in the second column, the words 'one rupee' shall be substituted,

Amendment of Schedule II Articles 4, 5 and 7 (3) for clause (d), in the second column and the corresponding entry in the third column shall be substituted, the following clause and entries namely—

(d) When presented to the High Court—

|                                                                  |                    |
|------------------------------------------------------------------|--------------------|
| (i) Under the Indian Companies Act 1913 for winding up a company | One hundred rupees |
| (ii) Under the same Act for taking some other judicial action    | Five rupees        |
| (iii) In all other cases                                         | Two rupees         |

Amendment of Schedule II Articles 4, 5 and 7

9. In the third column of articles 4, 5 and 7 respectively of Schedule II—

for the words "eight annas" the words "one rupee" shall be substituted

Amendment of Schedule II Article 10, clause (a)

10 In the third column of article 10 Schedule II

for the words "eight annas" opposite clause (a) in the second column, the words "one rupee" shall be substituted

Amendment of schedule II, Article 11, clauses (a) and (b), 11 In the third column of Article 11 of Schedule II—

(1) for the words "eight annas" opposite clause (a) is the second column, the words "one rupee" shall be substituted ;

(2) for the words "two rupees" opposite clause (b) in the second column the words "four rupees" shall be substituted.

12. The following new article with the corresponding entry in the New Article to Schedule II third column shall be added to the first column, of Schedule II namely —

22 Plaintiff or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land | Twenty rupees

### SCHEDULE

Table of Rates of *advalorem* fees leviable on the institution of suits

(See section 7)

| When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper Fee |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------|
| Rs                                                     | Rs                  | Rs A       | Rs                                                     | Rs                  | Rs A       |
| 5                                                      | 5                   | 0 9        | 220                                                    | 230                 | 25 12      |
| 10                                                     | 10                  | 1 2        | 230                                                    | 240                 | 27 0       |
| 15                                                     | 15                  | 1 11       | 240                                                    | 250                 | 28 2       |
| 20                                                     | 20                  | 2 4        | 250                                                    | 260                 | 29 4       |
| 25                                                     | 25                  | 2 13       | 260                                                    | 270                 | 30 6       |
| 30                                                     | 30                  | 3 6        | 270                                                    | 280                 | 31 8       |
| 35                                                     | 35                  | 3 15       | 280                                                    | 290                 | 32 10      |
| 40                                                     | 40                  | 4 8        | 290                                                    | 300                 | 33 12      |
| 45                                                     | 45                  | 5 1        | 300                                                    | 310                 | 34 14      |
| 50                                                     | 50                  | 5 10       | 310                                                    | 320                 | 36 0       |
| 55                                                     | 55                  | 6 3        | 320                                                    | 330                 | 37 2       |
| 60                                                     | 60                  | 6 12       | 330                                                    | 340                 | 38 4       |
| 65                                                     | 65                  | 7 5        | 340                                                    | 350                 | 39 6       |
| 70                                                     | 70                  | 7 14       | 350                                                    | 360                 | 40 8       |
| 75                                                     | 75                  | 8 7        | 360                                                    | 370                 | 41 10      |
| 80                                                     | 80                  | 9 0        | 370                                                    | 380                 | 42 12      |
| 85                                                     | 85                  | 9 9        | 380                                                    | 390                 | 43 14      |
| 90                                                     | 90                  | 10 2       | 390                                                    | 400                 | 45 0       |
| 95                                                     | 95                  | 10 11      | 400                                                    | 410                 | 46 2       |
| 100                                                    | 100                 | 11 4       | 410                                                    | 420                 | 47 4       |
| 110                                                    | 110                 | 12 6       | 420                                                    | 430                 | 48 6       |
| 120                                                    | 120                 | 13 8       | 430                                                    | 440                 | 49 8       |
| 130                                                    | 130                 | 14 10      | 440                                                    | 450                 | 50 10      |
| 140                                                    | 140                 | 15 12      | 450                                                    | 460                 | 51 12      |
| 150                                                    | 150                 | 16 14      | 460                                                    | 470                 | 52 14      |
| 160                                                    | 160                 | 18 0       | 470                                                    | 480                 | 54 0       |
| 170                                                    | 170                 | 19 2       | 480                                                    | 490                 | 55 2       |
| 180                                                    | 180                 | 20 4       | 490                                                    | 500                 | 56 4       |
| 190                                                    | 190                 | 21 6       | 500                                                    | 510                 | 57 6       |
| 200                                                    | 200                 | 22 8       | 510                                                    | 520                 | 58 8       |
| 210                                                    | 210                 | 23 10      | 520                                                    | 530                 | 59 10      |
| 220                                                    | 220                 | 24 12      | 530                                                    | 540                 | 60 12      |

| When the<br>amount or<br>value of the<br>subject<br>matter<br>exceeds | But does<br>not exceed | Proper Fee<br>(Act VII of<br>1870) |    | When the<br>amount or<br>value of the<br>subject<br>matter<br>exceed | But does<br>not exceed | Proper Fee<br>(Act VII of<br>1870) |   |
|-----------------------------------------------------------------------|------------------------|------------------------------------|----|----------------------------------------------------------------------|------------------------|------------------------------------|---|
| Rs                                                                    | Rs                     | Rs                                 | As | Rs                                                                   | Rs                     | Rs                                 | A |
| 540                                                                   | 550                    | 61                                 | 14 | 1,900                                                                | 2,000                  | 187                                | 8 |
| 550                                                                   | 560                    | 63                                 | 0  | 2,000                                                                | 2 100                  | 195                                | 0 |
| 560                                                                   | 570                    | 64                                 | 2  | 2 100                                                                | 2,200                  | 202                                | 8 |
| 570                                                                   | 580                    | 65                                 | 4  | 2,200                                                                | 2 300                  | 210                                | 0 |
| 580                                                                   | 590                    | 66                                 | 6  | 2,300                                                                | 2 400                  | 217                                | 8 |
| 590                                                                   | 600                    | 67                                 | 8  | 2,400                                                                | 2 500                  | 225                                | 0 |
| 600                                                                   | 610                    | 68                                 | 10 | 2 500                                                                | 2 600                  | 232                                | 8 |
| 610                                                                   | 620                    | 69                                 | 12 | 2 600                                                                | 2 700                  | 240                                | 0 |
| 620                                                                   | 630                    | 70                                 | 14 | 2,700                                                                | 2 800                  | 247                                | 8 |
| 630                                                                   | 640                    | 72                                 | 0  | 2,800                                                                | 2 900                  | 255                                | 0 |
| 640                                                                   | 650                    | 73                                 | 2  | 2 900                                                                | 3 000                  | 262                                | 8 |
| 650                                                                   | 660                    | 74                                 | 4  | 3 000                                                                | 3,100                  | 270                                | 0 |
| 660                                                                   | 670                    | 75                                 | 6  | 3 100                                                                | 3 200                  | 277                                | 8 |
| 670                                                                   | 680                    | 76                                 | 8  | 3 200                                                                | 3,300                  | 285                                | 0 |
| 680                                                                   | 690                    | 77                                 | 10 | 3,300                                                                | 3 400                  | 292                                | 8 |
| 690                                                                   | 700                    | 78                                 | 12 | 3 400                                                                | 3 500                  | 300                                | 0 |
| 700                                                                   | 710                    | 79                                 | 14 | 3 500                                                                | 3 600                  | 307                                | 8 |
| 710                                                                   | 720                    | 81                                 | 0  | 3 600                                                                | 3 700                  | 315                                | 0 |
| 720                                                                   | 730                    | 82                                 | 2  | 3,700                                                                | 3 800                  | 322                                | 8 |
| 730                                                                   | 740                    | 83                                 | 4  | 3,800                                                                | 3 900                  | 330                                | 0 |
| 740                                                                   | 750                    | 84                                 | 6  | 3 900                                                                | 4 000                  | 337                                | 8 |
| 750                                                                   | 760                    | 85                                 | 8  | 4 000                                                                | 4 100                  | 345                                | 0 |
| 760                                                                   | 770                    | 86                                 | 10 | 4 100                                                                | 4 200                  | 352                                | 8 |
| 770                                                                   | 780                    | 87                                 | 12 | 4,200                                                                | 4 300                  | 360                                | 0 |
| 780                                                                   | 790                    | 88                                 | 14 | 4 300                                                                | 4 400                  | 367                                | 8 |
| 790                                                                   | 800                    | 90                                 | 0  | 4 400                                                                | 4 500                  | 375                                | 0 |
| 800                                                                   | 810                    | 91                                 | 2  | 4 500                                                                | 4 600                  | 398                                | 8 |
| 810                                                                   | 820                    | 92                                 | 4  | 4 600                                                                | 4 700                  | 390                                | 0 |
| 820                                                                   | 830                    | 93                                 | 6  | 4 700                                                                | 4 800                  | 397                                | 8 |
| 830                                                                   | 840                    | 94                                 | 8  | 4 800                                                                | 4 900                  | 405                                | 0 |
| 840                                                                   | 850                    | 95                                 | 10 | 4 900                                                                | 5 000                  | 412                                | 8 |
| 850                                                                   | 860                    | 96                                 | 12 | 5,000                                                                | 5 250                  | 427                                | 8 |
| 860                                                                   | 870                    | 97                                 | 14 | 5 250                                                                | 5 500                  | 442                                | 8 |
| 870                                                                   | 880                    | 99                                 | 0  | 5,500                                                                | 5 750                  | 457                                | 8 |
| 880                                                                   | 890                    | 100                                | 2  | 5 750                                                                | 6,000                  | 472                                | 8 |
| 890                                                                   | 900                    | 101                                | 4  | 6,000                                                                | 6 250                  | 487                                | 8 |
| 900                                                                   | 910                    | 102                                | 6  | 6 250                                                                | 6 500                  | 502                                | 8 |
| 910                                                                   | 920                    | 103                                | 8  | 6 500                                                                | 6,750                  | 517                                | 8 |
| 920                                                                   | 930                    | 104                                | 10 | 6,750                                                                | 7,000                  | 532                                | 8 |
| 930                                                                   | 940                    | 105                                | 12 | 7,000                                                                | 7 250                  | 547                                | 8 |
| 940                                                                   | 950                    | 106                                | 14 | 7 250                                                                | 7,500                  | 562                                | 8 |
| 950                                                                   | 960                    | 108                                | 0  | 7,500                                                                | 7 750                  | 577                                | 8 |
| 960                                                                   | 970                    | 109                                | 2  | 7,750                                                                | 8 000                  | 592                                | 8 |
| 970                                                                   | 980                    | 110                                | 4  | 8 000                                                                | 8 250                  | 607                                | 8 |
| 980                                                                   | 990                    | 111                                | 6  | 8 250                                                                | 8 500                  | 622                                | 8 |
| 990                                                                   | 1,000                  | 112                                | 8  | 8 500                                                                | 8 750                  | 637                                | 8 |
| 1 000                                                                 | 1 100                  | 120                                | 0  | 8 750                                                                | 9 000                  | 652                                | 8 |
| 1,100                                                                 | 1 200                  | 127                                | 8  | 9,000                                                                | 9 250                  | 667                                | 8 |
| 1,200                                                                 | 1 300                  | 135                                | 0  | 9 250                                                                | 9 500                  | 682                                | 8 |
| 1,300                                                                 | 1,400                  | 142                                | 8  | 9 500                                                                | 9 750                  | 697                                | 8 |
| 1 400                                                                 | 1,500                  | 150                                | 0  | 9 750                                                                | 10 000                 | 712                                | 8 |
| 1,500                                                                 | 1 600                  | 157                                | 8  | 10 000                                                               | 10 500                 | 735                                | 0 |
| 1,600                                                                 | 1,700                  | 165                                | 0  | 10,500                                                               | 11 000                 | 757                                | 8 |
| 1,700                                                                 | 1 800                  | 172                                | 8  | 11 000                                                               | 11,500                 | 780                                | 0 |
| 1,800                                                                 | 1,900                  | 180                                | 0  | 11 500                                                               | 12,000                 | 802                                | 8 |

| When the amount or value of the subject matter exceeds | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds | But does not exceed | Proper fee (Act VII of 1870) |
|--------------------------------------------------------|---------------------|------------|--------------------------------------------------------|---------------------|------------------------------|
| Rs                                                     | Rs                  | R A        | Rs                                                     | Rs                  | Rs A                         |
| 12 000                                                 | 12 500              | 875 0      | 135 000                                                | 140 000             | 2 307 8                      |
| 12 500                                                 | 13 000              | 847 8      | 140 000                                                | 145 000             | 2 332 8                      |
| 13 000                                                 | 13 500              | 870 0      | 145 000                                                | 150 000             | 2 367 8                      |
| 13 500                                                 | 14 000              | 892 8      | 150 000                                                | 155 000             | 2 392 8                      |
| 14 000                                                 | 14 500              | 915 0      | 155 000                                                | 160 000             | 2 422 8                      |
| 14 500                                                 | 15 000              | 937 8      | 160 000                                                | 165 000             | 2 452 8                      |
| 15 000                                                 | 15 00               | 960 0      | 165 000                                                | 1 0 000             | 2 482 8                      |
| 15 500                                                 | 16 000              | 98 8       | 170 000                                                | 175 000             | 2 517 8                      |
| 16 000                                                 | 16 500              | 1 005 0    | 175 000                                                | 180 000             | 2 542 8                      |
| 16 500                                                 | 1 0 0               | 1 025 8    | 180 000                                                | 185 000             | 2 577 8                      |
| 17 000                                                 | 17 500              | 1 050 0    | 185 000                                                | 190 000             | 2 607 8                      |
| 17 500                                                 | 18 000              | 1 072 8    | 190 000                                                | 195 000             | 2 632 8                      |
| 18 000                                                 | 18 500              | 1 095 0    | 195 000                                                | 2 00 000            | 2 662 8                      |
| 18 500                                                 | 19 000              | 1 117 8    | 200 000                                                | 2 05 000            | 2 692 8                      |
| 19 000                                                 | 19 500              | 1 140 0    | 205 000                                                | 2 10 000            | 2 722 8                      |
| 19 500                                                 | 20 000              | 1 16 8     | 210 000                                                | 2 15 000            | 2 752 8                      |
| 20 000                                                 | 21 000              | 1 19 8     | 215 000                                                | 2 20 000            | 2 782 8                      |
| 21 000                                                 | 000                 | 1 222 8    | 220 000                                                | 2 25 000            | 2 812 8                      |
| 22 000                                                 | 23 000              | 1 52 8     | 225 000                                                | 30 000              | 2 842 8                      |
| 23 000                                                 | 24 000              | 1 282 8    | 230 000                                                | 2 35 000            | 2 872 8                      |
| 24 000                                                 | 25 000              | 1 31 8     | 235 000                                                | 2 40 000            | 2 902 8                      |
| 25 000                                                 | 26 000              | 1 342 8    | 240 000                                                | 2 45 000            | 2 932 8                      |
| 26 000                                                 | 27 000              | 1 37 8     | 245 000                                                | 2 50 000            | 2 962 8                      |
| 27 000                                                 | 28 000              | 140 8      | 250 000                                                | 2 55 000            | 2 992 8                      |
| 28 000                                                 | 29 000              | 143 8      | 255 000                                                | 2 60 000            | 3 027 8                      |
| 29 000                                                 | 30 000              | 142 8      | 260 000                                                | 2 65 000            | 3 052 8                      |
| 30 000                                                 | 32 000              | 149 8      | 265 000                                                | 70 000              | 3 08 8                       |
| 32 000                                                 | 34 000              | 1522 8     | 270 000                                                | 2 75 000            | 3 112 8                      |
| 34 000                                                 | 36 000              | 1552 8     | 275 000                                                | 2 80 000            | 3 142 8                      |
| 36 000                                                 | 38 000              | 1582 8     | 280 000                                                | 2 85 000            | 3 172 8                      |
| 38 000                                                 | 40 000              | 1612 8     | 285 000                                                | 2 90 000            | 3 202 8                      |
| 40 000                                                 | 42 000              | 1642 8     | 290 000                                                | 2 95 000            | 3 232 8                      |
| 42 000                                                 | 44 000              | 1672 8     | 295 000                                                | 3 00 000            | 3 262 8                      |
| 44 000                                                 | 46 000              | 1702 8     | 300 000                                                | 3 05 000            | 3 292 8                      |
| 46 000                                                 | 48 000              | 1732 8     | 305 000                                                | 3 10 000            | 3 322 8                      |
| 48 000                                                 | 50 000              | 1767 8     | 310 000                                                | 3 5 000             | 3 352 8                      |
| 50 000                                                 | 55 000              | 1792 8     | 315 000                                                | 3 20 000            | 3 387 8                      |
| 55 000                                                 | 60 000              | 1822 8     | 320 000                                                | 325 000             | 3 417 8                      |
| 60 000                                                 | 65 000              | 1852 8     | 325 000                                                | 3 30 000            | 3 442 8                      |
| 65 000                                                 | 70 000              | 1882 8     | 330 000                                                | 3 35 000            | 3 472 8                      |
| 70 000                                                 | 75 000              | 1912 8     | 335 000                                                | 3 40 000            | 3 502 8                      |
| 75 000                                                 | 80 000              | 1942 8     | 340 000                                                | 3 45 000            | 3 532 8                      |
| 80 000                                                 | 85 000              | 1972 8     | 345 000                                                | 3 50 000            | 3 567 8                      |
| 85 000                                                 | 90 000              | 2 007 8    | 350 000                                                | 3 55 000            | 3 597 8                      |
| 90 000                                                 | 95 000              | 2 03 8     | 355 000                                                | 3 60 000            | 3 627 8                      |
| 95 000                                                 | 1 00 000            | 2 062 8    | 360 000                                                | 3 65 000            | 3 652 8                      |
| 1 00 000                                               | 1 05 000            | 2 097 8    | 365 000                                                | 3 70 000            | 3 687 8                      |
| 1 05 000                                               | 1 10 000            | 2 122 8    | 370 000                                                | 375 000             | 3 717 8                      |
| 1 10 000                                               | 1 15 000            | 2 15 8     | 375 000                                                | 380 000             | 3 742 8                      |
| 1 15 000                                               | 1 20 000            | 2 18 8     | 380 000                                                | 385 000             | 3 777 8                      |
| 1 20 000                                               | 1 25 000            | 2 217 8    | 385 000                                                | 390 000             | 3 807 8                      |
| 1 25 000                                               | 1 30 000            | 2 242 8    | 390 000                                                | 395 000             | 3 832 8                      |
| 1 30 000                                               | 1 35 000            | 2 272 8    | 395 000                                                | 4 00 000            | 3 867 8                      |

And when the amount or value of the subject matter exceeds Rs. 48 00 000 the proper fee leviable shall be Rs. 3067 annas 8 plus Rs 30 for each five thousand rupees or part thereof in excess of Rs. 4 00 000

# APPENDIX F

## THE UNITED PROVINCES COURT-FEES (AMENDMENT) ACT, 1932.

### UNITED PROVINCES ACT NO III OF 1932

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF AGRA AND OUDH]

*Received the assent of the Governor of the United Provinces of Agra and Oudh on April 14, 1932, and of the Governor General on April 25, 1932, and was published under section 81 of the Government of India Act on May 7, 1932*

*An Act further to amend the Court-fees Act, 1870, in its application to the United Provinces*

WHEREAS it is expedient further to amend the Court fees Act, 1870,\* in its application to the United Provinces.

And whereas the previous sanction of the Governor General has been obtained, under section 80 A, sub-section (3) of the Government of India Act, † to the passing of this Act,

It is hereby enacted by follows —

Title extent and commencement

1. (1) This Act may be called the United Provinces Court fees (Amendment) Act, 1932

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces

(3) It shall come into force on the first day of May, 1932, and shall remain in force up till March 31, 1936

Amendment of section 6 of Act VII of 1870

2 To section 6 of the Court fees Act, 1870 hereinafter referred to as the said Act, the following proviso shall be added, namely,—

Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886 ‡ the Agra Tenancy Act, 1926 § or the United Provinces Land Revenue Act, 1901 || the proper fee shall be three quarters of the fee indicated in either of the said schedules except where the document is of any of the kinds specified as chargeable in the first schedule and the amount or value of the subject matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs 500

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act

Amendment of 1 paragraph (1) of section 7 of Act VII of 1870

3 In paragraph (v) of section 7 of the said Act the word 'ten' in clause (a) shall be read as 'twenty' and the word 'five' in clause (b) shall be read as 'six'.

\* VII of 1870

† 5 and 6 Geo V c 61 6 and 7 Geo V c 37, 9 and 10 Geo V c 101

‡ Act XII of 1886

§ U P Act III of 1926

|| U P Act III of 1901



Amendment of paragraph (ix) of section 7 of Act VII of 1870 4 For paragraph (ix) of section 7 of the said Act the following clause shall be substituted, namely,—

(IX) In suits against a mortgagee for the recovery of the property mortgaged according to the principal money expressed to be secured by the instrument of mortgage

(IX) (a) In suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute, according to the total amount claimed by way of principal and interest

Amendment of section 18 of Act VII of 1870 5 In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted

Amendment of Schedule I to Act VII of 1870 6 In Schedule I to the said Act the following amendments shall be made, namely,—

(i) In article 1 for the entries in the second and third columns the entries shown in the first and second columns of Schedule A to this Act shall be substituted

(ii) In article 6 for the words "four," "eight" and "one rupee" in the third column the words "six" "twelve" and "one rupee eight annas," respectively shall be substituted

(iii) In article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas" respectively shall be substituted

(iv) In article 8 for the word "eight" in the third column the word "twelve" shall be substituted

(v) In article 11 for the entries above the proviso in the second and third columns the following shall be substituted —

|   |                                                                                                                                                                              |                                        |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 1 | When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees but does not exceed ten thousand rupees and | Two per centum on such amount or value |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|

|   |                                                                                                      |                                                     |
|---|------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 2 | When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees, and | Two and one half per centum on such amount or value |
|---|------------------------------------------------------------------------------------------------------|-----------------------------------------------------|

|   |         |                                          |
|---|---------|------------------------------------------|
| 3 | " " and | Three per centum on such amount or value |
|---|---------|------------------------------------------|

|   |                                                                                                                                   |                                         |
|---|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| 4 | When such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of a lakh of rupees | Four per centum on such amount or value |
|---|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|

(vi) In article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted —

|    |                                                   |                                                                                                                                                      |                                                                                                                                                                              |
|----|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 | Certificate under the Indian Succession Act, 1925 | 1 When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees, | Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act |
|----|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# APPENDIX F

## THE UNITED PROVINCES COURT-FEES (AMENDMENT) ACT, 1932.

### UNITED PROVINCES ACT NO III OF 1932

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF  
AGRA AND OUDH]

*Received the assent of the Governor of the United Provinces of Agra and Oudh on April 14, 1932, and of the Governor General on April 25, 1932, and published under section 81 of the Government of India Act on May 7, 1932.*

*An Act further to amend the Court-fees Act, 1870, in its application to the United Provinces.*

~~Whereas it is expedient further to amend the Court-fees Act, 1870~~

|                                                                                                                                       |                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees | Four per centum amount or value per centum amount or value debt or security to which the certificate is tendered under section of the Act |
|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|

(vii) For the table of *ad valorem* fees leviable on the institution of a suit the table shown in Schedule B to this Act shall be substituted

7 In Schedule II to the said Act the following amendments shall be made, namely:—

Amendment of Schedule II to Act VII of 1870

(i) In article I for the words "one anna", "eight annas" and "one rupee" in the third column the words "two annas", "twelve annas" and "one rupee and eight annas", respectively, shall be substituted: and the following clause shall be substituted for clause (d).—

(d) I When presented to the Board of Revenue for revision of a judgment or order Three rupees

II When presented to a High Court—

(1) Under the Indian Companies Act 1913 (Act VII of 1913), for winding up a Company Fifty rupees

(2) Under section 115 of the Code of Civil Procedure 1908 (Act V of 1908) for revision of an order— Four rupees

(3) In any other case Three rupees

(ii) In the article I A for the words "twelve annas", in the third column the words "one rupee two annas" shall be substituted

(iii) In article 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted

(iv) In article 10 for the words "eight annas", "one rupee" and "two rupees" in the third column, the words "twelve annas", "one rupee and eight annas" and "three rupees", respectively, shall be substituted

(V) For article 11, the following shall be substituted —

|                                                                                                                         |                                                                                                                                                                                           |              |
|-------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented. | (a) to any Civil Court other than a High Court or to any revenue Court or Executive Officer other than a Commissioner of the division or chief Controlling Revenue or Executive Authority | Twelve annas |
|                                                                                                                         | (b) to a Commissioner of the division                                                                                                                                                     | Two rupees   |
|                                                                                                                         | (c) to a High Court or to a Chief Controlling Executive or Revenue Authority                                                                                                              | Three rupees |

(VI) The bracket opposite articles 12, 13 and 14 in the second column shall be omitted and for article 12 the following shall be substituted. —

|           |                                                                                     |             |
|-----------|-------------------------------------------------------------------------------------|-------------|
| 12 Caveat | Where the amount or value of the property in respect of which the caveat is lodged— |             |
|           | (a) does not exceed five thousand rupees,                                           | Five rupees |
|           | (b) exceeds five thousand rupees                                                    | Ten rupees  |

(VII) For article 14 the following shall be substituted, namely,—

|                                                                                |                          |
|--------------------------------------------------------------------------------|--------------------------|
| 14 Petition in a suit under the Native Converts Marriage Dissolution Act, 1865 | Seven rupees eight annas |
|--------------------------------------------------------------------------------|--------------------------|

(VIII) In article 17 for the words "Ten rupees" in the third column, the words "Fifteen rupees" shall be substituted, and the following proviso shall be added —

Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this article shall be one hundred rupees

(IX) In articles 18 and 19 for the word "ten" in the third column the word "fifteen" shall be substituted

(X) In articles 20 and 22 for the word "twenty" in the third column the word "thirty" shall be substituted

#### SCHEDULE A

|                                                                                                                                                      |              |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| When the amount or value of the subject matter in dispute does not exceed five rupees                                                                | Six annas    |
| When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.           | Six annas    |
| When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof in excess of one hundred rupees up to two hundred rupees | Twelve annas |
| When such amount or value exceeds two hundred rupees for every ten rupees, or part thereof, in excess of two hundred rupees up to five hundred       | One rupee    |



| When the<br>amount or<br>value of the<br>subject matter<br>exceeds— | But does not<br>exceed— | Proper fee | When the<br>amount or<br>value of the<br>subject matter<br>exceeds— | But does<br>not<br>exceed— | Proper<br>Fee |
|---------------------------------------------------------------------|-------------------------|------------|---------------------------------------------------------------------|----------------------------|---------------|
| Rs                                                                  | Rs                      | Rs A       | Rs                                                                  | Rs                         | Rs, A         |
| 200                                                                 | 210                     | 16 0       | 750                                                                 | 760                        | 77 8          |
| 210                                                                 | 220                     | 17 0       | 760                                                                 | 770                        | 78 12         |
| 220                                                                 | 230                     | 18 0       | 770                                                                 | 780                        | 80 0          |
| 230                                                                 | 240                     | 19 0       | 780                                                                 | 790                        | 81 4          |
| 240                                                                 | 250                     | 20 0       | 790                                                                 | 800                        | 82 8          |
| 250                                                                 | 260                     | 21 0       | 800                                                                 | 810                        | 83 12         |
| 260                                                                 | 270                     | 22 0       | 810                                                                 | 820                        | 85 0          |
| 270                                                                 | 280                     | 23 0       | 820                                                                 | 830                        | 86 4          |
| 280                                                                 | 290                     | 24 0       | 830                                                                 | 840                        | 87 8          |
| 290                                                                 | 300                     | 25 0       | 840                                                                 | 850                        | 88 12         |
| 300                                                                 | 310                     | 26 0       | 850                                                                 | 860                        | 90 0          |
| 310                                                                 | 320                     | 27 0       | 860                                                                 | 870                        | 91 4          |
| 320                                                                 | 330                     | 28 0       | 870                                                                 | 880                        | 92 8          |
| 330                                                                 | 340                     | 29 0       | 880                                                                 | 890                        | 93 12         |
| 340                                                                 | 350                     | 30 0       | 890                                                                 | 900                        | 95 0          |
| 350                                                                 | 360                     | 31 0       | 900                                                                 | 910                        | 96 4          |
| 360                                                                 | 370                     | 32 0       | 910                                                                 | 920                        | 97 8          |
| 370                                                                 | 380                     | 33 0       | 920                                                                 | 930                        | 98 12         |
| 380                                                                 | 390                     | 34 0       | 930                                                                 | 940                        | 100 0         |
| 390                                                                 | 400                     | 35 0       | 940                                                                 | 950                        | 101 4         |
| 400                                                                 | 410                     | 36 0       | 950                                                                 | 960                        | 102 8         |
| 410                                                                 | 420                     | 37 0       | 960                                                                 | 970                        | 103 12        |
| 420                                                                 | 430                     | 38 0       | 970                                                                 | 980                        | 105 0         |
| 430                                                                 | 440                     | 39 0       | 980                                                                 | 990                        | 106 4         |
| 440                                                                 | 450                     | 40 0       | 990                                                                 | 1 000                      | 107 8         |
| 450                                                                 | 460                     | 41 0       | 1 000                                                               | 1 100                      | 113 12        |
| 460                                                                 | 470                     | 42 0       | 1 100                                                               | 1 200                      | 120 0         |
| 470                                                                 | 480                     | 43 0       | 1 200                                                               | 1 300                      | 126 4         |
| 480                                                                 | 490                     | 44 0       | 1 300                                                               | 1 400                      | 132 8         |
| 490                                                                 | 500                     | 45 0       | 1 400                                                               | 1 500                      | 138 12        |
| 500                                                                 | 510                     | 46 4       | 1 500                                                               | 1 600                      | 145 0         |
| 510                                                                 | 520                     | 47 8       | 1 600                                                               | 1 700                      | 151 4         |
| 520                                                                 | 530                     | 48 12      | 1 700                                                               | 1 800                      | 157 8         |
| 530                                                                 | 540                     | 50 0       | 1 800                                                               | 1 900                      | 163 12        |
| 540                                                                 | 550                     | 51 4       | 1 900                                                               | 2 000                      | 170 0         |
| 550                                                                 | 560                     | 52 8       | 2 000                                                               | 2 100                      | 176 4         |
| 560                                                                 | 570                     | 53 12      | 2 100                                                               | 2 200                      | 182 8         |
| 570                                                                 | 580                     | 55 0       | 2 200                                                               | 2 300                      | 188 12        |
| 580                                                                 | 590                     | 56 4       | 2 300                                                               | 2 400                      | 195 0         |
| 590                                                                 | 600                     | 57 8       | 2 400                                                               | 2 500                      | 201 4         |
| 600                                                                 | 610                     | 58 12      | 2 500                                                               | 2 600                      | 207 8         |
| 610                                                                 | 620                     | 60 0       | 2 600                                                               | 2 700                      | 213 12        |
| 620                                                                 | 630                     | 61 4       | 2 700                                                               | 2 800                      | 220 0         |
| 630                                                                 | 640                     | 62 8       | 2 800                                                               | 2 900                      | 226 4         |
| 640                                                                 | 650                     | 63 12      | 2 900                                                               | 3 000                      | 232 8         |
| 650                                                                 | 660                     | 65 0       | 3 000                                                               | 3 100                      | 238 12        |
| 660                                                                 | 670                     | 66 4       | 3 100                                                               | 3 200                      | 245 0         |
| 670                                                                 | 680                     | 67 8       | 3 200                                                               | 3 300                      | 251 4         |
| 680                                                                 | 690                     | 68 12      | 3 300                                                               | 3 400                      | 257 8         |
| 690                                                                 | 700                     | 70 0       | 3 400                                                               | 3 500                      | 263 12        |
| 700                                                                 | 710                     | 71 4       | 3 500                                                               | 3 600                      | 270 0         |
| 710                                                                 | 720                     | 72 8       | 3 600                                                               | 3 700                      | 276 4         |
| 720                                                                 | 730                     | 73 12      | 3 700                                                               | 3 800                      | 282 8         |
| 730                                                                 | 740                     | 75 0       | 3 800                                                               | 3 900                      | 288 12        |
| 740                                                                 | 750                     | 76 4       | 3 900                                                               | 4 000                      | 295 0         |

When such amount or value exceeds five hundred rupees for every ten rupees or part thereof in excess of five hundred rupees up to one thousand rupees

One rupee four annas

When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees

Six rupees four annas

When such amount or value exceeds five thousand rupees for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees

Twelve rupees eight annas

When such amount or value exceeds ten thousand rupees for every five hundred rupees, or part thereof, in excess of ten thousand rupees up to twenty thousand rupees

Eighteen rupees twelve annas

When such amount or value exceeds twenty thousand rupees for every one thousand rupees, or part thereof, in excess of twenty thousand rupees up to thirty thousand rupees

Twenty five rupees

When such amount or value exceeds thirty thousand rupees for every two thousand rupees or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees

Twenty five rupees

When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof in excess of fifty thousand rupees

Thirty one rupees four annas

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees

### SCHEDULE B

*Table of rates of ad valorem fees leviable on the institution of suits*

| When the amount or value of the subject matter exceeds— | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee |
|---------------------------------------------------------|---------------------|------------|---------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                  | Rs A       | Rs                                                      | Rs                   | Rs A       |
|                                                         | 5                   | 0 6        | 75                                                      | 80                   | 6 0        |
| 5                                                       | 10                  | 0 12       | 80                                                      | 85                   | 6 6        |
| 10                                                      | 15                  | 1 2        | 85                                                      | 90                   | 6 12       |
| 15                                                      | 20                  | 1 8        | 90                                                      | 95                   | 7 2        |
| 20                                                      | 25                  | 1 14       | 95                                                      | 100                  | 7 8        |
| 25                                                      | 30                  | 2 4        | 100                                                     | 110                  | 8 4        |
| 30                                                      | 35                  | 2 10       | 110                                                     | 120                  | 9 0        |
| 35                                                      | 40                  | 3 0        | 120                                                     | 130                  | 9 12       |
| 40                                                      | 45                  | 3 6        | 130                                                     | 140                  | 10 8       |
| 45                                                      | 50                  | 3 12       | 140                                                     | 150                  | 11 4       |
| 50                                                      | 55                  | 4 2        | 150                                                     | 160                  | 12 0       |
| 55                                                      | 60                  | 4 8        | 160                                                     | 170                  | 12 12      |
| 60                                                      | 65                  | 4 14       | 170                                                     | 180                  | 13 8       |
| 65                                                      | 70                  | 5 4        | 180                                                     | 190                  | 14 4       |
| 70                                                      | 75                  | 5 10       | 190                                                     | 200                  | 15 0       |

| When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee | When the amount or value of the subject-matter exceeds— | But does not exceed— | Proper Fee |
|---------------------------------------------------------|----------------------|------------|---------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                   | Rs A       | Rs                                                      | Rs                   | Rs, A.     |
| 200                                                     | 210                  | 16 0       | 750                                                     | 760                  | 77 8       |
| 210                                                     | 220                  | 17 0       | 760                                                     | 770                  | 78 12      |
| 220                                                     | 230                  | 18 0       | 770                                                     | 780                  | 80 0       |
| 230                                                     | 240                  | 19 0       | 780                                                     | 790                  | 81 4       |
| 240                                                     | 250                  | 20 0       | 790                                                     | 800                  | 82 8       |
| 250                                                     | 260                  | 21 0       | 800                                                     | 810                  | 83 12      |
| 260                                                     | 270                  | 22 0       | 810                                                     | 820                  | 85 0       |
| 270                                                     | 280                  | 23 0       | 820                                                     | 830                  | 86 4       |
| 280                                                     | 290                  | 24 0       | 830                                                     | 840                  | 87 8       |
| 290                                                     | 300                  | 25 0       | 840                                                     | 850                  | 88 12      |
| 300                                                     | 310                  | 26 0       | 850                                                     | 860                  | 90 0       |
| 310                                                     | 320                  | 27 0       | 860                                                     | 870                  | 91 4       |
| 320                                                     | 330                  | 28 0       | 870                                                     | 880                  | 92 8       |
| 330                                                     | 340                  | 29 0       | 880                                                     | 890                  | 93 12      |
| 340                                                     | 350                  | 30 0       | 890                                                     | 900                  | 95 0       |
| 350                                                     | 360                  | 31 0       | 900                                                     | 910                  | 96 4       |
| 360                                                     | 370                  | 32 0       | 910                                                     | 920                  | 97 8       |
| 370                                                     | 380                  | 33 0       | 920                                                     | 930                  | 98 12      |
| 380                                                     | 390                  | 34 0       | 930                                                     | 940                  | 100 0      |
| 390                                                     | 400                  | 35 0       | 940                                                     | 950                  | 101 4      |
| 400                                                     | 410                  | 36 0       | 950                                                     | 960                  | 102 8      |
| 410                                                     | 420                  | 37 0       | 960                                                     | 970                  | 103 12     |
| 420                                                     | 430                  | 38 0       | 970                                                     | 980                  | 105 0      |
| 430                                                     | 440                  | 39 0       | 980                                                     | 990                  | 106 4      |
| 440                                                     | 450                  | 40 0       | 990                                                     | 1,000                | 107 8      |
| 450                                                     | 460                  | 41 0       | 1,000                                                   | 1,100                | 113 12     |
| 460                                                     | 470                  | 42 0       | 1,100                                                   | 1,200                | 120 0      |
| 470                                                     | 480                  | 43 0       | 1,200                                                   | 1,300                | 126 4      |
| 480                                                     | 490                  | 44 0       | 1,300                                                   | 1,400                | 132 8      |
| 490                                                     | 500                  | 45 0       | 1,400                                                   | 1,500                | 138 12     |
| 500                                                     | 510                  | 46 4       | 1,500                                                   | 1,600                | 145 0      |
| 510                                                     | 520                  | 47 8       | 1,600                                                   | 1,700                | 151 4      |
| 520                                                     | 530                  | 48 12      | 1,700                                                   | 1,800                | 157 8      |
| 530                                                     | 540                  | 50 0       | 1,800                                                   | 1,900                | 163 12     |
| 540                                                     | 550                  | 51 4       | 1,900                                                   | 2,000                | 170 0      |
| 550                                                     | 560                  | 52 8       | 2,000                                                   | 2,100                | 176 4      |
| 560                                                     | 570                  | 53 12      | 2,100                                                   | 2,200                | 182 8      |
| 570                                                     | 580                  | 55 0       | 2,200                                                   | 2,300                | 188 12     |
| 580                                                     | 590                  | 56 4       | 2,300                                                   | 2,400                | 195 0      |
| 590                                                     | 600                  | 57 8       | 2,400                                                   | 2,500                | 201 4      |
| 600                                                     | 610                  | 58 12      | 2,500                                                   | 2,600                | 207 8      |
| 610                                                     | 620                  | 60 0       | 2,600                                                   | 2,700                | 213 12     |
| 620                                                     | 630                  | 61 4       | 2,700                                                   | 2,800                | 220 0      |
| 630                                                     | 640                  | 62 8       | 2,800                                                   | 2,900                | 226 4      |
| 640                                                     | 650                  | 63 12      | 2,900                                                   | 3,000                | 232 8      |
| 650                                                     | 660                  | 65 0       | 3,000                                                   | 3,100                | 238 12     |
| 660                                                     | 670                  | 66 4       | 3,100                                                   | 3,200                | 245 0      |
| 670                                                     | 680                  | 67 8       | 3,200                                                   | 3,300                | 251 4      |
| 680                                                     | 690                  | 68 12      | 3,300                                                   | 3,400                | 257 8      |
| 690                                                     | 700                  | 70 0       | 3,400                                                   | 3,500                | 263 12     |
| 700                                                     | 710                  | 71 4       | 3,500                                                   | 3,600                | 270 0      |
| 710                                                     | 720                  | 72 8       | 3,600                                                   | 3,700                | 276 4      |
| 720                                                     | 730                  | 73 12      | 3,700                                                   | 3,800                | 282 8      |
| 730                                                     | 740                  | 75 0       | 3,800                                                   | 3,900                | 288 12     |
| 740                                                     | 750                  | 76 4       | 3,900                                                   | 4,000                | 295 0      |

When such amount or value exceeds five hundred rupees for every ten rupees, or part thereof, in excess of five hundred rupees up to one thousand rupees

One rupee four annas

When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees

Six rupees four annas

When such amount or value exceeds five thousand rupees for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees

Twelve rupees eight annas

When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees

Eighteen rupees twelve annas

When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees up to thirty thousand rupees

Twenty five rupees

When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees

Twenty five rupees

When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof in excess of fifty thousand rupees

Thirty-one rupees four annas

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees

### SCHEDULE B

*Table of rates of ad valorem fees leviable on the institution of suits*

| When the amount or value of the subject matter exceeds— | But does not exceed | Proper fee | When the amount or value of the subject matter exceeds— | But does not exceed— | Proper fee |
|---------------------------------------------------------|---------------------|------------|---------------------------------------------------------|----------------------|------------|
| Rs                                                      | Rs                  | Rs A       | Rs                                                      | Rs                   | Rs A       |
|                                                         | 5                   | 0 6        | 75                                                      | 80                   | 6 0        |
| 5                                                       | 10                  | 0 12       | 80                                                      | 85                   | 6 6        |
| 10                                                      | 15                  | 1 2        | 85                                                      | 90                   | 6 12       |
| 15                                                      | 20                  | 1 8        | 90                                                      | 95                   | 7 2        |
| 20                                                      | 25                  | 1 14       | 95                                                      | 100                  | 7 8        |
| 25                                                      | 30                  | 2 4        | 100                                                     | 110                  | 8 4        |
| 30                                                      | 35                  | 2 10       | 110                                                     | 120                  | 9 0        |
| 35                                                      | 40                  | 3 0        | 120                                                     | 130                  | 9 12       |
| 40                                                      | 45                  | 3 6        | 130                                                     | 140                  | 10 8       |
| 45                                                      | 50                  | 3 12       | 140                                                     | 150                  | 11 4       |
| 50                                                      | 55                  | 4 2        | 150                                                     | 160                  | 12 0       |
| 55                                                      | 60                  | 4 8        | 160                                                     | 170                  | 12 12      |
| 60                                                      | 65                  | 4 14       | 170                                                     | 180                  | 13 8       |
| 65                                                      | 70                  | 5 4        | 180                                                     | 190                  | 14 4       |
| 70                                                      | 75                  | 5 10       | 190                                                     | 200                  | 15 0       |



| When the<br>amount or<br>value of the<br>subject matter<br>exceeds— | But does not<br>exceed— | Proper fee | When the<br>amount or<br>value of the<br>subject matter<br>exceeds— | But does<br>not<br>exceed— | Proper<br>Fee |
|---------------------------------------------------------------------|-------------------------|------------|---------------------------------------------------------------------|----------------------------|---------------|
| Rs                                                                  | Rs                      | Rs A       | Rs                                                                  | Rs                         | Rs, A         |
| 200                                                                 | 210                     | 16 0       | 750                                                                 | 760                        | 77 8          |
| 210                                                                 | 220                     | 17 0       | 760                                                                 | 770                        | 78 12         |
| 220                                                                 | 230                     | 18 0       | 770                                                                 | 780                        | 80 0          |
| 230                                                                 | 240                     | 19 0       | 780                                                                 | 790                        | 81 4          |
| 240                                                                 | 250                     | 20 0       | 790                                                                 | 800                        | 82 8          |
| 250                                                                 | 260                     | 21 0       | 800                                                                 | 810                        | 83 12         |
| 260                                                                 | 270                     | 22 0       | 810                                                                 | 820                        | 85 0          |
| 270                                                                 | 280                     | 23 0       | 820                                                                 | 830                        | 86 4          |
| 280                                                                 | 290                     | 24 0       | 830                                                                 | 840                        | 87 8          |
| 290                                                                 | 300                     | 25 0       | 840                                                                 | 850                        | 88 12         |
| 300                                                                 | 310                     | 26 0       | 850                                                                 | 860                        | 90 0          |
| 310                                                                 | 320                     | 27 0       | 860                                                                 | 870                        | 91 4          |
| 320                                                                 | 330                     | 28 0       | 870                                                                 | 880                        | 92 8          |
| 330                                                                 | 340                     | 29 0       | 880                                                                 | 890                        | 93 12         |
| 340                                                                 | 350                     | 30 0       | 890                                                                 | 900                        | 95 0          |
| 350                                                                 | 360                     | 31 0       | 900                                                                 | 910                        | 96 4          |
| 360                                                                 | 370                     | 32 0       | 910                                                                 | 920                        | 97 8          |
| 370                                                                 | 380                     | 33 0       | 920                                                                 | 930                        | 98 12         |
| 380                                                                 | 390                     | 34 0       | 930                                                                 | 940                        | 100 0         |
| 390                                                                 | 400                     | 35 0       | 940                                                                 | 950                        | 101 4         |
| 400                                                                 | 410                     | 36 0       | 950                                                                 | 960                        | 102 8         |
| 410                                                                 | 420                     | 37 0       | 960                                                                 | 970                        | 103 12        |
| 420                                                                 | 430                     | 38 0       | 970                                                                 | 980                        | 105 0         |
| 430                                                                 | 440                     | 39 0       | 980                                                                 | 990                        | 106 4         |
| 440                                                                 | 450                     | 40 0       | 990                                                                 | 1,000                      | 107 8         |
| 450                                                                 | 460                     | 41 0       | 1,000                                                               | 1,100                      | 113 12        |
| 460                                                                 | 470                     | 42 0       | 1,100                                                               | 1,200                      | 120 0         |
| 470                                                                 | 480                     | 43 0       | 1,200                                                               | 1,300                      | 126 4         |
| 480                                                                 | 490                     | 44 0       | 1,300                                                               | 1,400                      | 132 8         |
| 490                                                                 | 500                     | 45 0       | 1,400                                                               | 1,500                      | 138 12        |
| 500                                                                 | 510                     | 46 4       | 1,500                                                               | 1,600                      | 145 0         |
| 510                                                                 | 520                     | 47 8       | 1,600                                                               | 1,700                      | 151 4         |
| 520                                                                 | 530                     | 48 12      | 1,700                                                               | 1,800                      | 157 8         |
| 530                                                                 | 540                     | 50 0       | 1,800                                                               | 1,900                      | 163 12        |
| 540                                                                 | 550                     | 51 4       | 1,900                                                               | 2,000                      | 170 0         |
| 550                                                                 | 560                     | 52 8       | 2,000                                                               | 2,100                      | 176 4         |
| 560                                                                 | 570                     | 53 12      | 2,100                                                               | 2,200                      | 182 8         |
| 570                                                                 | 580                     | 55 0       | 2,200                                                               | 2,300                      | 188 12        |
| 580                                                                 | 590                     | 56 4       | 2,300                                                               | 2,400                      | 195 0         |
| 590                                                                 | 600                     | 57 8       | 2,400                                                               | 2,500                      | 201 4         |
| 600                                                                 | 610                     | 58 12      | 2,500                                                               | 2,600                      | 207 8         |
| 610                                                                 | 620                     | 60 0       | 2,600                                                               | 2,700                      | 213 12        |
| 620                                                                 | 630                     | 61 4       | 2,700                                                               | 2,800                      | 220 0         |
| 630                                                                 | 640                     | 62 8       | 2,800                                                               | 2,900                      | 226 4         |
| 640                                                                 | 650                     | 63 12      | 2,900                                                               | 3,000                      | 232 8         |
| 650                                                                 | 660                     | 65 0       | 3,000                                                               | 3,100                      | 238 12        |
| 660                                                                 | 670                     | 66 4       | 3,100                                                               | 3,200                      | 245 0         |
| 670                                                                 | 680                     | 67 8       | 3,200                                                               | 3,300                      | 251 4         |
| 680                                                                 | 690                     | 68 12      | 3,300                                                               | 3,400                      | 257 8         |
| 690                                                                 | 700                     | 70 0       | 3,400                                                               | 3,500                      | 263 12        |
| 700                                                                 | 710                     | 71 4       | 3,500                                                               | 3,600                      | 270 0         |
| 710                                                                 | 720                     | 72 8       | 3,600                                                               | 3,700                      | 276 4         |
| 720                                                                 | 730                     | 73 12      | 3,700                                                               | 3,800                      | 282 8         |
| 730                                                                 | 740                     | 75 0       | 3,800                                                               | 3,900                      | 288 12        |
| 740                                                                 | 750                     | 76 4       | 3,900                                                               | 4,000                      | 295 0         |

| When the<br>amount or<br>value of the<br>subject-<br>matter-<br>exceeds | But does<br>exceed— | Proper<br>Fee | When the<br>amount or value<br>of the subject<br>matter exceeds— | But does<br>not<br>exceed— | Proper<br>fee. |
|-------------------------------------------------------------------------|---------------------|---------------|------------------------------------------------------------------|----------------------------|----------------|
| Rs. A.                                                                  | Rs. A.              | Rs. A.        | Rs.                                                              | Rs.                        | Rs. A.         |
| 4,000                                                                   | 4,100               | 301 4         | 15,000                                                           | 15,500                     | 813 12         |
| 4,100                                                                   | 4,200               | 307 8         | 15,500                                                           | 16,000                     | 832 8          |
| 4,200                                                                   | 4,300               | 313 12        | 16,000                                                           | 16,500                     | 851 4          |
| 4,300                                                                   | 4,400               | 320 0         | 16,500                                                           | 17,000                     | 870 0          |
| 4,400                                                                   | 4,500               | 326 4         | 17,000                                                           | 17,500                     | 888 12         |
| 4,500                                                                   | 4,600               | 332 8         | 17,500                                                           | 18,000                     | 907 8          |
| 4,600                                                                   | 4,700               | 338 12        | 18,000                                                           | 18,500                     | 926 4          |
| 4,700                                                                   | 4,800               | 345 0         | 18,500                                                           | 19,000                     | 945 0          |
| 4,800                                                                   | 4,900               | 351 4         | 19,000                                                           | 19,500                     | 963 12         |
| 4,900                                                                   | 5,000               | 357 8         | 19,500                                                           | 20,000                     | 982 8          |
| 5,000                                                                   | 5,250               | 370 0         | 20,000                                                           | 21,000                     | 1,007 8        |
| 5,250                                                                   | 5,500               | 382 8         | 21,000                                                           | 22,000                     | 1,032 8        |
| 5,500                                                                   | 5,750               | 395 0         | 22,000                                                           | 23,000                     | 1,057 8        |
| 5,750                                                                   | 6,000               | 407 8         | 23,000                                                           | 24,000                     | 1,082 8        |
| 6,000                                                                   | 6,250               | 420 0         | 24,000                                                           | 25,000                     | 1,107 8        |
| 6,250                                                                   | 6,500               | 432 8         | 25,000                                                           | 26,000                     | 1,132 8        |
| 6,500                                                                   | 6,750               | 445 0         | 26,000                                                           | 27,000                     | 1,157 8        |
| 6,750                                                                   | 7,000               | 457 8         | 27,000                                                           | 28,000                     | 1,182 8        |
| 7,000                                                                   | 7,250               | 470 0         | 28,000                                                           | 29,000                     | 1,207 8        |
| 7,250                                                                   | 7,500               | 482 8         | 29,000                                                           | 30,000                     | 1,232 8        |
| 7,500                                                                   | 7,750               | 495 0         | 30,000                                                           | 32,000                     | 1,257 8        |
| 7,750                                                                   | 8,000               | 507 8         | 32,000                                                           | 34,000                     | 1,282 8        |
| 8,000                                                                   | 8,250               | 520 0         | 34,000                                                           | 36,000                     | 1,307 8        |
| 8,250                                                                   | 8,500               | 532 8         | 36,000                                                           | 38,000                     | 1,332 8        |
| 8,500                                                                   | 8,750               | 545 0         | 38,000                                                           | 40,000                     | 1,357 8        |
| 8,750                                                                   | 9,000               | 557 8         | 40,000                                                           | 42,000                     | 1,382 8        |
| 9,000                                                                   | 9,250               | 570 0         | 42,000                                                           | 44,000                     | 1,407 8        |
| 9,250                                                                   | 9,500               | 582 8         | 44,000                                                           | 46,000                     | 1,432 8        |
| 9,500                                                                   | 9,750               | 595 0         | 46,000                                                           | 48,000                     | 1,457 8        |
| 9,750                                                                   | 10,000              | 607 8         | 48,000                                                           | 50,000                     | 1,482 8        |
| 10,000                                                                  | 10,500              | 626 4         | 50,000                                                           | 55,000                     | 1,513 12       |
| 10,500                                                                  | 11,000              | 645 0         | 55,000                                                           | 60,000                     | 1,545 0        |
| 11,000                                                                  | 11,500              | 663 12        | 60,000                                                           | 65,000                     | 1,576 4        |
| 11,500                                                                  | 12,000              | 682 6         | 65,000                                                           | 70,000                     | 1,607 8        |
| 12,000                                                                  | 12,500              | 701 4         | 70,000                                                           | 75,000                     | 1,638 12       |
| 12,500                                                                  | 13,000              | 720 0         | 75,000                                                           | 80,000                     | 1,670 0        |
| 13,000                                                                  | 13,500              | 738 12        | 80,000                                                           | 85,000                     | 1,701 4        |
| 13,500                                                                  | 14,000              | 757 8         | 85,000                                                           | 90,000                     | 1,732 8        |
| 14,000                                                                  | 14,500              | 776 4         | 90,000                                                           | 95,000                     | 1,763 12       |
| 14,500                                                                  | 15,000              | 795 0         | 95,000                                                           | 1,00,000                   | 1,795 0        |

And the fee increases at the rate of thirty-one rupees four annas for every five thousand rupees, or part thereof, for example—

| Rs.      | Rs.     |
|----------|---------|
| 2,00,000 | 2,420 0 |
| 3,00,000 | 3,045 0 |
| 4,00,000 | 3,670 0 |
| 5,00,000 | 4,295 0 |
| 5,35,000 | 4,500 0 |

# U. P. COURT-FEES (AMENDMENT) ACT III OF 1933

PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES  
OF AGRA AND OUDH

*An Act to amend the Court Fees Act, 1870, in its application to  
the United Provinces*

WHEREAS it is expedient to amend the Court Fees Act, 1870, in its applica-  
tion to the United Provinces for the purposes  
hereinafter appearing, it is hereby enacted as  
follows —

Preamble

Title

1 (1) This Act may be called the United  
Provinces Court fees (Amendment) Act, 1933

(2) It extends to the territories for the time being administered by the  
Local Government of the United Provinces

Addition of new article to  
Schedule II to Act VII of 1870

2 In schedule II to the Court fees Act,  
1870, the following article shall be added after  
article 21

Number

Proper fee

|                         |                                                                                                                                                                                                                                                                                                                                                                                |                       |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 22 Election<br>petition | (a) A petition presented to the Commissioner<br>of a division or to the collector of a district<br>(or to some other person or tribunal spe-<br>cially appointed by rule in this behalf) under<br>sub section (1) of section 22 of the United<br>Provinces Municipalities Act (Act II of 1916)<br>questioning the election of any person as a<br>member of the Municipal board | One hundred<br>rupees |
|                         | (b) A petition presented to a District Judge (or<br>to some other person or tribunal specially<br>appointed by rule in this behalf) or to a<br>munsif under sub section (2) of section 18<br>of the District Boards Act (Act X of 1922)<br>questioning the election of any person as a<br>member of a District Board                                                           | Do                    |

## THE CROWN GRANTS ACT, 1895

Act No XV OF 1895

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

*(Received the assent of the Governor-General on the 10th October, 1895)*

*An Act to explain the Transfer of Property Act, 1882, so far as relates to  
grants from the Crown, and to remove certain doubts as to the powers of  
the Crown in relation to such grants*

WHEREAS doubts have arisen as to the extent and operation of the Transfer  
of Property Act, 1882, and as to the power of the Crown to impose limitations  
and restrictions upon grants and other transfers of land made by it or under its  
authority, and it is expedient to remove such doubts, It is hereby enacted  
as follows —

Title extent and commencement 1. (1) This act may be called the Crown Grants Act, 1895 ;  
 (2) It extends to the whole of British India ;\*

Legislative papers For Statement of Objects and Reasons, *vide* Gazette of India 1895, Pt. V p 169 and for Proceedings in Council, *vide ibid* Pt VI pp 339 and 355

Notes—In England it is said "no one holds market without a license from the Crown and the reason has been thus stated 'The reason why a market or fair cannot be holden without a grant is not merely for the sake of promoting traffic of commerce but also, for the like reason as in the Roman law, for the preservation of order and prevention of irregular behaviour, *ubi est multitudo, ubi debet esset rector* The words are those of *Mr Justice Wilmut* in *Rex v Marsden*, (1765) 3 Burr 1812 and they were cited in the house of Lords in the case of *Hammerton v Earl of Dysart*, L R (1916) 1 A C 67 at p 68 In Bengal the right to hold market is treated as incident of ownership of land A proprietor may set up a market in proximity to his neighbour's market without infringing the maxim *Sic utere, tui at alie num non laedas* The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition (*Hammerton v Earl of Dysart*) He has no remedy at law merely because his profits are diminished' 24 C W N 800 at pp 802, 803 This act validates all grants "ect may be contrary to the tenor of any 9 C W N, 1009=8 O C 317=15 M L J. grants made under Government of India does not apply to leases by crown 104 Ind

Cas 209 This is also a declaratory Act 49 M 349

2 Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made, or hereafter to be made, by or on behalf of Her Majesty the Queen Empress, her heirs, or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever, but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

rt of property object to the not saleable ature did not rictions as to gee 3 A L J mine whether the Crown is grant and the the *darkhast* so 29 M 461 ; the provisions of the Transfer of Property Act inapplicable to land held under s that when the Court is Crown it shall construe of Property Act A W. N (1906) 44=3 A L J 129 The provisions of sections 2 and 3 of the Crown Grants Act do not exclude all leases executed by or on behalf of Government from the operation of section 107 of the Transfer of Property Act, *a fortiori* they do not exclude the operation of the Indian Registration Act which itself provides for the cases in which documents are exempted from registration when executed by or on A 176=12 A L J 125 The expression transfer of prerogative right possessed every description 53 Ind Cas 345= y the Crown are outside the operation

\* Certain word after this repealed by Act 10 of 1914 has been omitted

of the Transfer of Property Act There is no distinction between grants by virtue of the prerogative rights of the Crown and grants made as a mercantile transaction for profit A I R 1927 Pat 319 As to the application of this Act in cases where the original endowment by *wakf* made by former rule, vide 1927 Oudh, 131

3 All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding

Notes—A grant by the Crown for the maintenance of a tomb cannot be contented to be invalid, on the ground that it created an estate not recognised by the Mahomedan Law as the Crown has under this section power to make any such grant or transfer, "any rule of law, statute or enactment of the legislature to the contrary notwithstanding" 2 M L T 55 A stipulation in a lease granted by Government of land situate in Malabar, that the lessee should not erect buildings thereon does not fall within the mischief of section 10 of the Malabar Compensation for Tenants Improvements Act and is saved by this section 53 Ind Cas 345=43 M O=37 M L J 332 The Crown has in British India power to grant or to transfer lands and by its grant, or on the transfer to limit in any way it pleases the descent of such lands But a subject has no right by express declaration still less by mere volition, actual or presumed, to impose upon lands or other property any limitation or descent which is at variance with the ordinary law of descent of property applicable to the case 23 C W N 101=40 A 470=45 I A 134=48 Ind Cas 213 (P C) Where Crown grant contains a reservation of the right to terminate the tenancy on six months notice and also an express covenant by the lessee to surrender the tenancy on ejection is not entitled to compensation under the Malabar Compensation for Tenant's Improvement Act 69 Ind Cas 475=41 M L J 44 The Act cannot be taken to mean that when the Crown has granted an estate upon certain terms then those terms are to hold good in perpetuity and that the Crown is precluded from modifying those terms by subsequent legislation 1927 Oudh 280

## THE CUTCHI MEMONS ACT, 1920

### ACT NO XLVI OF 1920

PASSED BY THE GOVERNOR GENERAL IN COUNCIL

*Received the assent of the Governor General on the 17th September, 1920*

*An Act to enable Cutchi Memons to be governed in matters of succession and inheritance by Muhammadan law*

WHEREAS it is expedient to enable those Cutchi Memons who so desire to be governed in matters of succession and inheritance by Muhammadan law, it is hereby enacted as follows—

Notes—Before the passing of this Act all the *Cutchi Memons* were governed by Hindu Law in matters of succession 41 B 181=17 Bom. L R 799=31 Ind Cas 196, 43 I A 35=20 C W N 362=30 M L J 277, 5 Ind Cas 990=30 P R. (1910)=27 P W R (1910), 10 B 1=30 B 497=7 Bom L R 447, 9 B, 115 But the Cutchi Memons are not Hindus 6 B 452 Although Cutchi Memons are governed by the Hindu law and customs as regards succession, still in other matters such as execution of Will etc they are governed by the Mahomedan law 7 Bom L R 558, 251 P L R 1903 41 B 181=17 Bom L R 799=31 Ind Cas 106, 38 B 442

Object of the Legislation—The Cutchi Memons claim that they are the descendants of the Muhammadans who came to the coast of Oman Except for the historical fact converted to Mahomedanism about present day good and strict Moslems

one occasion since the judgment of *Sir Erskine Perry* in the year 1847, in what is commonly known as the *Khojas and Memons'* case that in some particulars they are still governed by the Hindu Customs instead of *Mahomedan Law*. The *Cutchi Memons* have always felt aggrieved and considered the principle so established as incorrect both in law and in practice. Realising this grievance of the *Cutchi Memons* a Bill was brought in by Mr Justice Amir Ali about the end of 1885. That Bill intended to make it permissive to the members of the *Cutchi Memons* community to declare themselves subject to Muhammadan Law. The Bill provided for such a declaration to be made in a prescribed form. By reason of certain difference of opinion as to its provisions the Bill was not proceeded with. In the year 1896 another Bill was submitted to the Imperial Legislative Council. That Bill was drafted on practically the same lines as the Bill of 1885. The Government of India would appear to have been still of opinion that it would not be right to accept such a measure unless it were shown to be in accordance with the wishes of the entire community. The Bill was referred to a Select Committee. The Committee made its report on the Bill and the matter was allowed to rest there and as no motion with respect to the Bill was made for 2 years the Bill was removed from the list of business on the 24th March 1900 by an order of the President under rule 43 of the Rule for the conduct of Legislative Business. From the manner in which the *Cutchi Memons* were agitating the question in their community it would appear that they are unanimous that they should be governed in all particulars by Muhammadan Law of the *Hanafi School*.—*Statement of Objects and Reasons*

Short title

1 This Act may be called the Cutchi Memons Act, 1920

2 (a) "Any person who satisfies the prescribed authority—

Power to make a declaration (a) that he is a Cutchi Memon and is the person whom he represents himself to be,

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872, and

(c) that he is resident in British India, "

may be a  
rit  
dec  
the prescribed authority, and thereafter the  
its shall in matters of  
succession and inheritance be governed by the Muhammadan law

(2) "Where the prescribed authority refuses to accept a declaration under  
make the same may appeal to such officer  
general or special order, appoint in this  
satisfied that the appellant is entitled to  
the declaration order the prescribed authority to accept the same "

Notes—According to sect on 11 of the Contract Act 'every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject'. A contract is void 30 C 539 (P C)  
27 Ind C 733, 46 A 568 23 P R.  
1888 Unless pers  
in matter of success rned by Mahomedan law

Rule making power of Local Government 3f "(1) The Local Government may make rules to carry into effect the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters namely—

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made,

\* Substituted and inserted by Act 34 of 1923

† Substituted by Act 34 of 1923

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this act, and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied "

(3) Rules made under the provisions of this section shall be published in the local official Gazette and shall thereupon have effect as if enacted in this Act

## THE DESTRUCTION OF RECORDS ACT, 1917

### ACT NO V OF 1917.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

*Received the assent of the Governor General on the 28th*

*February, 1917*

*An Act to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other public officers*

WHEREAS it is expedient to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other public officers, It is hereby enacted as follows

**Object of the Legislation**—In present conditions documents are required to be placed in the custody of a Government officer under a large number of enactments. In many of these Acts no provision exists for destruction of documents lodged with the Registrar of Joint Stock Companies Act (XXI of 1860) the Provident Insurance Life Assurance Companies Act (VI of 1912) 1913), nor could such papers be dealt with under (III of 1879) as it stands. It is accordingly proposed to repeal and re enact the Act of 1879 so as to make it conform to modern requirements. The principal feature of the draft Bill is that it empowers certain authorities to frame rules for the disposal may consider not of sufficient the delegation to subordinate local Government. The rule s and the chief controlling be affected by this Bill—

### *Statement of objects and Reasons*

Short title.

1 This Act may be called the destruction of Records Act, 1917

Definitions

\*2 In this Act—

(1) "The Chief Controlling Revenue authority" means—

(a) in the presidencies of Fort William in Bengal and For St George and in the United Provinces and Bihar and Orissa—, the Board of Revenue,

(b) in the presidency of Bombay outside Sindh and the limits of the town of Bombay,—a Commissioner,

(c) in Sindh,—the Commissioner,

(d) in the Punjab and Burma,—the Financial Commissioner, and

(e) elsewhere,—the Local Government or such officer as the Local Government may, by notification in the local official Gazette, appoint in this behalf

(2) "High Court" means the highest Civil Court of appeal in any local area

**Notes**—The following definition of High Court occurs in the General Clause Act (IX of 1897) —"High Court" used with reference to Civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act

or Regulation containing the expression operates—*Vide Section 3 (24) of the General Clauses Act (IX of 1897)*

**3** (1) The authorities hereinafter specified may from time to time, make rules for the disposal, by destruction or otherwise, of such documents as are, in the opinion of the authority making the rules, not of sufficient public value to justify their preservation

- (a) The authorities shall be—
- (a) in the case of documents in the possession or custody of a High Court or of the Courts of Civil or Criminal jurisdiction subordinate thereto,—the High Court,
- (b) in the case of documents in the possession or custody of Revenue Courts and officers, the Chief Controlling Revenue authority, and
- (c) in the case of documents in the possession or custody of any other public officer,—the Local Government or any officer specially authorised in that behalf by the Local Government
- (3) Rules made under this section by the High Court of Judicature at Fort William in Bengal shall be subject to the previous approval of the Governor General in Council, and rules made by any other High Court, or by a Chief Controlling Revenue authority or by an officer specially authorized in that behalf by a Local Government, shall be subject to the previous approval of the Local Government

**Notes**—The principal feature of the Act is that it empowers certain authorities to frame rules for the disposal by destruction they may consider not of sufficient public value to for the delegation to subordinate officers of the Local Government. The rule making powers already vested in the Chief Controlling Revenue Authorities by Act III of 1879 is not affected by this Act—*Vide Statement of Objects and Reasons*

**4** All rules and orders directing or authorising the destruction or other disposal of documents in the possession or custody of any public officer, heretofore made by a Local Government, or with the approval of the Local Government by any authority not empowered to make such rules under the destruction of Records Act, 1879,\* shall be deemed to have had the force of law from the date on which they were made, and all such rules and orders now in force shall continue to have the force of law until they are superseded by rules made under this Act

**Notes**—By the section the previous rules or orders made under Act III of 1879 acquire the force of law. The necessity of making fresh rules dealing with subjects contained in the old rules has been done away with by this section

**5** Nothing in this Act shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained

**Notes**—The documents which are required to be kept and maintained by any enactment or law cannot be destroyed under this Act

**6** Repeals. *Repealed by Act XII of 1927.*

### THE SCHEDULE

#### REPEAL OF ENACTMENTS

Repealed by Act XII of 1927

\* Act III of 1879



# THE INDIAN DIVORCE ACT

## ACT NO IV OF 1869

RECEIVED THE G G'S ASSENT ON THE 26TH FEBRUARY, 1869.\*

*An Act to amend the law relating to Divorce and Matrimonial Causes in India*

Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows —

### 1—Preliminary

Short title  
Commencement of Act

This Act may be called "The Indian Divorce Act" and shall come into operation on the first day of April, 1869.

Statement of Objects and Reasons Vide Calcutta Lect Committee Vide Gazette of India 1869 p 192  
Calcutta Gazette 1862 supplement p 463 *ibid*  
ette of India 18 9 supplement p 291

2. This Act shall extend to the whole of British India, and (so far as only regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with the Majesty

Extent of power to grant relief generally, "Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner [or respondent,† professes the Christian religion,

"Or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time and to make decrees of dissolution when the petition is presented,

\* Act IV of 1869 extends to India the principal provisions of 20 & 21 Vict c 85, as amended by 22 and 23 Vict c 61 23 & 24 Vict c 144 and 29 and 30 Vict c 32. It also embodies many rulings of *Sir Cresswell Cresswell and Lord Penzance* Upper Burma generally (except the Shan States) III of 1913 s 3 in the Sinthal Parganas by Reg (III of 1890) s 3, in Angul and the Arakan Hill District (except so much of sections 47 and 49 as relates to stamps) by Reg (IX of 1874) s 3 and in British Baluchistan by Reg (I of 1890) s 3, and Reg 2 of 1913 s 3

ing the present District of the Kolhan in the District

agapatam Fort St George

It has been extended by notification under the same Act to the North Western Provinces Tarai. See *Gazette of India* 1876 Pt 1 p 505

The Limitation Act does not apply to suits under this Act—See Act XV of 1877,

† Inserted by Act XXX of 1 27

' Or to make decrees of nullity of marriage except where the marriage has been solemnized in India, and the petitioner is resident in India at the time of presenting the petition, or of nullity

' Or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition ' \*

Notes —For the second third and fourth paragraphs of the old section 2, (*vide infra*) the paras within quotations have been substituted by Act 25 of 1926

Old Section 2 — This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion, and resides in India at the time of presenting the petition, Extent of power to grant relief generally

or make decrees of dissolution of marriage except in the following cases (a) where the marriage shall have been solemnized in India or (b) where the adultery, rape, or unnatural crime complained of shall have been committed in India, or (c) where the husband has, since the solemnization of the marriage, exchanged his profession of some other form of religion,

and nullity or the make decrees of nullity of marriage except in cases where the marriage has been solemnized in India

Extent of Act—This section extends the provisions of this Act to European British subjects residing in a native state 10 B 422

decree against a  
applicable to such  
polygamous con  
v 2 N W P 370  
d under this Act  
o case, where the  
s to what persons  
xii, 14 M 380,  
9 C 469, 16 M  
be a Christian by

Resides—The words 'resides' is capable of a variety of meanings according to the circumstances to which it is applicable and the context to which it is found Each

43, 79 Ind Cas  
But where the  
but other than  
municipal law  
the decree is

See also *Lolly's Case* 1 Russ and Ry 237.

*Convoy v Bearly* 3 Hagg 639 *Dolphin v Robins*, 7 H L C 390, *Pitt v Pitt* 4 Macq 627, *Shaw v Attorney General* L R 2 P D 156 The existing English Law on the subject was summarised by the Judge Ordinary Lord Penzance in *Shaw v Attorney General* "It has been ver been English 1 in the cited, the English Courts would recognise and act upon such a divorce, appears to be a question not wholly free from doubt, but the better opinion seems to be that they would do so if the divorce be for a ground of divorce recognised as such in their country, and the foreign country be not resorted to for the collusive purpose of So it is not competent for a British Indian Court when the parties are not domiciled in India though India and the matrimonial offence was committed Residence must be a bona fide one 38 B 125=15

**Adultery committed in India**—Whatever the place of marriage may be, the District Court has under this section jurisdiction to pass a decree for dissolution of marriage when adultery the ground for dissolution has been committed in India. 23 B 392

**Effect of amendment by Act 30 of 1927**—Under the Indian Divorce Act which the petitioner professes acted by a Christian Marriage ly to Christian parties to such a also to apply for relief—*State*

**3** In this Act, unless there be some thing repugnant in the subject or context,—

(r) "High Court" means,

in any Regulation province—the Court there established under the Act of the twenty fourth and twenty fifth of Victoria chapter one hundred and four,

in the territories for the time being subject to the government of the Lieutenant Governor of the Punjab—the "High Court of Judicature at Lahore"

in Burma—"The High Court of Judicature at Rangoon" †

"in Oudh—the Chief Court of Oudh in Sind—the Chief court of Sind" ‡

and in any other Non Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together

§ (2) "District Judge" means, in the Regulation Provinces "and in Oudh" a Judge of a Principal Civil Courts of original jurisdiction,

\* Words within quotations have been substituted by Act 18 of 1919.

† The words within quotations have been substituted by Act XI of 1923

‡ Inserted by XXII of 1925

§ So much of s 3 cl (2) of this Act as defines "District Judge" to mean in the Central Provinces a Commissioner of a Division is repealed by (Act IV of 1901)

in the Non Regulation Provinces, other than "Oudh," Sind and "Burma",—  
a Commissioner of a Division \*

in "Burma and Sind—a Judge of a District † Court,"

and in any place in the dominions of the Princes and States aforesaid—  
such officer as the Governor General of India in Council shall from time to time  
appoint in this behalf by notification in the *Gazette of India* and in the  
absence of such officer, the High Court in the exercise of its original jurisdiction  
under this Act,

(3) "District Court" means, in the case of any petition under this Act, the  
Court of the District Judge within the local limits of whose ordinary jurisdic-  
tion or of whose jurisdiction under this Act, the husband and wife reside or  
last resided together,

(4) "Court" means the High Court or the District Court, as the case  
may be \*

(5) "Minor children" means, in the case of sons of native fathers, boys who  
have not completed the age of sixteen years, and, in the case of daughters  
of native fathers, girls who have not completed the age of thirteen years  
in other cases it means unmarried children who have not completed the age of  
eighteen years

(6) "Incestuous adultery" means, adultery committed by a husband with a  
woman with whom, if his wife were dead, he could not lawfully contract  
marriage by reason of her being within the prohibited degrees of consanguinity  
(whether natural or legal), or affinity

(7) "Bigamy with adultery" means adultery with the same woman with  
whom the bigamy was committed \*

(8) "Marriage with another woman" means marriage of any person, being  
married, to any other person, during the life of the former wife, whether the  
second marriage shall have taken place within the dominions of Her Majesty  
or elsewhere

(9) "Desertion" implies an abandonment against the wish of the person  
charging it and

(10) "Property" includes, in the case of a wife, any property to which she  
is entitled for an estate in remainder or reversion, or as a trustee, executrix  
or administratrix and the date of the death of the testator or intestate shall  
be deemed to be the time at which any such wife becomes entitled as executrix  
or administratrix

**Resides or last resided together**—As used in the section the word "resides"  
implies a dwelling either of a permanent nature or for some considerable time  
(L B R 1900—1922, Vol 1, 222) Where the husband and wife had no permanent  
residence, the petition could be entertained by the Court having jurisdiction at  
the place where they "last resided together" though for a short period 36 C 954  
The word "together" must be read with "last resided" only 22 Bom L R 361,  
171 P L 1911 See also 45 B 547, 22 Bom L R 1077, 76 P R 1916, 20 Ind Cas  
322, 44 B 974, 59 Ind Cas 931, 36 C 954, 77 P R 1905, 14 W R 416, 1892  
P J 153 If both parties are resident within the jurisdiction of the Court at the  
time of the presentation of the petition the Court has jurisdiction 22 Bom L R  
361, 10 Ind Cas 487 (F B), 53 C 282 As to the meaning of the word "reside"  
Vide, 30 C L J 314, 21 C 634, 13 C L J 221, 38 C 394, 32 A 203 (F B),  
5 Ind Cas 871, 5 Lah 147 (F B), 45 B 547, 3 C W N 250, 35 Ind Cas 367  
(B B), 10 B 422 47 B 843, 30 C 215, 52 C 566

**Subsection (8)**—The term "marriage" does not include Hindu marriage  
17 M 235

\* Substituted by XI of 1923

† Certain words of this repealed by Act 34 of 1906 by Act XXXIV of 1926

th-  
 cause *Mutter v Mutter*, 8 P D 187. A desertion may be made by the husband where he was imprisoned for 4 years for felony and twice for debt *Astope v Astope* 29 L J Mat. 27. Where a husband after his return from foreign country did not see his wife a case of desertion was proved *Lawrence v Lawrence* 2 S W & Tr 575. For other cases of desertion vide, *Hently v Hently* 33 L T 263, *Draw v Draw* 13 P D 97, *Thomas v Thomas*, (1924) P 194, *Nott v Nott* 1 P & M 251, *Yeatman v Yeatman* 1 P & M 489, *Powell v Powell* (1912) P 278, *Townsend v Townsend* 3 P & M 179, *Garcia v Garcia* 13 P D 216. But there is no desertion when the parties parted by mutual consent *Smith v Smith* 1 S W & Tr 359. Desertion is not to be held merely by ascertaining which of the parties left the matrimonial home first. That fact may be immaterial. The party who by his or her act intends bringing cohabitation to an end commits the desertion *Sicker v Sicker* (1899) P 278. Where the husband is a case of desertion and may be guilty of parties *De Lanban* cause to refuse to *Synge*, 70 L J P r 94 L T 704. A

party who brings co-habitation to an end cannot afterwards complain of desertion by the other *Bradshaw v Bradshaw* (1897) P 74, *Kay v Kay* 73 L J P 168. A mere refusal to resume cohabitation after agreement to live apart is not desertion *Brown v Brown* 73 L J P 87. Withdrawal from wife's company under compulsion is not desertion 3 C 48, *Townsend v Townsend* 3 P & D 179.

**High Court**—The High Court has jurisdiction where the parties are residents of and adultery is committed in 24 Parganas 3 B L R 67 Sec 18 A 575.

**District Judge**—The District Resident of Aden is not a District Judge as L R 872 37 B 57 17 Ind Cas 215. As regards in a suit for divorce arising between European and Native State vide 10 B 422. A decree dismissing a made by the Judicial Commissioner of Oudh executed. Judge is appealable to the High Court for the N W P 4 A 306. See 39 B 136 (F B), 40 B 109.

**Cost of appeal by wife**—In a suit for divorce a wife though unsuccessful, is entitled to the costs of an appeal if it is not unreasonably preferred 4 C 260= 3 C L R 484.

## II—Jurisdiction

4 The jurisdiction now exercised by the High Courts in respect of divorce *a mens et toro*, and in all other causes, suits, Matrimonial jurisdiction of High Court to be exercised subject to Act Exception and matters matrimonial shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise, except so far as relates to the granting of marriage licenses, which may be granted as if this Act had not been passed.

Sec shall b not pre under declarr of this

By section of the High Courts Act such matrimonial jurisdiction was conferred direct and se directed the High every power and authority whatsoever in any manner vested in any of the supreme Courts 20 Ind Cas 49=38 B 175. The ecclesiastical jurisdiction of the Bombay

in the Non Regulation Provinces other than 'Oudh' Sind and "Burma",—  
a Commissioner of a Division

in "Burma and Sind—1 Judge of a District † Court, '

and in any place in the dominions of the Princes and States aforesaid—  
such officer as the Governor General of India in Council shall from time to time  
appoint in this behalf by notification in the *Gazette of India* and in the  
absence of such officer, the High Court in the exercise of its original jurisdiction  
under this Act,

(3) "District Court" means, in the case of any petition under this Act the  
Court of the District Judge within the local limits of whose ordinary jurisdic-  
tion or of whose jurisdiction under this Act, the husband and wife reside or  
last resided together,

(4) 'Court' means the High Court or the District Court, as the case  
may be.

(5) "Minor children" means, in the case of sons of native fathers, boys who  
have not completed the age of sixteen years and in the case of daughters  
of native fathers girls who have not completed the age of thirteen years  
in other cases it means unmarried children who have not completed the age of  
eighteen years

(6) "Adultery" means adultery committed by a husband with a  
woman who is dead, he could not lawfully contract  
the prohibited degrees of consanguinity

(7) "Bigamy with adultery" means adultery with the same woman with  
whom the bigamy was committed

(8) 'Marriage with another woman' means marriage of any person being  
married to any other person during the life of the former wife, whether the  
second marriage shall have taken place within the dominions of Her Majesty  
or elsewhere

(9) 'Desertion' implies an abandonment against the wish of the person  
charging it and

(10) Property includes in the case of a wife, any property to which she  
is entitled for an estate in remainder or reversion or as a trustee, executrix  
or administratrix and the date of the death of the testator or intestate shall  
be deemed to be the time at which any such wife becomes entitled as executrix  
or administratrix

Resides or last resided together—As used in the section the word 'resides'  
implies a dwelling either of a permanent nature or for some considerable time  
(L B R 1000—1902 Vol I 222) Where the husband and wife had no permanent  
residence, the petition could be entertained by the Court having jurisdiction at  
the place where they 'last resided together' though for a short period 36 C 964  
The word 'together' must be read with 'last resided' only 22 Bom L R 361,  
171 P R 1911 See also 45 B 547 22 Bom L R 1077 76 P R 1916 20 Ind Cas  
309 44 B 924, 59 Ind Cas 931, 36 C 964 77 P R 190, 14 W R 416 189  
P J 153 If both parties are resident within the jurisdiction of the Court at the  
time of the presentation of the petition within the jurisdiction of the Court at the  
time of the presentation of the petition 22 Bom L R 351, 10 Ind Cas 487 (F B) 53 C 28. As to the meaning of the word 'reside'  
Vide 30 C L J 314 21 C 634 13 C L J 221 38 C 394 32 A 203 (F B)  
5 Ind Cas 871 5 Lah 147 (F B) 45 B 547, 3 C W N 250, 35 Ind Cas 367  
(S B), 10 B 422 47 B 843 30 C 215 52 C 566

Subsection (8)—The term "marriage" does not include Hindu marriage  
17 M 235

\* Substituted by XI of 1923

† Certain words after this repealed by Act 34 of 1926 by Act XXXIV of 1926



Supreme Court was limited to persons described and distinguished by the appellation of British subjects residing in the town and island of Bombay and the factories subordinate thereto and all the territories dependent upon the Government of Bombay *Ibid* It was held in *Ardisur Curseljee v Perozeboye*, 6 M L A 348=4 W R (P C) 91 that this jurisdiction could not be exercised over the *Parsis* By that decision was given to 'matters matrimonial regards the jurisdiction where the parties reside R 109 As regards the (1923) Pat 127=A 1 R already possessed by the

High Court at the date when the Act came into force 94 Ind Cas 952

5 Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Courts so enforcing or dealing with the same

6 All suits and proceedings in causes and matters matrimonial which, when this Act comes into operation, are pending Pending suits in any High Court, shall be dealt with and decided by such Court, so far as may be as if they had been originally instituted therein under this Act

7 Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief

"Provided that nothing in this section shall deprive the said courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded"

Scope—This section is applicable not only to the grant of relief but also to question of procedure 55 Ind Cas 269 52 C 566=1925 Cal 574, but see 30 C 489, 37 C 613 This section is a residuary section intended to provide for any matters which by inadvertence or otherwise are not dealt with in the Act It is not unusual in statutory drafting to insert provisions of the nature *ex majori cautela* more especially where an attempt is being made to codify in this country an unfamiliar branch of English Law The expression 'rules and principles' points rather to the rules and principles on which the Court deals with these matrimonial cases in requiring a certain degree of evidence and other cognate matters 47 B 843=25 Bom L R 945

Principles and rules—Refer to rules *quasi*, substantive rather than mere adjective law 23 Ind Cas 242, 27 B 612, but see 5 Lah 147

Evidence—The charge of cruelty and the marriage of the parties can be proved by the production of a previous decree for judicial separation and by showing the identity of the parties 22 C 544 In a case of divorce, if there is no evidence as to the law of the parties or domicile the Court will act and grant relief on the general principles of English law 29 C 619

\* The words within quotations have been added by Act X of 1912



**PROVISO**—The rulings in 17 M 235 and 8 Bom L R 856 are of no effect in view of the addition of the proviso

**Matrimonial causes in England**—There is the possibility of reading into this section an intention on the part of Legislature to adopt whatever test the Court of Divorce in England might from time to time lay down upon the matter of divorce but that is a forced and unnatural construction. Also it would be necessary to omit the words "subject to the provisions contained in this Act". Had the Legislature intended any such result, it would have been easy to say in express terms that the provisions of the Act must be read as subject to the rules and principles adopted from time to time by Matrimonial Courts in England. They have chosen to say precisely the contrary. Any such construction would introduce an element of uncertainty

he must be sworn, and he must prove his case because among other things the Judge has to satisfy himself whether there is any collusion between the parties and he has further to satisfy himself as to the complete truth and honesty of the petition. 69 Ind. Cas 509=L R 4 A 1=(1913) All 43. In proceedings for divorce the evidence of the husband or wife alone ought never to be accepted without corroboration either by witness or at least by strong surrounding circumstances. A I R 1923 Mad 9. A domicile of choice can only be acquired by residence coupled with an intention of permanent or definite residence. 79 Ind. Cas 719.

8 The High Court may whenever it thinks fit remove and determine as a Court of any Extraordinary jurisdiction of High Court or proceeding Court of any of its jurisdiction under this Act

The High Court may also withdraw any such suit or proceeding and transfer it for trial or disposal to the Court of any other such District Judge.

**Scope**—Such District Judge must be subordinate to the High Court. 40 B 109.

9 When any question of law, or usage having the force of law, arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the Court may, either of its own motion or on the application of any parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

### III—Dissolution of Marriage

10 Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman, or has been guilty of incestuous adultery, or of bigamy with adultery,

or of marriage with another woman with adultery,  
 or of rape, sodomy, or bestiality,  
 or of adultery coupled with such cruelty as without adultery would have  
 entitled her to a divorce *a mensa et foro*,  
 or of adultery coupled with desertion, without reasonable excuse, for  
 two years or upwards.

Every such petition shall state, as distinctly as the nature of the case  
 permits, the facts on which the claim to have  
 Contents of petition such marriage dissolved is founded

**Adultery of wife**—In a charge of adultery the evidence must be clear  
*Winscom v Winscom* 3 Sw & Tr 380, *Alexander v Alexander* 2 Sw & Tr 95,  
 But under certain circumstances such adultery may be presumed *Davidson v*  
*Davidson* 2 Jur N S 547

**Change of religion**—By a husband and his subsequent marriage is a ground  
 for divorce 14 Ind Cas 192 see also 2 Rang 199

**Adultery**—The Court may presume adultery when it is satisfied that a guilty  
 occurred when a  
 Ind Cas 782  
 ' ' ' ' *King v King*  
 ' ' ' ' *v Allen* A C  
 (1924) P 425

Adultery alone is not a sufficient ground for a wife to frame a petition for asking for  
 a dissolution of marriage The adultery must be coupled with one of the other  
 reasons given in this section 8 Ind Cas 1186 (t B)

**Sodomy**—Carnal knowledge against the order of nature by a man with a woman  
 was held to be sodomy within the meaning of this section 68 P R 1882, see also  
 1 A 43 6 A 204

**Adultery and cruelty**—Adultery and cruelty after judicial separation is also  
 good ground for a decree for dissolution 11 Bur L T 227 45 Ind Cas 914  
 The cruelty must be such as endangers life, limb or health, bodily or mental or  
 381 Repeated acts of cruelty may also  
 Ind Cas 982 Communicating contagious  
 14 Bur L R 173, see also 83 Ind Cas

**Desertion**—Desertion must be against the will of the wife 8 L B R 100  
 B) Before the two years period of desertion is over a petition for divorce would  
 be premature and without a cause of action 21 Ind Cas 230, see also *Wood v*  
*Wood* 13 P D 22, *Cudlipp v Cudlipp* 1 Sw & Tr 229 *Gargill v Gargill*, 1 Sw  
 & Tr 235

Where a deed of separation has been executed by the wife, she cannot plead  
 desertion *Ro v Poe* (1916) P 153, *Dagg v Dagg* 7 P & D 17, *Cribb v Cribb*  
 1 P & M 609 Facts constituting desertion may vary *Williams v Williams* 3  
 Sw & Tr 547 A husband who by his ill treatment, compels his wife to separate  
 from him and afterwards refuses to receive her is guilty of desertion *Graves v*  
*Graves* 3 Sw & Tr 350

**Reasonable excuse**—Where there is a reasonable excuse a husband can desert  
 his wife *Beer v Beer*, 54 W R 564, *Lawson v Lawson* 7 C W N ccxiv,  
*Synge*, (1901) A C 317, *Haswell v Haswell*, 1 Sw & Tr 502, *Faulkes v Faulkes*  
 64 L T 834, *Coulpart v Coulpart* 28 L J P 21, *Heyes v Heyes* 13 P D 11  
 Where the husband refuses to allow his wife to live with him except under  
 the orders of his mistress and the wife lives apart it amounts to desertion 2  
 Rang 199

11. Upon any such petition as aforesaid, the petitioner shall

Adulterer to be co respondent  
 Adulteress to be co respondent  
 desert is excused from so  
 doing on one of the following grounds to be  
 allowed by the Court,—

(1)—That the respondent is leading the life of a prostitute and that  
 the petitioner knows of no person with whom the adultery has  
 been committed,

- (2) —That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it,  
 (3) —That the alleged adulterer is dead

**Prostitute** —The addition of co respondent is not necessary if the wife has been leading the life of a prostitute 3 B L R Ap 9, *Heath v Hooke* 27 L J Mat 61, *Quicke v Quicke* 31 L J Mat 28

**Adulterer** —A person who is named in a petition by the wife for divorce is entitled to intervene 4 C W 52, *Bell v Bell*, 8 P D 71

n L R 251=A I R 1925 Bom 231

47 B 657 14 C W N (cccxxii)

Where some of the adulterers are known and some are unknown, the known adulterers should be added as co respondent *Penty v Penty*, 7 P D 19

**12** Upon any such petition for the dissolution of a marriage, the Court to be satisfied of the absence of collusion Court shall satisfy itself, so far it is reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any such matter as may be made known to the Court

are also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same, and shall enquire into any counter charges which may be made against the petitioner 31 A 511 Although the refusal of the relief on the ground of the petitioner's adultery is discretionary under this section yet the discretion must be exercised on principles and rules on which the Divorce Court in England grants relief 2 Bom L R 690 See also L B R (1903—1904) Vol II 67, P R 62 of 1887, 130 P R 1879 The duties of the Court in investigating a suit for divorce is laid down in this section 3 Ind Cas 969

**Counter charge** —A letter written by the respondent to the Judge imputing misconduct to the petitioner will not constitute a counter charge within the meaning of this section 62 P R 1887

**Accessory to** —A person who aids to produce the offence complained of is called an accessory Vide *Gipps v Gipps*, 11 H L Cas 1=10 L T 73,=33 L J Mat 161, *Lancaster v Lancaster* (1905) P 114, *Gower v Gower* (1905) P 114

**Connivance** —The word conniving means not merely refusing to see an act of adultery, but also wilfully abstaining from taking any step to prevent adulterous intercourse which from what passes before the husband's eye he must reasonably expect, will occur *Gibbs v Gibbs* *ubi supra* see also *Ross v Ross*, L R 1 P & D 734 In order to establish connivance by a husband at his wife's adultery it must be shown that he gave a willful consent before the fact mere negligence in matter of adultery will not suffice, but there must be wilful adultery *Allen v Allen and D A Glennie* 37 L J Mat 17, *Morris v*

a knowledge of acquiescence in the misconduct complained of *Boulting v Boulting* 3 Sw & Tr 379=33 L J Ma 33 see also 11 Ind Cas 799 For other instances of connivance vide *Pike v Pike* 34 L J Mat 22, 41 L J Mat 49 *Brown v Brown* 21 L J 81 *Sugg v Sugg* 21 L T 81 If a wife although unwilling, to consent that her husband should live in adultery, ultimately gives her consent for the sake of obtaining an allowance from him, she is guilty of connivance *Ross v Ross*, L R 1 P & D 734 To constitute connivance on the part of the wife it is not necessary that there should be a willing consent to the adultery of the husband She may be unwilling to consent to his living with another woman, but if under pressure of circumstances, short of force in the nature of duress she should withdraw her scruples, that would

amount to connivance *Ibid* Delay in some case raises a presumption of connivance 3 C 688 The reason of the delay should be satisfactorily explained 51 Ind Cas 235=71 P L R 1919 (F B), see also 31 C L J 435 31 Ind Cas 264 As to what does not amount to connivance vide, *Bell v Bell* 58 L J P 54, 41 Ind Cas. 447=21 C W N 717=44 C 1091 *Glennie v Glennie*, 32 L J P M & A 17, *Stone v Stone*, 3 N C 278

**Condonation**—Mere forgiveness is not co must completely restore the offending party and 31 C L J 435=47 C 1068, 44 C 1091=21 C W is a question of fact 41 B 36=36 Ind Cas 800=8 being a conclusion of fact and not of law, means a conjugal offence, with knowledge of all that is forgiven existence of and does not operate as a forgiveness of other unknown adulteries *Bernstein v Bernstein*, 63 L J P 3, (1893) P 292, *Story v Story*, 12 P D 196 To be perfect it must be voluntary and conditional *Cooke v Cooke*, 3 Sw & Tr 26, also *Ellis v Ellis*, 4 Sw & Tr 154, *Wandford*, 8 P D 20 A condoned *rne v Bourne* (1913) P 164, *Youd R 2 P & D 306*, 5 M 118, 39

C 395

13 In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged

Dismissal of petition adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court,

**Collusion**—In order to establish collusion against a petitioner and the respondent in a suit for a dissolution of marriage it is necessary to prove that there was some understanding or agreement between them *Gelvin v Gelvin*, 31 L J Mat

43 a divorce suit to withhold any relevant collusion *Bacon v Bacon and Ashby* 25 W 51, *Haunt v Haunt*, 39 L T 45, *Butler v Alexandar*, L R 2 P 164 Collusion

may exist when both being guilty the husband and wife agree to present before the Court the guilt of one only of the parties in order to obtain a divorce which they both desire *Gray v Gray* 2S v & Tr 559 Collusion may consist in keeping back evidence or what would be a case *Jessop v Jessop* 2 Sw & Tr 302

case (a n o m m ad l a m)

petition *1011 v 101d*, 35 L J Mat 34 Where a wife petitioner in a suit for dissolution of marriage receive monetary assistance from her husband's sister (presumably his agent) *Held*, that was not a collusive arrangement between the petitioner and the respondent *Mally v Mally* 53 S J 617

Power to court to pronounce decree for dissolving marriage 14 In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioners as been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared

Provided that Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been, guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,  
or of cruelty towards the other party to the marriage,  
or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued

Condonation

**Collusion**—implies an agreement or understanding between the parties in other words collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured or its conduct provided for by agreement or bargain between the spouses or their agents 44 C 1091 In the absence of collusion uncorroborated confession of adultery by a respondent may be accepted as evidence 49 Ind Cas 30, See also 11 C 651

**Adultery of petitioner**—is a good ground of refusal to the granting of decree nisi 18 Bom L R 818, 2 Bom. L R 690, A W N 1883 74

and not of law and means followed by cohabitation, circumstances of the particular

**Solemnization of marriage**—in divorce cases before a final decree is made the Court must come to a distinct finding upon the question whether the marriage was solemnized in India and on what date 31 C L J 340

**Delay**—in instituting a suit shows that petitioner either connived at the adultery or was wholly indifferent to it 3 C 688 See also A W N 1887, 272, 12 C W N 1009, 7 M H C R 284, 3 P & D 53

**Husband's neglect conducing adultery**—is complete answer to a suit for dissolution of marriage by the husband 5 A 71, A W N 1887, 272, 22 V 328, 30 C W N 820=44 C L J 25, *Symons v Symons* (1897) P D 167

**Cruelty**—The cruelty must be specifically pleaded 3 B L R App 6 It is in the discretion of the Court to refuse a decree for divorce if the petitioner has been guilty of cruelty even though the cruelty may have been condoned 3 B L R O C 136

must be a regulated discretion to act on the principle followed as a part of the petitioner is very near which the Courts in England in the cases of *Constantinidis v Ilkyke* (1904) 20 T L R 193, =4 Bur L J 47

**Res judicata**—Refusal of divorce in a former proceeding is no bar to a subsequent one 6 P R 1888, see also 45 P R 1871

**Relief in case of position on certain grounds** of marriage if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her

adultery and cruelty the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion

Notes—Speaking generally a guilty party cannot obtain relief by way of judicial separation any more than she can obtain relief by way of divorce. Where a wife sues her husband for divorce

in his written statement to adultery It is not necessary t

47 B 657=25 Bom I R

section has no application to

L J P & M 62, 33 L J P & M 105. The respondents' prayer can be granted even where the petitioner withdraws the suit 31 A 511, 6 B 416, *Hall v Hall*, 48 L J

P 57. A husband respondent can pray for damages against the adulterer in his cross petition *N v N* (1913) P 75

18 Every decree for a dissolution of marriage made by a High Court

Decrees for dissolution to be not being a confirmation of a decree of a District Court, shall, in the first instance, be a *nisi* decree, not to be made absolute till after the

expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said

decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court

On cause being so shown, the Court shall deal with the case by making the decree absolute or by reversing the decree *nisi* or by requiring further inquiry or otherwise as justice may demand

The High Court may order the costs of counsel and witnesses, and other wise arising from such cause being shown to be paid by the parties or such one or more of them as it thinks fit including a wife if she have separate property

Whenever a decree *nisi* has been made and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit

Service on respondent—A decree *nisi* need not be served on the respondent 8 C 756. Notice of the application is only intended that any party other than the parties to the suit should come in to show cause 4 B L R O C 52, 6 B 416 17 C 570

Arrears of alimony—must be paid to the wife before order can be passed making the decree *nisi* absolute 4 A 295

Decree *nisi*—Under this section a decree *nisi* can be pronounced only by a High Court 43 Ind Cas 519, 29 Ind Cas 178. A dissolution suit terminates with decree absolute and no with decree *nisi* *Ellis v Ellis* 8 P D 188. *Stanhope v Stanhope*, 11 P D 103, 2 B 612. A decree *nisi* was passed *ex parte* in a suit for divorce. On an application to make the decree absolute the respondent tried to show that the petitioner had been guilty of adultery and that he was not entitled to relief. Held that it was incumbent on the Court to enquire into the truth of the allegations and examine the evidence in support of them even though the respondent was not entitled to costs under this section 47 B 664=25 Bom L R 339, 84 Ind Cas 71=A I R 1924 Bom 132

Confirmation of decree for dissolution by District Judge 17 Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards)

by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the Senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by the general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person, suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit remove such suit and try and determine the same as a Court of original jurisdiction and the provisions contained in section 16 shall apply to every suit so removed, or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

**Scope**—The obvious intention of the legislature as expressed in this section is that the High Court upon a reference for confirmation should review the entire evidence and come to its own conclusion whether facts sufficient to justify a decree are established by that evidence (1922).

It does not make the proviso in s 17 applicable to a decree for nullity of marriage by a District Judge. 22A 275 (F B) For enabling the High Court to take action under this section, an application for confirmation of a decree for dissolution of marriage is not necessary. 29 M L J 268 (F B) But see 31A 511. But a decree for dissolution of marriage cannot be passed without enquiry into and evidence to prove the facts alleged by the petitioner. The procedure in matrimonial suits under this Act differs in some respects from the procedure in other suits. L B R (1903 1904) Vol II 67. There is nothing in this Act which justifies a distinction between the two sections (16 and 17) with reference to the power of the Court to rescind the decree made in the first instance, when the parties have resumed the relations of husband and wife since that decree was passed and before it has been confirmed or made absolute. 8 Ind Cas 684, 10A 559. No notice to the respondent is necessary. 59 Ind Cas 89.

**Execution for costs**—A decree nisi for costs cannot be executed before its confirmation. 35 P R 1887. Application for alimony should be made in the original Court. 17 Bom L R 948. A decree nisi cannot be made absolute after the death of the petitioner. 74 Ind Cas 250=50 C 153. *Stanhope v Stanhope* 11 P D 103.

A condoned adultery is revived by the commission of a latter matrimonial offence. 53C 436=A I R 1916 Cal 864.

**High Court**—When a decree nisi dissolving the marriage of an European British subject is pronounced by a Judicial Commissioner of Sind, the Court to confirm the decree nisi is no longer the High Court of Bombay, but the Court of the Judicial Commissioner, Sind on its appellate side. 91 Ind Cas 97=A I R 1926 Sind 58 (F B).

17A\* The Governor General in Council may appoint for each High Court

Appointment of Officer to exercise duties of King's Proctor

of Judicature established by Letters Patent an officer who shall, within the jurisdiction of the High Court for which he is appointed have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as, is exercisable in England by the King's Proctor, and the Governor General in Council may make rules regulating the manner in which the right shall be exercised and all matters incidental to or consequential on, such exercise

Notes—Under sub section (4) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17 Geo 5 ch 4) proceedings before a High Court in India in exercise of the jurisdiction conferred by that Act are to be conducted in accordance with rules made by the Secretary of State in Council of India with concurrence of the Lord Chancellor These rules are required to provide *inter alia* for conferring on such officials as may be appointed for the purpose within the jurisdiction of each High Court the like right of showing cause why a decree *nisi* should not be made absolute as is exercisable in England by the King's Proctor under sections 181 and 182 and of the Supreme Court of Judicature (Consolidation) Act, 1925, (15 & 16 Geo 5 ch 49) These provisions apply in cases where the parties concerned are British subjects domiciled in England or Scotland The Bill proposes to make provision in the Indian Divorce Act for the appointment of an official to perform similar functions in respect of persons domiciled in India—*Statement of Objects and Reasons*

#### IV—Nullity of Marriage

18 Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void

Petition for decree of nullity

Grounds of decree

19 Such decree may be made on any of the following grounds—

(1)—That the respondent was impotent at the time of the marriage and at the time of the institution of the suit,

(2)—That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity,

(3)—That either party was a lunatic or idiot at the time of the marriage,

(4)—That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud

Impotence—means physical unfitness for consummation 29 M L J 183 (F B) A decree is granted when it is incurable 48 C 283=33 C L J 97, *Stagg v Edgcombe*, 32 L J Mat 153, *Brown v Brown* Hagg Ecc 523

Prohibited degrees—The prohibited degrees for marriage were not degrees prohibited by the law of England, but those prohibited by the customary law of the class to which the parties belong 12 C 706 (F B), 17 C 324, 1 M L A 175, 9 M L A 387, 17 M 235

Fraud—Concealment of a loathsome and incurable form of syphilis is recognised as a fraud 48 C 283=33 C L J 97, 24 C W N 914

Lunacy—Where a person wants to have a marriage declared null and void on the ground of lunacy, it is not sufficient to show that he is or deficient to a certain extent merely, that his whole mental being was



not necessarily the nature of the act but its validity 79 Ind Cas 535, see also *Hancock v Peaty* L R P D 335, *Fry v Fry*, 15 P D 50

20 Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, Confirmation of District Judge's decree and the provisions of section 17, clause 1, 2, 3 and 4 shall, *mutatis mutandis* apply to such decrees

Confirmation—Provision of section 17 is not wholly applicable The High Court can confirm even before the expiry of six months 27 A 270 (F B), 23 B 460 Marriage with an idiot is invalid 8 Bom L R 982 Such a confirmation can be made even after long delay where the delay is explained *Grint v Gianette* (1913) P 137

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree and shall be entitled to succeed in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract

Notes—The Court should make some provision as regards custody of children 44 C 35

#### V—Judicial Separation

22 No decree shall hereafter be made for a divorce *a mensa et toro* but the husband or wife may obtain a decree or judicial separation, on the ground of adultery or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have effect of a divorce *a mensa et toro* under the existing law and such other legal effect as hereinafter mentioned

Desertion by wife—Without reasonable cause it is no bar to a suit brought by her for judicial separation 26 A 553=1 A L J 321

23 Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly

Clean hand—A party claiming for judicial separation must come to Court with a clean hand 8 A L J 318 (F B)=30 A 500 *Otoway v Otoway* 13 P D 141, *Hill v Hill*, 47 B 657

24 In every case of a judicial separation under this Act, the wife shall from the date of the sentence, and whilst the separation continues be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her

Separated wife deemed spinster with respect to acquired property

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate

**Notes**—A wife having obtained a decree for judicial separation, may avoid a mortgage made by her of a reversion in personality which falls in during the joint lives *Insole, In re*, 35 Beav 92 By a decree for judicial separation the wife's choses in action not reduced into possession at the date of the decree become her absolute property as if she were a *feme sole* *Johnson v Landor*, 38 L J Ch 229, *Wells v Maldon*, 31 Beav 48 A wife who has obtained a decree for judicial separation is to be considered as a *feme sole* with respect to such property only as she may acquire which may come to or devolve upon her after the decree *Waite v Morland*, 57 L J Ch 655, see also *Dawes v Creyke* 54 L J Ch 1096 An appointment by a married woman under a general power created after a decree for judicial separation makes the fund assets for his creditors *Hughes In re Brander v Hughes* 67 L J Ch 279=(1898) 1 Ch 529, see also *Hill v Hill*, (1893) 2 Q B 85 *Davis v Ceryke*, 30 Ch D 500

25 In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried Separated wife deemed woman for the purposes of contract, and wrongs spinster for purposes of con and injuries, and suing and being sued in any tract and suing civil proceeding, and her husband shall not be liable in respect of any contract, act or costs entered into done, omitted, or incurred by her during the separation

Provided that, where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessities supplied for her use

Provided also that nothing shall prevent the wife from joining at any time during such separation, in the exercise of any joint power given to herself and and her husband

**Necessaries**—In *Peter v Fleming*, 6 M & W 42 Baron Parke observed From the earliest time down to the present the word 'necessaries' is not confined in its strict sense to such articles as were necessary to support life but extended to articles fit to maintain the particular person in the estate degree and station in life in which he is and therefore we must not take the word 'necessaries' in its unqualified sense but with the qualification as above pointed out This definition was adopted by the Exchequer Chamber in *Ryder v Wornhill*, L R 3 Exch 90, 4 Fx 32 So the question as to what are necessities is a mixed question of fact and law 13 C W N 643=36 C 768 A wife is entitled to pledge her husband's credit for all the costs as between solicitor and client reasonably incurred by her in respect of the institution and prosecution of a divorce suit against her husband *Ottway v Hinton* 47 L J C P 725, see also *Wilson v Ford*, 37 L J Ex 30=L R 3 Ex 63

### *Reversal of Decree of Separation*

26 Any husband or wife, upon the application of whose wife or husband, Decree of separation obtained during absence of husband or wife may be reversed as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse of the alleged desertion, where desertion was the ground of such decree

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof

**Notes**—This section empowers the Court to rehear an *ex parte* case in order to do justice to all the parties concerned

## VI—Protection orders

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply may when deserted by her husband, Deserted wife may apply to Court for protection present a petition to the District Court or the High Court, at any time after such desertion for an order to protect any property which she may have acquired or may acquire and any property of which she may have become possessed or may become possessed after such desertion against her husband or his creditors, or any person claiming under him

Notes—This section relates to protection order in case of desertion. Such an order may have retrospective effect. *Elliot, In the goods* of 40 L J Mat 76, *Ramsden v Brerly*, 10 Q B 142. An order protecting the earnings or property of a wife deserted by her husband is confined to money or property acquired by lawful industry, and does not extend to property acquired by keeping a brothel. *Mason v Mitchell*, 31 L J Ex 68. A wife who has obtained an order for a bequest in a Court, representing a legacy. *Cooke v Fuller* 26 Beav 99. *Coward* n re 67 L J Ch 279. The desertion S W & Tr 235. *Lewart v Chubb*, L R 20 Eq 454.

28. The Court, if satisfied of the fact of such desertion and that the same was without reasonable excuse, and that wife is Court may grant protection maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Notes—The petition should state sufficient facts to satisfy the Court of the fact of desertion. *Sewell, Ex parte*, 28 L J part of a wife, deserted by her husband for if his whereabouts is known. *Mathew v* be in general terms the Court having no have to specific property. *Mullintux Ex parte*, 13 W & A 11. An order obtained by a woman deserted by her husband, for the protection of property acquired since desertion will not enable her to maintain an action commenced before the date of the order for injuries to, or in respect of, such property. *Midland Ry v Pye* to C B N. S. 179. An order for protection, obtained by a wife, will bar an action by her husband. *Topham v Hickmell* 1 F & F 438. A wife

obtaining an order of protection a wife does not deprive herself of her right to alimony *pendente lite*, in a suit subsequently instituted by her for dissolution of marriage. *Hakewill v Hakewill*, 30 L J Mat 251. A wife having been deserted by her husband, obtained a protection order. On her death, in the life time of her husband, intestate, the Court decreed letters of administration, limited to such personal property as she had acquired, or become possessed of since the desertion, without specifying of what that property consisted, to be granted to one of her next of him. *Worman In the goods of*, 1 Sw & Tr 513.

29. The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was Discharge or variation of orders made for the discharge, or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

**Notes**—A husband may come to the Divorce Court at any time, and apply for a discharge of the order *Hall Ex parte* 27 L J Mat 19 An application to discharge a protection order is not limited to the lifetime of the married woman *Mudge v Adams*, 50 L J P 49=6 P D 54=44 L T 185; *Maoney v McCarthy*, (1892) P 21 An order of protection to a married woman granted by a Police Magistrate or Justice, under the 20 & 21 Vict C 85 s 21, could only be discharged by the Magistrate or Justice by whom it was made *Sharpe, Ex parte*, 5 B & S 322=33 L J M C 152

**30** If the husband, or any creditor of, or person claiming under the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring) to return or deliver to her the specific property, and also to pay her a sum equal to double its value

**31** So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation

**Notes**—On a petition presented by a wife, who had been deserted by her husband, to draw out of Court certain sums of money to which she became entitled *Held*, that notice of the petition must be served upon the husband notwithstanding that a protection order had been obtained of the *feme covert* *Sutcliffe, Ex parte* 22 for earnings after an order of a Police M notwithstanding that ever since the desertion appearing that she had begun the adulterous *Thomas v Head* F & F 58

### VII—Restitution of Conjugal Rights

**32** When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either husband or wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights and the Court on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted by decree restitution of conjugal rights accordingly

**Legal cruelty**—Every act of personal violence or every combination of such acts voluntarily inflicted and productive of hurt or alarm will not constitute legal cruelty on the part of the husband 101 P R 1882

**Notes**—The written demand for restitution of conjugal rights must be made in writing and must be signed by the husband or wife and must be proved by the petitioner. *See* *Smith v Smith* 59 L J P 9=15 P D 47 *Marshall v Marshall* 5 P D 19 at p 23, *Mason v Mason*, 61 L T 304, *Tucker, Ex parte*, 66 L J P 65=(1896) P 83 The Court will not dismiss a petition for the restitution of conjugal rights solely on the ground of delay in presenting the petition *Beaucherk v Beaucherk*, 71 L T 376, see also 27 Ind Cas 604=8 L B R 256 An agreement to live separate is no answer or bar to a petition for restitution of conjugal rights *Spering v Spering*, 3 Sw & Tr 211, but see *Hunt v Hunt*, 4 Deg E & J 225, *Anquet v Anquet* 35 L J Mat 93 *Kitchin v Kitchin*, 19 L T 674 *Besant v Wood*, 12 Ch D 605 A separation deed, executed by a husband and wife containing covenants that the husband should not sue her for the wife for the

*Clark v Clark* 54 William, (1911) P 302, *Brodie v*

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of

Answer to petition  
nullity of marriage

Notes—It can be pleaded that the return is unsafe (*Redford v Redford* 20 L T 279), or the husband is impotent (C v C 32 L J Mat 31, *Rickets v Rickets*, 35 L J Mat 97), or the wife made his home uncomfortable and systematically aggravated him in order that he might commit some act of violence (*Woodey v Woodey* 31 L T 647). But it is no ground for dismissing a wife's suit for restitution of conjugal rights that she has been guilty of impropriety of behaviour not amounting to a matrimonial offence nor yet that she has previously refused to permit conjugal intercourse (*Reppingal v Reppingal*, 24 W R 967). Conjugal rights can be defeated only by acts sufficient to found a decree for a divorce (*Manning v Manning* 11 R 7 Eq 520). Nothing can be pleaded in bar to suit for restitution but what would entitle the respondent to a judicial separation (*Burroughs v Burroughs* 2 Sw & Tr 303). In a suit for conjugal right the Court could not reject on demurrer, an

ments against his daughters by which he was obliged to remove them from his house, acts of violence towards his servants—all tending to affect the health and social position—constitute a legal defence to a suit by a wife for restitution of conjugal rights (*D'Arcy v D'Arcy* 11 L R Tr 369, *Woodey v Woodey*, 31 L T 647).

The charge of adultery can be pleaded in the usual manner with particulars (*Green v Green*, 21 L T 401, see also *Blackmore v Blackmore* 18 L T 450=37 L J Mat 73, *Moore v Moore*, 3 Moore, P C 84). An answer denying that the respondent withdrew from cohabitation without just cause, should state the cause of such withdrawal. If he does not it is bad on demurrer but the objection is waived by filing a replication (*Ward v Ward* 72 L J Mat 120). When an answer to a petition for restitution of conjugal rights contains a prayer for judicial separation the respondent has a right to proceed and prove the allegations in the answer on which the prayer is founded notwithstanding the withdrawal of the prayer for restitution by the petitioner (*Blackburn v Blackburn* (*ubi supra*)).

The Court will decree a restitution of conjugal rights in favour of a wife in every case where she has not been guilty of such misconduct as would entitle the husband to a decree for a judicial separation (*Yeatman v Yeatman*, 16 W R 734). Where both the parties are guilty of adultery no suit is maintainable (*Hope v Hope*, 1 Sw & Tr 94, but see *Seaver v Seaver*, 2 Sw, & Tr 66).

#### VIII—Damages and Costs

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

Notes—The principle in awarding damages against a co-respondent in divorce proceedings is to ascertain what loss the husband has suffered the object is not to punish. The means of the co-respondent are not a relevant factor 52 C 379=29 C W N 350=86 Ind Cas 1018=A I R 1975 Cal 585.

(F, B) *Bicker v Bicker*, 67 L T 721, *Derbshire v Derbshire*, 62 L T 664, *Keys v Keys*, 11 P D 102. When in a suit for dissolution of marriage on the ground of wife's adultery the husband puts forward a claim for damages against the co respondent the Court should have regard to the following circumstances in assessing damages namely (1) how the husband has demeaned himself (2) whether the husband and wife live happily together (3) the position of the defendant 3 O W N 926, see also *Cowing v Cowing* 32 L J P & M 210, *Key v Key*, 11 P D 100. Where damages are claimed against the co respondent, the petition should specify the amount claimed. *Spedding v Spedding*, 31 L T Mad 96. Claims for damages are placed wholly under the jurisdiction of the Divorce Court, and can only be made by petition and the damages recovered are placed under the control of the Court. The petition must be served on the wife, unless the Court dispenses with such service. The petition must be dismissed if the petitioner has been accessory to or conniving at the adultery complained of or has condoned the same. *Bernstein v Bernstein* 63 L J P 3. Where a co-respondent, against whom damages are claimed, is not named in the petition, the Court will not assume that he is the adulterer. *Stone v Stone* 63 L J P 3. Where a co-respondent is named in the petition and the Court has ordered him to pay costs, and he has withdrawn from the suit, the Court refused to allow it to be reinstated in the petition the petitioner having failed to show that it was withdrawn in error, or that an altered state of circumstances had arisen which would justify its reinsertion. *Sykes v Sykes*, 38 L J Mat 12. The measure of damages is the value of the wife of whom the husband has been deprived. *Cowing v Cowing* 33 L J Mat 149. A claim for damages in a divorce suit is founded upon the hypothesis that the husband has suffered injury by being deprived of his wife's society through the wrongful act of the co respondent. In order to award any damages it is necessary to find (1) that the husband has in fact been damaged (2) that such damage has been brought about by the wrongful act of the co respondent without any fault on the part of the husband. It is no part of the functions of the jury to punish the adulterer for his immorality. Their sole duty is to compensate the husband for the injury (if any) which he has suffered through the wrongful act of the co respondent. If a husband has a virtuous wife taken from him by contrivance of another man, he is entitled to damages commensurate with the loss of such a wife, but if she has led a loose life before marriage her value is not the same as that of a virtuous woman. In estimating the amount of damages to be awarded the fact that the wife was earning money of a portion of which the petitioner had the advantage may properly be taken into account. *Derbshire v Derbshire* 62 L T 664.

35 Whenever in any petition presented by a husband, the alleged adulterer has been made a co respondent, and the adultery has been established, the Court may order the co respondent to pay the whole or any part of the costs of the proceedings.

Provided that the co respondent shall not be ordered to pay the petitioner's costs—

(1) If the respondent was at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or,

(2) if the co respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Whenever any application is made to the Court for an order for costs, the Court may, if it thinks sufficient, order the petitioner to pay the whole or any part of the costs occasioned by the application.

Power to order litigant to pay costs. If the petitioner is the adulterer, the Court may order him to pay the whole or any part of the costs occasioned by the application.

Costs—Adultery committed by one co respondent, condoned by the husband is revived by subsequent adultery with another co respondent. In such a case a decree nisi will be passed against both co respondents. Costs will be given only against the co respondent with whom the subsequent adultery was committed. 28 C 221.

Costs of a wife in a divorce suit should be paid by the husband. 5 B L R Ap 9, 9 M 12, 3 B L R Ap 5, 30 C 631=7 C W N 565, 14 C 580, 19 B 293, 23 C 913, 23 C 916 N, 25 C 222=2 C W N 37, 9 B L R Ap 6, 5 C 357, 29

C 619 Where a petition for the dissolution of marriage on the ground of adultery is made and is filed by the husband and the wife enters an appearance and denies the allegations against her, she has an absolute right to require her husband to furnish her with funds sufficient to enable her to make a full and satisfactory defence to obtain such assistance from counsel as is reasonable under the circumstances (1922) All 504

### IX—Alimony

36 In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit

Such petition shall be served on the husband and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just :

... suit shall in no case exceed one fifth of the three years next preceding the date of a decree for dissolution of marriage or of nullity of marriage until the decree is made absolute or is confirmed, as the case may be

Period for payment of alimony—In India the period during which alimony is payable is regulated by this section which provides that it shall continue in the case of decree for dissolution of marriage until the decree is made absolute 36 C 1081, 49 Ind Cas 209

Amount of alimony—This section provides that such alimony shall not exceed one fifth of the husband's net income. Net income has its ordinary meaning—the amount of income minus deductions on account of income-tax, charges for pension fund and the like. Expenses of maintaining children and liquidation of debts may be taken into consideration in allotting the alimony 14 M 88, see also 6 C W N 444, 35 C 264, 11 Ind Cas 813. While the wife is living with the co respondent no alimony should be granted 3 B L R Ap 13

After a decree nisi in a suit has been passed alimony *pendente lite* cannot be granted 11 C 354, but see 23 C 913

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, Power to order permanent alimony

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties :

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable

Power to order monthly or weekly payments  
Provided that, if the husband afterwards from any cause becomes unable to make the same, the Court may at any time discharge or modify the same as to the whole or any part of the order, and may at any time revive the same order wholly or in part

**Scope**—This section limits the power of Court to make an order for permanent alimony to cases in which a decree has been made declaring a marriage to be dissolved or where a decree for judicial separation has been obtained by the wife. The section omits to give such power to the Court, where the decree declares the marriage null and void 48 C 636

**Application when to be made**—Application for permanent alimony must be made either at the same time as or at reasonable time after the confirmation of any decree declaring the marriage to be dissolved 44 M 987

**Discretionary**—The power conferred under this section is discretionary 38 A 638 The Court has power under this section to order payment of a lump sum

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**District Judge**—Cannot order permanent alimony before his decree in the suit is confirmed 13 P R 1891

**38** In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do

**Notes**—Vide 11 Ind Cas 813, 14 M 89

### X—Settlements

**39** Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband or of the children of the marriage or of both

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court may direct that the whole or any part of the damages covered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife

**Notes**—It is competent to the Court to make an order for the settlement of damages after the decree nisi has been made absolute *Billingay v Billingay* 35 L R J P 84=L R I P 168, see also *Taylor v Taylor* 39 L J Mat 23, *Meyern v Meyern* 46 L R I P 5, *Forster v Forster* 3 Sw & Tr 158, *Clark v Clark* 2 Sw & Tr 520, *Speeding v Speeding* 37 L J Mat 31

**40** The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed

may inquire into the existence of ante nuptial or post nuptial settlements made on the parties whose marriage is the subject of the decree and may make such orders, with reference to the application of the whole or a portion of the



property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage or of both children and parents, as to the Court seems fit.

Provided that the Court shall not make any order for the benefit of the parents, or either of them at the expense of the children

**Notes**—The Court has power to order a variation of the settlement *Nunzeley v Nunzeley* 15 P D 186=63 L T 113, *Forsyth v Forsyth* 61 L J P 13=(1891) P 363. The Court cannot vary settlements to the detriment of infant children *Forsyth v Forsyth* 61 L J P 13. This power can only be exercised where the decree upon which the application to vary the marriage settlement is founded has been pronounced by the Court *Moor v Moor* 60 L J P 76, see also *Midwinter v Midwinter* 61 L J P 1=(1892) P 28. The power given to the Court of varying settlements after a final decree for dissolution of marriage, is a power to be exercised once for all, and an order made under it is not liable to be varied on the ground of the change of circumstances since the date of the date of the order *Benyon v Benyon* 59 L J P 39. The Court has power to make provision for the maintenance of children above the age of sixteen years *Thomasset v Thomasset* 63 L J P 140. The Court has not power to order the executor of a deceased petitioner the husband to be made a party for the purpose of continuing proceedings to vary a settlement where the petitioner is dead, there are no children and the proposed variation would not be for the benefit of the wife *Thomson v Thomson* 65 L J P 80=(1896) P 263.

#### *XI—Orders for custody of children*

**41** In any suit for obtaining a judicial separation the Court may from

Power to make orders as to custody of children in suit for separation

time to time, before making its decree make such interim orders and may make such provision in the decree as it deems proper with respect to the custody, maintenance, and education

of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said Court

**Custody of Children**—The Court has wide discretion regarding custody of children 69 P R 1870, see also 6 B L R 318, 5 B L R 71, 70 P R 1873

**42** The Court, after a decree of judicial separation, may upon applica-

Power to make such orders after decree

tion (by petition) for this purpose, make from time to time, all such orders and provision, with respect to the custody, maintenance and

education of the minor children the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree, or by interim orders in case the proceedings for obtaining such decree were still pending

**Custody of Children**—No formal prayer need be made in the original petition for judicial separation 18 C 473

**43** In any suit for obtaining a dissolution of marriage or a decree of

Power to make orders as to custody of children in suits for dissolution or nullity

nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case) may be, make such interim

orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit,

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the court

**Notes**—A decree *nisi* for the dissolution of a marriage made by a District Court and maintenance of the children terminate upon the confirmation of

**44** The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time, all such orders and provision with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid

**Notes**—Where after obtaining a decree *nisi* for dissolution of marriage, and an order for the custody of the children of the marriage the petitioner dies, the High Court has no jurisdiction to confirm the decree or to make an order in the proceedings for the custody of the children *Butterfield v Butterfield* 74 Ind Cas 250=50 C 153 Application for custody and maintenance of the children of the marriage

see also 18 C 473 In *D Alton v Alton* said The first duty of the children—and that should be the paramount consideration of the Court The Court has no power to make an order as to the custody of children either pending a suit for restitution of conjugal rights or after its termination *Chambers v Chambers* 39 L J Mat 59, *Seddon v Seddon* 2 S & T 640 If the permanent custody of the children is claimed a prayer to that effect should be made in the petition

1 Sw & Tr 332 18 C 473, 41 C 71 order as to custody has jurisdiction until they attain the age of sixteen *Thomson v Thomson* 35 L J Mat 81 But the Court has jurisdiction to make any order as to the custody of children upwards of sixteen years *Ryder v Ryder*, 2 S & Tr 225 *Thomasset v Thomasset* (1894) P 295 It is the duty of the Court to consider all the circumstances of the particular case *Symington* *Symington*, L R 2 H L (Sc) 415

**Interim Orders**—The Court has jurisdiction to pass interim orders *Thomson* *Thomson* 2 Sw & T 402 *Cubley v Cubley* 30 L J Mat 161 It can depart from the common law rule in passing such orders *Shurt v Shurt* 1 Sw & Tr 251, *Curtis v Curtis* 1 Sw & Tr 75

the custody the custody right *Cart* *Thomasset*, (1894) P 295, In *Re* 29 L J Mat 165 An *ex parte* interim order can be passed restraining one of the parents from removing the child out of the jurisdiction of the Court *Harris v Harris*, 63 L T 262, *Portugal v Portugal* (Eng) 15 W R 9, *Allen v Allen* 54 L J P 77

**Access**—In exercising its discretion in the matter of access to the children by the father, the court is only influenced by consideration for the welfare of the children—J P 89, see also *Thomson v Thomson*, 3 Sw & Tr 496

**Final order**—The final order can be passed when both the parties are before the Court *Stacey v Stacey*, 29 L J Mat 61 The court may also pass an order for the custody of the children

see also *Bignall v. Bagnall* 54 S J 738 Where paternity of a child is questioned it must be raised by the opposite party *Gordon v. Gordon* 72 L J P 34—(1903) P 92

## XII—Procedure

45 Subject to the provisions herein contained, all proceedings under the Act between party and party shall be regulated by the Code of Civil Procedure to Code of Civil Procedure apply

Notes—Party should not be lightly excused from effecting personal service of the petition should circumstances render the course desirable in preference to the practice of service by registered post 40 B 368—27 Bom L R 251—A I R 1925 Bom 231

46 The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule

47. Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation shall \* state that there is not any collusion or connivance between the petitioner and the other party to the marriage,

the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of statements to be verified by the petitioner or some other competent person in manner required by law for the verification of complaints and may at the hearing be referred to as evidence

48 When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody

49 Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court, and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs

Such undertaking shall be filed in Court and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit

50 Every petition under this Act, shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do

Notes—When the service on the respondent is dispensed with the Court should assign reasons for it 1896 P J 221

It is essential, in suits for dissolution of marriage that petition of the plaintiff should be personally served under this section on the respondent or that such notice of its contents should be given to him 12 C W N 1009

\* Certain words after this which were repealed by Act VII of 1870 are omitted

† Certain words, which were repealed by Act VII of 1870 have been omitted For Court fee see now Act 7 of Sch II of that Act

51 The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any Mode of taking evidence party may offer himself or herself as a witness and shall be examined, and may be cross examined and re examined, like any other witness.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall on the application of the opposite party, or by direction of the Court, be subject to be cross examined by or on behalf of the opposite party orally, and after such cross examination may be re examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52 On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty or of adultery coupled with desertion without reasonable excuse the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion

53 The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors  
Power to close doors

54 The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon  
Power to adjourn if it sees fit so to do

55 All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the the laws, rules and orders for the time being in force,

Provided that the decree of a District Judge for dissolution of marriage shall not be appealed from, nor, from the order of the High Court, shall there be any appeal therefrom.

No appeals as to costs the subject of costs only

Appeal—No appeal lies from decree refusing to allow dissolution of marriage passed by District Judge in Upper Burma 19 Ind Crs 53 (F B)

Appeal from decrees absolute—is competent even though no appeal has been preferred against decree *nisi* 22 B 612

Limitation—Vide 22 B 612, 6 B 487

Additional evidence—in the appellate Court is allowed 4 A 306

See also 5 B L R 71, 20 B 362, 84 P L R 1904, 56 P R 1904, 18 P R 1903, 10 A 375

56 Any person may appeal to her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,  
Appeal to Queen in Council

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council

*XIII—Re marriage*

57. When six months after the date of an order of a High Court confirming

Liberty to parties to marry the decree for a dissolution of marriage made again by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired and no appeal has been presented against such decree

dissolved, if any marriage is declared to be

but not sooner it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death \*

Provided that no appeal to Her Majesty in council has been presented against any such order or decree

When such appeal has been dismissed, or when, in the result thereof, the marriage is declared to be dissolved, but not sooner it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dismissed by death

Notes—The marriage of a woman with the petitioner during the life time of her former husband and within six months of the confirmation by the High Court of a decree of the District Judge dissolving her marriage with the former husband is opposed to the terms of this section and must therefore be declared null and void under section 18 19 Ind Cas 778, 48 C 636, 2 A L J 420 (F B), 38 M 452, 34 A 202

58 No clergyman in Holy Orders of the \* Church of England\* shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

59 When any minister of any church or chapel of the said\* Church refuses to perform such marriage service between any person who, but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate within the diocese in which such church or chapel is situate to perform such marriage-service in such church or chapel

*XIV.—Miscellaneous*

60 Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until, reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof

\* Certain words, which were repealed by Act XII of 1873, have been omitted.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other Act such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61 After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62 The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same.

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure,\*

All such rules, alterations, and additions shall be published in the local official Gazette

### SCHEDULE OF FORMS

#### No 1—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO RESPONDENT BY REASON OF ADULTERY

(See Sections 10 and 34.)

In the (High) Court of

To the Hon'ble Mr Justice

[or To the Judge of ]  
The day of 186  
The petition of A B of

SHEWETH

1 That your petitioner was, on the day of one thousand eight hundred and lawfully married to C B then C D spinster at†

2 That, from this said marriage, your petitioner lived and cohabited with his said wife at and at in and lastly at in marriage five children of whom two sons only survive, aged respectively twelve and fourteen years

3 That during the three years immediately preceding the day of one thousand eight hundred and X Y was constantly, with few exceptions, residing in the house of your petitioner at aforesaid and that, on divers occasions during the said period, the dates of which are unknown to your petitioner the said C B in your petitioner's said house committed adultery with the said X Y

4 That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X Y, do pay the sum

\* See Act V of 1908

† If the marriage was solemnized out of India, the adultery must be shown to have been committed in India

(Signed)  $A \ B^*$

(Signed) C B +

(Signed) *X V*

(Signed) *A B*

*Form of verification* See No 1

† If the marriage was solemnized out of India the adultery must be shown to have been committed in India.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other Act such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation

61 After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife

62 The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same :

Power to makes rules  
Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure,\*

All such rules, alterations, and additions shall be published in the local official Gazette

### SCHEDULE OF FORMS

#### No 1—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO RESPONDENT BY REASON OF ADULTERY

(See Sections 10 and 34)

In the (High) Court of

To the Hon ble Mr Justice

[or To the Judge of ]  
The day of 186  
The petition of A B of

SHREWETH,

1 That your petitioner was on the day of one thousand eight hundred and lawfully married to C B then C D spinster at†

2 That, from this said marriage, your petitioner lived and cohabited with his said wife at and at in and lastly at in marriage five children of whom two sons only survive, aged respectively twelve and fourteen years

3 That during the three years immediately preceding the day of one thousand eight hundred and X Y was constantly, with few exceptions, residing in the house of your petitioner at aforesaid and that, on divers occasions during the said period, the dates of which are unknown to your petitioner the said C B in your petitioner's said house committed adultery with the said X Y

4 That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose

Your petitioner therefore prays that this (Hon'ble) Court will decree a dissolution of the said marriage and that the said X Y, do pay the sum

\* See Act V of 1908

† If the marriage was solemnized out of India, the adultery must be shown to have been committed in India



(Signed)  $A \ B^*$

(Signed) C B +

(Signed) *X V*

The petitioners of  $A$   $B$  falsely called  $A$   $D$

(Signed) *A E*

*Form of verification* See No 1

† If the marriage was solemnized out of India the adultery must be shown to have been committed in India.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other Act such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61 After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62 The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same :

Power to make rules  
Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure,\*

All such rules, alterations, and additions shall be published in the local official Gazette

### SCHEDULE OF FORMS

#### No 1—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO RESPONDENT BY REASON OF ADULTERY

(See Sections 10 and 34.)

In the (High) Court of

To the Hon'ble Mr Justice

[or To the Judge of ]  
The day of 186  
The petition of A B of

SHEWETH,

1 That your petitioner was, on the day of one thousand eight hundred and lawfully married to C B then C D spinster at†

2 That, from this said marriage, your petitioner lived and cohabited with his said wife at and at in and lastly at in and that your petitioner and his said wife have had issue of their said marriage five children of whom two sons only survive, aged respectively twelve and fourteen years

3 That during the three years immediately preceding the day of one thousand eight hundred and X Y was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that, on divers occasions during the said period, the dates of which are unknown to your petitioner the said C B in your petitioner's said house committed adultery with the said X Y

4 That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X Y, do pay the sum

\* See Act V of 1908

† If the marriage was solemnized out of India, the adultery must be shown to have been committed in India

(Signed)  $A \ B^*$

[illegible]

(Signed) C B +

Between  $A$   $B$  petitioner  
 $C$   $B$  respondent, and  
 $I$   $Y$  co respondent

(Signed) *X V*

[or to the Judge of ]  
The day 186.

The petitioners of *A B* falsely called *A D*.

2 That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said C D, at divers places and particularly at , aforesaid

(Signed) *A B*

*Form of verification* See No 1

† If the marriage was solemnized out of India the adultery must be committed in India

No 5—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE  
GROUND OF HER HUSBAND'S ADULTERY.

(See section 22)

In the (High) Court of  
To the Hon'ble Mr Justice  
The day of

[ or To the Judge of ]

186

The petition of C B of

, the wife of A B

SHEWETH

1 That on the day of one thousand eight hundred and  
sixty , your petitioner then C D was lawfully married to A, B at the church  
of , in the

2 That after her said marriage your petitioner cohabited with the said A B  
at and at , and that your petitioner and her said husband have  
issue living of their said marriage three children, to wit, &c, &c \*

3 That on divers occasions in or about the months of August, September and  
October, one thousand eight hundred and sixty , the said A B at  
aforesaid, committed adultery with E F who was then living in the service of the  
said A B and your petitioner at their said residence aforesaid

4 That on divers occasions in the months of October, November and December  
one thousand eight hundred and sixty the said A B at  
aforesaid committed adultery with G H who was then living in the  
service of the said A B and your petitioner at their said residence aforesaid.

5 That no collusion or connivance exists between your petitioner and the said  
A B with respect to the subject of the present suit

Your petitioner therefore prays that this (Hon'ble) Court will decree a  
judicial separation to your petitioner from her said husband by reason of his aforesaid  
adultery

(Signed) C B †

Form of the attestation see No 1

No 6—STATEMENT IN ANSWER TO No 5

In the (High) Court of

B against B

The day of

The respondent A B by W Y, his attorney (or vakil) saith—

1 That he denies that he committed adultery with E F, as in the third para-  
graph of the petition alleged

2 That the petitioner condoned the said adultery with E F if any

That he denies that he committed adultery with G H, as in the fourth paragraph  
of the petition alleged

3 That the petitioner condoned the said adultery with G H if any

Wherefore this respondent prays that this (Hon'ble) Court will reject prayer  
of the said petition

(Signed) A B

No 7—STATEMENT IN REPLY TO No 6

In the (High) Court of

B against B

The day of

The petitioner, C B, by her attorney (or vakil), says—

1 That she denies the charge of adultery

respondent with

paragraph of the petition

has been revived  
in the fourth

(Signed) C B

\* State the respective ages of the children

† The petition must be signed by the petitioner

NO 8—PETITION FOR A JUDICIAL SEPARATION BY REASON OF CRUELTY  
(See section 22)

In the (High) Court of  
To the Hon ble Mr Justice [or To the Judge of ]  
The day of 186

The petition of *AB* (wife of *CB*) of  
SHEWETH

1 That on the day of , one thousand eight hundred and your petitioner then *AD* spinster, was lawfully mentioned to *CB* at

2 That from her said marriage your petitioner lived and cohabited with her said husband, at until the day of , one thousand eight hundred and when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage

3 That from and shortly after your petitioner s the said marriage, the said *CB* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane or with some other weapon

4 That on an evening in or about the month of one thousand eight hundred and the said *CB* in the highway and opposite to the house in which your petitioner and the said *CB* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *FD*, your petitioner's brother

5 That subsequently on the same evening, the said *CB* in his said house at aforesaid, struck your petitioner with his clenched fists a violent blow on her face

6 That on one Friday night in the month of , one thousand eight hundred and the said *CB* in , without provocation threw a knife at your petitioner thereby inflicting a severe wound on her right hand

7 That on the afternoon of the day of , one thousand eight hundred and your petitioner by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him

8 That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit  
will decree a  
*CB* and also  
to these

Form of verification see No 1.

NO 9—STATEMENT IN ANSWER TO

In the (High) Court of  
The day of

*CB*, the respondent, in answer to the petition filed attorney [ or vakil] saith that he denies that he has the said *AB*, as alleged in the said petition

## No 10 — PETITION FOR REVERSAL OF DECREE OF SEPARATION

(See section 24)

In the (High) Court of  
To the Hon ble Mr Justice[or To the Judge of  
The day of  
The petition of A B, of

] 186

SHEWETH,

1 That your petitioner was, on the day of lawfully married to  
That on the day of this (Hon'ble) Court, at the petition of, pronounced a decree affecting the petitioner to the effect following, to wit —

*[Here set out the decree]*

3 That such decree was obtained in the absence of your petitioner who was then residing at  
*[State facts tending to show that the petitioner did not know of the proceedings and further that had he known he might have offered a sufficient defence,]*

or

That there was reasonable ground for your petitioner leaving his said wife, for that this said wife

*[Here state any legal grounds justifying the petitioner's separation from his wife]*

your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree

(Signed) A B

Form of verification see No 1

## No 11 — PETITION FOR PROTECTION ORDER

(See section 27)

In the (High) Court of  
To the Hon ble Mr JusticeThe day of  
The petition of C B of  
the wife of A B[or To the Judge of  
186

SHEWETH

That on the day of she was lawfully married to A B

at That she lived and cohabited with the said A B for years at and also at and hath had children issue of her said marriage of whom

are now living with the appl cant, and wholly dependent upon her earnings  
That on or about the said A B without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her

That since the desertion of her said husband, the applicant hath maintained herself by her own industry (or on her own property as the case may be) and hath thereby otherwise acquired certain property consisting of *[here state generally the nature of the property]*

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of from the said A B, and from all creditors and persons claiming under him

(Signed) C B

## No 12 — PETITION FOR ALIMONY PENDING THE SUIT

(See section 36)

In the (High) Court of

B against B

To the Hon ble Mr Justice

The day of [or to the Judge of  
The petition of C B, the lawful wife of A B, 186

SHEWETH,

1. That the said *A B* has for some years carried on the business of at and from such business derives the net annual income of from Rs 4,000 to 5 000

2 That the said *A B* is possessed of plate furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquire d through her of the value of Rs 10,000

3 That the said *A B* is entitled, under the will of his father, subject to the life-interest of his mother therein, the property of the value of Rs 5 000 or some other considerable amount \*

Your petitioner therefore prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony pending the suit, as to this (Hon'ble) Court may seem meet

(Signed) *C B*

*Form of verification see No 1*

### No 13—STATEMENT IN ANSWER TO No 12

In the High Court of

*B against B*

*A B* of , the above named respondent in answer to the petition for alimony, pending the suit of *C B* says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at and that from such business I have derived a net annual income of Rs 900, but less than Rs 1,000

2 In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs 7,000 but as I verily believe of no larger value And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs 1,500, belonged to my said wife before our marriage, but the

the will of my father, subject to the life-property of the value of Rs 5 000 that is to say will, upon the death of my mother, to a hall have to pay to my father's executors the sum of Rs 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent, per annum

4 And in further answer to the said petition I say that I have no income whatever except that derived from my aforesaid business, that such income, since

that such diminution is likely to con- income I have to pay the annual sum of my late father's executors, and also to support myself and my two eldest children

my wife left my with her, and has and other effects -alue of as I verily of her departure to me from certain and that she lodgers of mine, amounting in the aggregate to Rs has ever since withheld and still withholds from me the same sum

(Signed) *A*

\* The petitioner should state her husband's income as accurately as possible

NO 14—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE  
FOR RESPONDENT'S COSTS

*See Section 49*

In the (High) Court of

I the undersigned *A B* of \_\_\_\_\_ being the  
next friend of *C D* who is a minor and who is desirous of filing a petition in this  
Court, under the Ind in Divorce Act against *D D* of \_\_\_\_\_ hereby under  
take to be responsible for the costs of the said *D D* in such suit, and that, if the  
said *C D* fail to pay to the said *D D* when and in such manner as the Court shall  
order all such costs of such suit as the Court shall direct him [or her] to pay to the  
said *D D* I will forthwith pay the same to the proper officer of this Court

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1866

(Signed) *A B*

## THE DOWER ACT.

### ACT NO XXIX OF 1839

PASSED ON THE 16TH DECEMBER, 1839

*An Act for the Amendment for the Law relating to Dower.*

1 WHEREAS it is expedient to extend the amendments in the English  
law of dower contained in the statute 3rd and  
Preamble 4th William IV, Chapter C. V. to the territories

of the East India Company, in cases which, but for the passing of this Act,  
would be governed by the English law of dower as it existed previously to the  
passing of the aforesaid statute :

It is hereby enacted that t

Interpretation

except where the nature of the provision or the context of the Act shall  
exclude such construction be interpreted as follows ; that is to say, the word  
"land" shall extend to messuages, and all other heriditaments, whether cor-  
poreal or incorporeal (except such as are not liable to dower), and to any  
share thereof \*

Notes—The whole Act, except as to marriages contracted before first January  
1866, was repealed by Act VIII of 1868 As to the local extent, see the Laws Local  
Extent Act (XV of 1874) s 3

2. † When a husband shall die, beneficially entitled to any land for an  
interest which shall not entitle his widow to  
Widows to be entitled to dower out of equitable es-  
tates tates  
in possession, or equal to an estate of inheritance in possession (other than  
an estate in joint tenancy) then his widow shall be entitled in equity to dower  
out of the same land

Notes—A on his marriage with C, being equitable tenant in fee of certain  
lands, conveyed by deed of 1804, these lands to B, an indemnity against incum-

\*Certain words after this repealed by X of 1914 have been omitted

†The words "And it is hereby further enacted that" in sections 2 to 10, 12 and  
14 were repealed by the Repealing and Amending Act (12 of 1891)



the son marries and dies and the father gets a conveyance from his younger son, who took as heir to the eldest. The eldest son's wife shall have dower in these lands. *Bateman v Bateman*, 2 Vern 436

3. \* When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof. Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

4. \* No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his life time, or by his will.

Notes—A widow is not dowable of an equity of redemption. *Desion v Saville* 1 Bro C C 325, *Knight v Framton*, 4 Beav 10, *Flack v Longwate* 8 Beav 425

5. \* All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

6. \* A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

7. \* A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of free hold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of his land.

8. \* The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.

9. \* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

10. \* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will.

11. Provided always that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

\* Vide foot note † at page 1464

† Certain words repealed by Act 12 of 1891 have been omitted

NO 14—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE,  
FOR RESPONDENT'S COSTS

*See Section 49*

In the (High) Court of

I the undersigned *A B* of being the  
next friend of *C D* who is a minor and who is desirous of filing a petition in this  
Court, under the Ind in Divorce Act against *D D* of hereby under  
take to be responsible for the costs of the said *D D* in such suit and that, if the  
said *C D* fail to pay to the said *D D* when and in such manner as the Court shall  
order all such costs of such suit as the Court shall direct him [or her] to pay to the  
said *D D* I will forthwith pay the same to the proper officer of this Court

Dated this day of 186

(Signed) *A B*

## THE DOWER ACT.

### ACT NO XXIX OF 1839

PASSED ON THE 16TH DECEMBER, 1839

*An Act for the Amendment for the Law relating to Dower.*

1 WHEREAS it is expedient to extend the amendments in the English  
law of dower contained in the statute 3rd and  
Preamble 4th William IV, Chapter C V. to the territories

of the East India Company, in cases which, but for the passing of this Act,  
would be governed by the English law of dower as it existed previously to the  
passing of the aforesaid statute

It is hereby enacted that the words and expressions hereinafter mentioned,  
Interpretation which in their ordinary signification have a more  
confined or a different meaning shall in this Act,  
except where the nature of the provision or the context of the Act shall  
exclude such construction be interpreted as follows, that is to say, the word  
"land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof \*

Notes—The whole Act except as to marriages contracted before first January 1866 was repealed by Act VIII of 1868 As to the local extent, see the Laws Local Extent Act (XV of 1874) s 3

2 † When a husband shall die, beneficially entitled to any land for an  
interest which shall not entitle his widow to  
Widows to be entitled to dower out of equitable estates  
dower out of the same at law, and such interest,  
whether wholly equitable or partly legal and  
partly equitable, shall be an estate of inheritance  
in possession, or equal to an estate of inheritance in possession (other than  
an estate in joint tenancy) then his widow shall be entitled in equity to dower  
out of the same land

Notes—A on his marriage with C being equitable tenant in fee of certain lands, conveyed by deed of 1804 these lands to B an indemnity against incumbrances on other lands purchased by B from A, the legal fee subsequently descended upon A on the death of his father C became dowerable out of the lands *Lloyd v Lloyd*, 2 Con & L 592=4 Dr & War 354 A purchases lands in his eldest son's name, and puts him in possession, and the son falling sick takes a declaration of trust from him, and after the son's recovery, he is permitted to remain in possession,

\* been omitted  
sections 2 to 10, 12 and  
2 of 1891)

the son marries and dies, and the father gets a conveyance from his younger son, who took as heir to the eldest. The eldest son's wife shall have dower in these lands. *Bateman v Bateman*, 2 Vern 436

8. \* When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof. Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

4. \* No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his life time, or by his will.

Notes—A widow is not dowerable of an equity of redemption. *Desion v Saville* 1 Bro C C 325, *Knight v Framton* 4 Beav 10, *Flack v Longwate*, 8 Beav 425

5. \* All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

6. \* A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

7. \* A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of free hold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of his land.

8. \* The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.

9. \* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

10. \* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will.

11. Provided always that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

\* Vide foot note † at page 1464

† Certain words repealed by Act 12 of 1891 have been omitted

12. \* Nothing in this Act contained shall interfere with any rule of equity or of any Ecclesiastical Court by which Legacies in bar of dower still entitled to preference of dower are entitled to priority over other legacies

13 [*Certain dowers abolished*].—*Repealed by the Repealing and Amend-  
ing Act, 1891* (XII of 1891)

14 \* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one-thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement or charge executed, entered into or created before the said first day of July one-thousand eight hundred and forty the effect of defeating or prejudicing any right to dower

15 \* This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice

**THE INDIAN EASEMENTS ACT.**

ACT V OF 1882

RECEIVED THE G G'S ASSENT ON THE 17TH FEBRUARY 1882

*An Act to define and amend the Law relating to Easements and Licenses*

WHEREAS it is expedient to define and amend the law relating to Ease  
 Preamble                      ments and Licenses, It is hereby enacted as  
                                          follows —

Notes — The right of easement  
race first emerging from barbarism  
or living as each other's neighbours,  
easement is the necessity  
proper  
were  
rence  
proper  
And

A primary principle appears to be the original foundation on which property  
was based — *Vide Abstract of Proceedings of the Council of the Governor General*  
*in India, dated the 16th February 1832*. The act was intended to formulate system-  
atically those rules of law which were laid down by the Courts of India in deciding  
cases. Those rules were based mainly on English law as being just equitable and  
at most free from local peculiarities — *Vide Whately Stokes Anglo Indian Codes,*  
Vol I p 879.

## PRELIMINARY

|                               |                                                                                                                               |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Short title                   | 1, This Act may be called, "The Indian Easements Act, 1882"                                                                   |
| It extends to the territories | respectively administered by the Governor of Madras in Council and the Chief Commissioner of the Central Provinces and Coorg. |
| Local extent                  |                                                                                                                               |
| Commencement                  | and it shall come into force on the first day of July 1882                                                                    |

It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioner of the Central Provinces and Coorg.

Commencement and it shall come into force on the first day of July 1882

\* Certain words repealed by Act 12 of 1891 have here been omitted

**Notes**—Originally it was extended to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg. By Act 7 of 1891 it has been extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the North Western Provinces and the Chief Commissioner of Oudh. See also 18 B 616. By Act 7 of 1915 it has been extended to the Delhi Provinces. The Indian Easement Act is not in force in Bengal 30 C 503=7 C W N 649. Although the Indian Easements Act is not in force in the Punjab, the Punjab Courts when deciding cases in which principles of law dealt with by the provisions of those Acts are involved may adopt those provisions as embodying the law applicable to the case, especially where the law enunciated therein coincides with the principles

for

In *Sr*

Col

ian E

purports to define and amend the law relating to easements and licenses' or in other words to be a complete and self-contained code on those subjects. It originally extended to Madras the Central Provinces and Coorg. It has since been applied to other Provinces but not to Bengal. . . In those Provinces to which the Easements Act was not applied, the Courts were left to follow the course which their substantive accordance with

Bom L R 825

—30 D 319

**2** *Nothing herein contained shall be deemed to affect any law Savings not hereby expressly repealed, or to derogate from—*

(a) any right of the Government to regulate the collection, retention, and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained, or distributed in or by any channel or other work constructed at the public expense for irrigation ;

(b) any customary or other right (not being a license) in or over immovable property which the Government the public, or any person may possess irrespective of other immoveable property ; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force

**Notes**—This Act is not retrospective in its operation 14 A 785. In the case of lands irrigated by a Government tank, the owners of wet lands have a preferential right to the supply of water in seasons where the tank cannot yield the normal supply over the assignee of waste lands which were subsequently brought under cultivation

22 W R 279, 5 M H C R O, 20 D 103, 7 D 109, 1 N L J 47, 10 M 333. Where Government in the exercise of its general power of distributing water for irrigation in riyotwari villages limits the supply of water to what is reasonably necessary, no one else has any right to interfere with it 26 Ind Cas 18, see also 45 Ind Cas 80=34 M L J 425

**Clause (b)**—Before finding that a customary easement exists the Court must be satisfied of its reasonableness, certainty as to extent and application and length of time as suggest that the usage had become customary 90 Ind Cas 976

**Clause (c)**—Where the plaintiff has acquired the right and enjoyed it from time immemorial he is not prevented from exercising that right 42 B 288

12. \* Nothing in this Act contained shall interfere with any rule of equity or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies

13 [Certain dowers abolished]—*Repealed by the Repealing and Amending Act, 1891 (XII of 1891)*

14 \* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement or charge executed, entered into or created before the said first day of July one thousand eight hundred and forty the effect of defeating or prejudicing any right to dower

15 \* This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice

## THE INDIAN EASEMENTS ACT.

### ACT V OF 1882

RECEIVED THE G G's ASSENT ON THE 17TH FEBRUARY 1882

*An Act to define and amend the Law relating to Easements and Licenses*

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses, It is hereby enacted as follows —

Notes — The right of easement is a right as old as the law itself —

were to be allowed exclusive ownership in the equitable principle that the good of the public lay in enjoying one's property so as not to disturb the enjoyment by the neighbour of his own property. And this salutary principle appears to be the original foundation on which easement law was based — *Vide Abstract of Proceedings of the Council of the Governor General in India dated the 16th February 1882*. The Act was based on the principles of those rules of law which were laid down in the *English Easements Act, 1800*. Those rules were based mainly on English law at most free from local peculiarities — *Vide Vol I p 879*

### PRELIMINARY

1, This Act may be called, "The Indian Easements Act, 1882" respectively administered by the Governor of Madras in Council and the Chief Commissioner of the Central Provinces and Coorg : and it shall come into force on the first day of July 1882

\* Certain words repealed by Act 12 of 1891 have here been omitted

Notes—Originally it was extended to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg. By Act 7 of 1891 it has been extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant Governor of the North Western Provinces and the Chief Commissioner of Oudh. See also 18 B 616. By Act 7 of 1915 it has been extended to the Delhi Provinces. The Indian Easement Act is not in force in Bengal 30 C 503=7 C W N 649. Although the Indian Easements Act is not in force in the Punjab the Punjab Courts when deciding cases in which principles of law dealt with by the provisions of those Acts are involved may adopt those provisions as embodying the law applicable to the case especially where the law enunciated therein coincides with the principles of justice equity and good conscience and for which there is no statutory law applicable to the Punjab 85 P R 1902. In *Sital Chand v Chaudhury v Mrs A J Delaney*, 20 C W N 1158 at p 1163 the Court observed. The next Act passed by the Indian Legislature was the Indian Easements Act (Act V of 1882) which purports to define and amend the law relating to easements and licenses, or in other words to be a complete and self contained code on those subjects. It originally extended to Madras the Central Provinces and Coorg. It has since been applied to other Provinces but not to Bengal. In those Provinces to which the Easements Act was not applied, the Courts were left to follow the course which they had previously pursued of drawing upon English sources for their substantive law on the principle that the English law on the subject is in accordance with justice equity and good conscience, see also 8 C W N 425 7 Bom L R 825 =30 B 319.

2 Nothing herein contained shall be deemed to affect any law  
 Savings not hereby expressly repealed or to derogate  
 from—

(a) any right of the Government to regulate the collection retention, and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained, or distributed in or by any channel or other work constructed at the public expense for irrigation,

(b) any customary or other right (not being a license) in or over immovable property which the Government the public, or any person may possess irrespective of other immoveable property, or

(c) any right acquired, or arising out of a relation created, before this Act comes into force

Notes—This Act is not retrospective in its operation 14 A 785. In the case of lands irrigated by a Government tank, the owners of wet lands have a preferential right to the supply of water in seasons where the tank cannot yield the normal supply brought under cultivation and sources of irrigation 14 Ind Cas 261=1912 14 B L R 209=22 W R 279, 5 M H C R O, 20 B 103, 7 B 209, 1 M L J 47 16 M 333. Where Government in the exercise of its general power of distributing water for irrigation in ryotwari villages limits the supply of water to what is reasonably necessary, no one else has any right to interfere with it 26 Ind Cas 18, see also 45 Ind Cas 80=34 M L J 425.

Clause (b)—Before finding that a customary easement exists the Court must be satisfied of its reasonableness certainty as to extent and application and length of time as suggest that the usage had become customary 90 Ind Cas 976.

Clause (c)—Where the plaintiff has acquired the right and enjoyed it from time immemorial he is not prevented from exercising that right 42.

3 \* All references in any Act or Regulation to section 26 or 27 of the Indian Limitation Act, 1877, or to sections 27 and 8 of Act No IX of 1871, shall, in the territories to which this Act extends, be read as made to sections 15 and 16 of this Act

Notes—Section 3 repeals so far as the Central Provinces are concerned, ss 26 and 27 of the Limitation Act and the definition of easement contained in that Act 14 N L R 35=43 Ind Cas 96.

## CHAPTER I

### OF EASEMENTS GENERALLY

4 An easement is a right which the owner or occupier of certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do some thing, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner, the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner

*Explanation*—In the first and second clauses of this section, the expression 'land' includes also things permanently attached to the earth, the expression 'beneficial enjoyment' includes a mere amenity, includes removal and appropriation by enjoyment of the dominant heritage, or any part of the soil or the servient heritage, or anything growing or subsisting thereon

#### Illustrations

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house This is an easement

(b) A, as the owner of a certain house has the right to go on his neighbour B's land and to take water for the purposes of his house hold out of a spring therein This is an easement

(c) A, as the owner of a certain house has the right to conduct water from B's stream to supply the fountains in the garden attached to the house This is an easement

(d) A, as the owner of a certain house and farm has the right to graze a certain number of his own cattle on B's field or to take for the purpose of being used in the house by himself his servants water or fish out of C's tank for the purpose of manuring his land These are easements

(e) A has the right to use the surface of certain land for the purpose of depositing his refuse This is not an easement

(f) A is bound to cleanse a water course running through his land and keep it free from obstruction for the benefit of B a lower riparian owner This is not an easement

*Gale on Easements*  
called may be  
upon a corporeal  
arising from it

\* Section 3 has been substituted for the original section by Act 10 of 1914



*Ibid* These rights can well be called 'rights of accommodation as distinguished from those which are *directly* profitable. 'A right of way or right of passage for water where it does not create an interest in the land is an incorporeal right and stands upon the same footing with other incorporeal rights. *Heldlin v Shippeam* (1826) 5 B & C 221 Artificial structures such as flat masonry roofs of shops are land within the meaning of that expression as used in section 4 of the Act and easements can be acquired over them. 45 Ind Cas 585. A right to open and shut the windows of a person's house is an easement within the meaning of this section as it is a right, which the owner of the house has as such for the beneficial enjoyment of his house to do something, i.e. to swing the shutters upon certain other lands not his own and such a right can be acquired as an easement by

as it is not dependent on the ownership of any landed property. 48 A 560=9, Ind. Cas 1030=24 A L J 682=A 1 R (1926) All 538. A right of way can be claimed by a person for a municipal sweeper if he can substantiate that the passage has been used by the municipal sweeper for the statutory period as a matter of right. 28 Bom L R 601=9, Ind Cas 170=A 1 R (1926) Bom 287. A person can claim in a suit certain property as his own or in the alternative that he has got a right of easement over the same. 41 C L J 379=87 Ind Cas 19=A 1 R (1915) Cal 788.

The lessee or a person in lawful possession of a house may maintain an action if the right of privacy of the house of which he is in possession is interfered with. 3 A L J 670=A W N 1905 783=29 A 64. A right to go on to a neighbour's land to gather the fruits that fall therefrom a portion of a tree alleged to belong to the plaintiff is not an easement. 43 M L J 13=68 Ind Cas 968 (1893) A C 1.

Considered with regard to the servient tenement an easement is but a charge or obligation, curtailing the ordinary rights of property with regard to dominant tenement, it is a right accessory to these ordinary rights—constituting in both cases a new quality impressed upon the respective heritages. *Gale on Easement* p 9. An easement can only be claimed in relation to a property. *Ibid*

Continuous and discontinuous, apparent and non apparent, easements. 5 Easements are either continuous or discontinuous apparent or non apparent.

A continuous easement is one whose enjoyment is or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non apparent easement is one that has no such sign.

### Illustrations

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Right annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non apparent easement.



owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature

(i) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels shall be allowed by the owner of adjacent lower land to run naturally thereto

(j) The right of every owner of land abutting on a natural stream, lake, or pond to use and consume its water for drinking household purposes and watering his cattle and sheep, and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners

**Explanation**—A natural stream is a stream whether permanent or intermittent, tidal or tideless on the surface of land or underground, which flows by the operation of nature only and in a natural and known course

**Notes**—This right conferred by an easement attaches upon the soil of servient tenement, the utmost extent of the obligation imposed upon the owner being not to alter the state of it so as to interfere with the enjoyment of the easement by the dominant tenement. The burden is in fact negative—to suffer or not to do—being to be the owner of the servient heritage; and upon its transfer, to each successive proprietor

The test of user under this section is whether the owner use more than a reasonable quantity, and the user is not as a rule to be deemed unreasonable unless there is material diminution of water so as to affect the right of other like owners (1914) M W N 481=24 Ind Cas 68, The ownership of free natural elements such as air and water, and of all water. It is a right in the water lies, just as lava thrown up by a 346=3 P L T 53

**Variety of easements**—The number or modifications of rights of this kind may be infinite both in their extent, and mode of enjoyment as the convenience of man, in using his property requires 'To descend now,' says Lord Stur, 'to the kinds of servitudes, there may be as many as there are ways whereby the liberty of a house or tenement may be restrained in favour of another tenement, for liberty and servitude are contraries, and the abatement of the one is the being or enlarging of other' Cited in *Gale on Easement* p 22 But no incidents of a novel kind can be devised and attached to property at the fancy or caprice of any owner" Per Lord Brougham in *Keppell v Bailey*, 2 M & K at p 535, see also *Hill v Tupper* 2 H & C 121

Every one may build upon or otherwise utilize his own land regardless of the fact that his doing so involves an interference with the light which would otherwise reach the land and building of another person 72 Ind Cas 576=1923 Cal 256 Every land owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it into such a use as he may desire 4 Pat L T 81=69 Ind Cas 947 The right of the riparian owner does not depend on the ownership of the soil of the stream It belongs to the proprietor of the adjoining land as a natural incident to the right of the soil belonging to him and he is entitled to the benefit of it as is to all other natural advantages belonging to the land of which he is the owner 59 Ind Cas 364 An easement exists for the benefit of the dominant tenant alone

away in the usual course of nature upon the lower land of his neighbour and cannot be bound to prevent it from so doing 65 Ind Cas 84=(1922) Pat 805=44 P. L. R (Pat 1) 105

The word 'owner' in this section cannot be interpreted as meaning necessarily absolute owner 42 M 567=37 M L J, 28=26 M L T. 48=10 L W. 87=(19 M W N 305=50 Ind, Cas 291

**Illustration (h)**—Riparian owners have a natural right to use the water of a natural streamlet for the purpose of irrigation so long as that used is reasonable 44 Ind Cas 19, 51 Ind Cas 949

entitled to let the water run off  
into  
by  
own  
and not passing in defined channels  
*ex jure nature* and not a right founded  
Cas 91, 41 Ind Cas 863, 84 Ind Cas 949, 22 C W 14 650=41 Ind Cas  
863, 46 Ind Cas 24, 44 Ind Cas 500, 52 Ind Cas 128

**Illustration (i)**—The riparian owner has right to utilise water for irrigation which must be exercised in such a way as does not interfere with easement acquired by lower proprietors 44 Ind Cas 19, see also 43 Ind Cas 113, 52 Ind Cas 276, 7 Bom L R 26, 5 B 357

## CHAPTER II

### THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS

8 An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed

#### *Illustrations*

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease A may impose an easement on the land to continue during the time that the lease exists or for any shorter period

(b) A is tenant for his life of certain land with remainder to B absolutely A cannot, unless with B's consent impose an easement thereon which will continue after the determination of his life interest

(c) A, B and C are co owners of certain land A cannot, without the consent of B and C impose an easement on the land, or on any part thereof

(d) A and B are lessees of the same lessor A of a field X for a term of five years and B of a field Y for a term of ten years A's interest under his lease is transferable, B's is not A may impose on X in favour of B a right of way terminable with A's lease

**Notes**—An easement right can be conferred by the owner of the servient tenement for caste consideration 7 Ind Cas 920 Under the Land Clause Consolidation Act 1845 (8 & 9 Vict c 18) a limited owner had no power to grant an easement But under the Settled Land Act, 1882 43 & 46 Vict c 381 a limited power v power As to the limits of this 83 L T h 169, *Re Pearson's Will*, (1900)

9 Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement But he cannot, without the consent of the dominant owner impose an easement on the servient heritage which would lessen such utility.

#### *Illustrations*

(a) A has, in respect of his mill a right to the uninterrupted flow thereto, from sunrise to noon of the water of B's stream B may grant to C the right to divert the water of the stream from noon to sun set provided that A's supply is not thereby diminished

(b) A has in respect of his house a right of way over B's land B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way, provided that A's right of way is not thereby obstructed

**Notes**—As it is the duty of the owner of the dominant tenement not to do any act which imposes an additional burthen upon the owner of the servient tenement

so the latter must not do an act which interferes with the exercise of the right already acquired or those secondary easements, which are requisite for its full and free enjoyment. If his wall be liable to an easement of support to a neighbouring house, he must not (except for the purpose of necessary repair) pull down or otherwise weaken the wall, so as to make it incapable of rendering the requisite support to the grantee's wall, so as to obstruct use at the v. *Hell*, 1

Bing N C 555)'—*Gale on Easement* p 598

**10** Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose on the property mortgaged any easement that does not render the security insufficient. But a lessor or mortgagor cannot without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

*Explanation*—A security is insufficient within the meaning of the section, unless the value of the mortgaged property exceeds by one third, or if consisting of buildings, exceeds by one half, the amount for the time being due on the mortgage.

*Notes*—A mortgagor or a lessor cannot grant a right of easement in derogation of the rights of the lessee or mortgagee. Subject to the provisions of section 8 and of this section an easement can be created by an instrument under seal. *North British Railway Co v Park Yard Co Ltd* (1898) A C 643, see also *Southerland* *Southerland* [1893] 3 Ch 169, *Re Pearson's Will* (1900) 83 L T 676, *Pase v Courtney* 1904 2 Ch 503.

**11.** No lessee or other person having a derivative interest may impose, on the property held by him as such, an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

*Notes*—Vide notes under section 10.

**12** An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created or, on his behalf, by any person in possession of the same.

One of two or more co owners of immovable property, may, as such with or without the consent of the other or others acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of the immovable property of his own, an easement in or over the property comprised in his lease.

*Notes*—In *Ringley v Milland Rail Co* (1868) L R 3 Ch 610 Lord Cairns observed 'There can be no easement, properly so called unless there be both a servient and a dominant tenement. An easement must be connected with a dominant tenement'. The point decided by *Ackroyd v Smith*, (1850) 10 C. B 164, is that a right of way can not be so granted as to pass to the successive owners of land, as such in cases where the way is not connected in some manner with the enjoyment of the land, to which it is attempted to make it appurtenant. Although a tenant cannot acquire a prescriptive right of easement in the land belonging to his lessor, he may claim a right of easement based on immemorial user. 36 C. L.

J 161=50 C 355, 23 C 369, 14 A 185, 38 M L J 28 The lessor is entitled to the right of easement acquired by his lessee after his lease 19 C W N 1121=31 Ind Cas 549, 45 Ind Cts 28

Easements of necessity and  
*quasi* easements

13 Where one person transfers or bequeaths immoveable property to another,—

- (a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or,
- (b) if such an easement is apparent and continuous, and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement, or
- (c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or
- (d) if such an easement is apparent and continuous, and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied be entitled to such easement

Where a partition is made of the joint property of several persons,—

- (e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or
- (f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partitions took effect he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement

The easements mentioned in this section, clauses (a), (c) and (e) are called easements of necessity

Where immoveable property passes by operation of law, the persons from and to whom it so passes are for the purpose of this section, to be deemed, respectively the transferor and transferee

#### *Illustrations*

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land, or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B and retains the other. The field retained was at the date of the sale used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land which A retains. The light, which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows which look towards the land of C. A sells the house to B and the land to C. A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house overlooking the land of C. A sells the house to B, reserving any easement in favour of his house as it was enjoyed when he owned the land. A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses Y and Z, sells Y to B and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air when necessary, with smoke and vapours from the factory.

(l) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air when necessary, with smoke and vapours from the factory. The Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air when necessary, with smoke and vapours from the factory. The Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(n) A, the owner of a house, sells B a factory built on adjoining land. B is entitled as against A, to pollute the air when necessary, with smoke and vapours from the factory. The Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

Notes.—The implication of the grant of an easement may arise in two ways: 1st, upon the severance of a heritage by its owner into two or more parts, 2ndly, by prescription. *Gale on Easements* p 111. Upon the severance of a heritage a grant will be implied 1st of all those continuous and apparent easements which have in fact been enjoyed by the owner of the land, 2ndly of those which are necessary for the use of the dominant tenement.

1st. Upon the severance of a heritage by its owner into two or more parts, a grant will be implied 1st of all those continuous and apparent easements which have in fact been enjoyed by the owner of the land, 2ndly of those which are necessary for the use of the dominant tenement. 38 A 467=9 Ind Cas 628, 17 A L J 672=50 Ind Cas 646, 48 Ind Cas 670, 50 Ind Cas 756, 60 Ind Cas 504. Without such an easement the use of the dominant tenement is impossible. 60 Ind Cas 504, (1913) Oudh 250, 17 Ind Cas 966, 16 C L J 417, 90 Ind Cas 900, 46 Ind Cas 327, 3 C W N 409, 14 B 457. In order to found a claim to an easement of necessity, unity of ownership of the dominant and servient tenements at some time is essential, as in the absence of such unity no grant can be implied. *Gale on Easements* p 171, see also 46 Ind Cas 327, 26 C 510, 11 B 452. In *Union Light & Ice Co v London Graving Dock Co* (1902) 2 Ch 557 573 *Starling L J* said: "An easement of necessity is one without which the property retained upon a severance can not be used at all, not one which is merely necessary to the reasonable enjoyment of that property." See also *Ray v Huxtable* (1904) 2 Ch 17, *Tillemans v Kingston Water Co Ltd* (1900) 81 L T 673, 35 A 467=9 Ind Cas 628, 17 A L J 672, 72 Ind Cas 197, 50 Ind Cas 646, 50 Ind Cas 756, 48 Ind Cas 670.

*Morris v Eddington* 3 Trunt 28 *Bailey v Great Western Railway*, (1884) L R 26 Ch D 453 The inference of law arises equally whether the easement is incident to a grant or a reservation *Pinnington v Gallind* 9 Ex 1, *Wheeldon v Burrows* (1879) L R 12 Ch D 57, *Midland Railway v Miles*, L R 31 Ch D 614

Where the owner of an entire tract of land or of two or more adjoining parcels employ a part thereof so that one derives from the other a benefit or advantage of continuous and apparent nature, and sells the one in favour of which such continuous and apparent quasi easement exists the easement being necessary to the reasonable enjoyment of the property granted will pass to the grantee by implication 72 Ind Cas 576=1921 Cal 256, *Ewert v Cockrane* 4 Mic H L 117, *Wheeldon v Burrows* 12 Ch D 31, *Gayley v O W. Ry & Co* 26 Ch D 434, *Crown v Alafaster* 37 Ch D 470, *Swin v Cotton* (1916) 2 Ch 459. An easement of necessity can not arise in any other way than on severance of tenements 46 Ind Cas 327 The mere fact that plaintiff had acquired another tenement through which he could pass water did not deprive the easements in question of the character of easement of necessity 10 P R 1919=53 Ind Cas 584 Right to enter upon a neighbour's land and erect a scaffolding there for the purpose of plastering the walls whether an easement of necessity 94 Ind Cas 673=28 Bom L R 403=A I R (1926) Bom 328 The right to take water from another's well is not an easement of necessity 22 Bom L R 415=57 Ind Cas 143 Where the easement was not in existence at the time of severance an easement under this section can not be created 5 Ind Cas 740=33 M 207 The owner of the dominant heritage cannot increase this easement by altering the dominant heritage 24 B 188=1 Bom L R 633, see also 1 Bom L R 37=23 B 595 Where there are other means of access there can be no easement of necessity 9 Ind Cas 764=9 M L T 274, 9 Ind Cas 628=8 A L J 280 Where the necessity for an easement of necessity terminates the easement also terminates 60 Ind Cas 504

Clause (a) The Court would be justified in holding that on the transfer of one portion of the property, the easement for the discharge of rain water over the other was necessary under this clause 4 S L R 180, see also 4 B 452

Clause (b) The existence of drains through which adjoining lands were being irrigated is evidence of an apparent continuous and necessary easement which passes to the transferee 45 M I J 724 This clause relates to a continuous easement which a right of way is not 104 Lah 488=6 Lah L J 176 Where a portion of land is sold an easement apparent continuous and necessary for enjoying the portions severed from the transferor's land will pass to the transferee unless a contrary intention is expressed in the instrument of the transfer 47 M L J 307=81 Ind Cas 833 The necessity contemplated in clauses (a) (c) and (d) is an absolute necessity while in clause (b) of the section it is a qualified necessity The distinction between the two is obvious a right of way may not be absolutely necessary and yet necessary for the purpose of enjoying the property as it was enjoyed when the transfer of it took place, the existence of this last necessity has to be determined by reference to the prior user 3 Bom L R 601

Clause (c) Where a quasi tenement is sold without express reservation of a right of way not absolutely necessary the principle that a man cannot derogate from his grant applies and no such right is saved 16 C P L R 155, see 26 M 66

Clause (d) *Vide* 29 Ind Cas 493

Clauses (e) and (f) There is a distinction between the cases falling under clauses (e) and (f) Under the former the plaintiff has to prove that the easement claimed was necessary for the enjoyment of the property allotted to him by partition and under the latter he has to prove four things (1) that the easement was apparent (2) that it was continuous (3) that it was necessary for enjoying his share of the property (4) that it was a right of way the plaintiff claimed after par



share as it was enjoyed immediately before partition 70 Ind Cas 930=1923 Oudh 57 The flow of run water into a drain is a continuous easement 22 A L J 425=80 Ind Cas 896 See also 28 M 495=15 M L J 255 Where the easement claimed would impose a burden different from what existed before it cannot be claimed as a *quasi* easement Vide 90 Ind Cas 900=A I R 1926 Mad 680=1925 M W N 282

14 When a\* right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, Direction of way of necessity or the owner of the share over which the right is exercised, as the case may be, is entitled to set out way, but it must be reasonably convenient for the dominant owner

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out

Notes — And the grantor shall assign the way where he can best spare it\* 2 Roll Abr lit Graunt 2 pl 17 18 When the person was entitled to set out the way the dominant owner 'might take a convenient way without permission (*Sans le gree*) of the plaintiff, and the law would then adjudge whether such way was convenient and sufficient or otherwise *Puller v Welsted*, 1 Wms Saund 323 n For it is apparent by the plea that it is a way of necessity, and it is *pro bono publico* that the land should not be unoccupied' *Dutton v Tylor*, 2 Lect 1487 This right is to be measured by the nature of the grant or reservation to which it is incident *Daut v Kingscote*, 6 M & W 174, *Macneil v Burt*, (1903) 2 Ir R 731 The necessity must be judged at the date of the conveyance *Holmes v Going* 2 Bing 76

15 Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, without interruption and for twenty years, Acquisition by prescription

and where support from one person's land, or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement, shall be absolute

Each of the said periods of twenty years shall be taken to be a period ending within two years, next before the institution of the suit wherein the claim to which such period relates is contested

*Explanation I* — Nothing is an enjoyment within the meaning of this section, when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period or subject to a condition on the fulfilment of which it is to cease

*Explanation II* — Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made

*Explanation III* — Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section

\* In s 14 the italicised article a has been inserted by Act VII of 1891

**Explanation IV**—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years," the words "sixty years" were substituted

### Illustrations

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right without interruption, from 1st January 1862 to 1st January 1882. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed for the right of way has not been enjoyed "as of right" for twenty years.

**Notes**—There is no substantial difference between the English and the Indian laws as to the acquisition of the easement by long user of the land. That it is of right until the contrary is shown 35 Ind Cas 749=4 L W 126, 109; 11 Ind Cas 11, 15 L W 266, 86 Ind Cas 59,=1925 Lth 341. This section does not interfere with the titles and modes of acquiring easements 45 M 633.

**Title to easement by prescription**—Prescription may be defined to be—a title acquired by possession had during the time and in the manner fixed by law. After the lapse of the requisite period the law adds the right of property to that which before was possession only.—*Gale on Easements* p 185; see also 19 Ind Cas 255=38 M 280. The possession here spoken of is legal possession. To constitute a legal possession there must be not only a corporeal detention or that *quasi* detention which according to the nature of the right, is equivalent to it, but there must be also the intention to act as owner. *Gale on Easements* p 185. From the definition of this section the enjoyment of the easement must be without interruption both as to the manner and during the time required by the law. In *Monmouthshire Canal Company v Hurford* (1839) 1 C M & R 631, Baron Parke observed: "An enjoyment of an easement for one week and a cessation to enjoy it during the next week and so on alternately would confer no right." See also 39 C 53=11 Ind Cas 180, 25 Ind Cas 40,=12 A L J 693, 49 Ind Cas 963=21 Bom L R 709, 26 Ind Cas 781, 35 Ind Cas 749=4 L W 128=20 M L T 544, 25 Ind Cas 499, 1913 M W N 454=18 L W 404, 1912 Mod 61. The owner are require

by permission does not confer any title. This section has no application when a right to the unimpeded use of water had been acquired before the Act came into force 4 C P L R 16. Where the defendants have been in the enjoyment of a right of way "openly, peaceably and as of right" (within the intention of acquiring a right of easement) as a means of access to their share of the house. Held that the defendants acquired an easement of necessity 9 M L T 350=9 Ind Cas 640. A superior proprietor is

the way as an easement for the period of prescription 8 Ind Cas 502. To acquire a right of way by user there must be a peaceable and open enjoyment by a person

claiming title thereto as an easement and as of right without interruption and for twenty years 2 C P L R 34, 39 C 53, 11 Ind Crs 180, 21 Bom L R 709, 26 Ind Cas 781, 30 Ind Cas 523=29 M L J 635 9 Ind Cas 764=9 M L T 274, 9 Ind Cas 640=9 M L T 350, 6 N L J 59=1923 Nag 192, 26 Ind Cas 723=39 M 304

A right of easement can be acquired in waste land 65 Ind Cas 509 An easement in the nature of right of passage for sweeper can also be acquired 21 Bom L P 229=(1922) Bom 79 A right to pass filth and other water on the land of another can be acquired by immemorial user 2 Bom L R 89 An easement is not necessarily extinguished by mere cessation of enjoyment, but the lessor coupled with an act or omission of the dominant owner indicating the intention to abandon the right is equal to express release of the easement 30 P R 1871 The right of easement may be acquired in the surplus water of a tank flowing through a defined channel whether natural or artificial 7 M 530 The right to hold something as a musical festival can not exist as an easement 36 C 615=13 C W N 1002=1 Ind Cas 108 A tenant can not acquire an easement by prescription in other lands of his lessor 9 C W N 856, see also 56 Ind Cas 598 A tenant may have a right of pasturage on his landlords' waste land by immemorial user In such a case of immemorial user the presumption is that the right has a legal origin 31 C 503 P C=31 I A 75=8 C W N 425=14 M L J 152 P C Knowledge of the fact of enjoyment on the part of the owner of the servient tenement is essential for the creation of the right of easement 54 Ind Cas 936

An easement once acquired is not necessarily lost by mere user and the question of abandonment is one of intent on to be decided on the facts of each particular case 7 Ind Cas 813, see also 97 P R 1869 The rule that easements are extinguished by operation of law if the seisin of the dominant and servient tenements becomes united in one and the same person cannot apply to a case where there has been no real or genuine unity of seisin but the dominant owner had wrongfully possessed himself of the servient tenement as a trespasser A W N 1882 76 Landholder, exercising the *kumki* right in South Canara are not entitled to sue and obtain possession of the land over which such right is held 16 M 304

Where there is no "interruption" as defined in Explanation II of this section of of the statutory period, in the enjoyment of a right of easement, and the plaintiff has been in enjoyment of the right for at least forty years prior to date of the suit, such enjoyment must be referred to a legal origin 2 Ind Cas 315=5 M L T 107 The right of privacy does not arise from prescription but is a creation of custom which has been recognised as such in Gujrat by judicial decision 2 Bom L R 454

The right to an easement by prescription can be acquired only by enjoyment of the right for 20 years ending within two years previous to the institution of the suit 25 W R 15, see also 12 A L J 415=24 Ind Crs 126, 12 A L J 93 A title by prescription may be acquired by long possession, but it must be possession not merely permissive, but as of right *et c.* in the capacity of a master or, in the case of easements adversely to the owner of the land 13 W R 344 There can be no prescriptive right to projection which has been erected merely for the purpose of ornamentation 30 C 503=7 C W N 649

In the acquisition by prescriptive user of a right to light and air, the enjoyment of light and air figures from the time when the window frames are put into and the rafters and beams are laid on the new building with reference to which the right is claimed 11 B H C R 148 Where there has been no appropriation of light and air for the statutory period of 20 years, no right of prescription can be acquired 2 B 660 The right of air is a right which can be acquired by prescription only if there has been a long and uninterrupted use of the right and if the user has been as of right and if the use is as of right it is possible 35 Ind Crs 126 To establish a right of an easement by statutory prescription it is necessary to prove enjoyment of the right (whether 20 years or 30 years) within two years next before the institution of the suit where in the claim to which such period relates is contested 33 Ind Crs 503 The words "as an easement in this section do not mean that the enjoyment should be in the assertion of claim of an easement Illustration (b) shows that the expression "as an easement" was introduced in order to show that unity of title or possess on during the period of 20 years, or a portion

thereof make the possession useless to create a right of easement 17 Ind Cas 112 An uninterrupted enjoyment for more than 20 years is sufficient 61 Ind Cas 569, 39 M L J 574 A right of way or other easement must be definite and not so large as to destroy all the ordinary uses of the servient property and make it impossible that it should ever be used for any useful purpose 43 A 345=19 A L J 126=60 Ind Cas 990 A right of easement may be acquired with respect to water which is discharged from the surplus water of a tank 33 M L J 674 The burden of proving that a right of way has been peaceably and openly enjoyed by a person for the period of 20 years is on the person claiming the right of way 499 This section 7 L W 1107=

The words "belongs to Government" refer not to the time of suit but to the time during which the easement is enjoyed 41 M 622=34 M L J 396=45 Ind Cas 98, see also 1924 All 724 A statutory prescription can not be acquired unless and until the claim thereto has been contested in a suit 72 Ind Cas 909=1923 Oudh 29 The enjoyment necessary to qualify for a right of easement is not referable to a purported character of the easement 49 M 820=A I R 1926 Mad 625 The benefit of the dominant heritage is not interrupted by the mere giving of notices does not serve to interrupt the peaceable enjoyment of the easement 21 Bom L R 709 When the user is proved the presumption is that it is of right 69 Ind Cas 11 An easement can be acquired as regards a right to support 15 Ind Cas 294=(1912) M W N 1117 A right of easement can be acquired by projection of eaves of a cottage 24 Bom L R 305

16 Provided that, when any land, upon, over, or from which any easement has been enjoyed or derived, has been sold under, or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty years in case the claim is within three years next after the determination of such interest or term resisted by the person entitled, on such determination, to the said land

#### Illustration

A sues for declaration that he is entitled to a right of way over B's land but B shows that during C's death B became death he contested A's reference to the provisions

Notes—The period of any tenancy for life must be excluded (if properly pleaded) in the computation of the periods required for a valid easement. *Clayton v Carby* (1842) 2 G & D 174 Q B 666 Mere user as against a subsequent malcharathdar and disaffirm the same and put an end to the right opened to them, under this section 24 L W 691

Rights which cannot be acquired by prescription 17 Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights

None of the following rights can be so acquired,

- (a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed,
- (b) a right to the free passage of light or air to an open space of ground,

(c) a right to surface water not flowing in a stream, and not permanently collected in a pool, tank or otherwise

(d) a right to underground water not passing in a defined channel

Clause (a)—*In Hill v Nottingham* (1875) 1 Ex D 1 the possibility that the custom there set up might have the effect of taking away from the owner of the freehold the whole use and enjoyment of his property was not thought a sufficient ground for disallowing it. The mere possibility that after many years the number

the exercise of the right the servient tenement will be totally destroyed

This section is intended to apply not to rights of irrigation in natural streams which do not include a right to water. It implies that a right of easement in artificial channels or of water derived from prescription 33 M L J 674=(1917)

M W N 863

Customary easements  
customary easements

18 An easement may be acquired in virtue of local custom. Such easements are called

#### *Illustrations*

(a) By the custom of a certain village every cultivator of village lands entitled as such, to graze his cattle on the common pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbours' privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation and B acquires a like easement with respect to A's house.

Notes—Any kind of easement recognised by the custom of a province will fall within the term 'customary easements'. It is not limited to easements of a kind which could not be recognised at all apart from official customs. 74 Ind Cas 703. A right to the crushing of the sugar cane and boiling of the juice can be claimed as a customary easement. 12 A L J 963.

19 Where the dominant heritage is transferred, or devolves by act of parties, or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

#### *Illustration*

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues.

### CHAPTER III

#### THE INCIDENTS OF EASEMENTS

20 The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree (if any) by which the easement referred to was imposed.

Rules controlled by contract  
Incidents of customary easements  
And when any incident of any customary easement is inconsistent with such rules nothing in this chapter shall affect such incident.

**Notes**—There can be no question of easement as regards light and air in the case of joint property 28 Bom L R 1000=97 Ind Cas 691=A I R 1926 Bom 545

**Bar to use unconnected with enjoyment** 21 An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage

(a) A as owner of a farm Y, has a right of way over B's land to Y, lying beyond Y. A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used not only by A, lodgers, servants, workmen, visitors, with the enjoyment of the dominant the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

**Notes**—In *Bailey v Stephens*, 12 C B N S 61, *Earle C J* said "It is a claim of a right as appurtenant to estate, and yet wholly unconnected with the estate. I can not find an authority for such a claim."

22 The dominant owner must exercise his right in the mode which is least onerous to the servient owner, and when the exercise of an easement can, without detriment to the dominant owner, be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

**Exercise of easement**

**Confinement to exercise of easement**

### Illustrations

(a) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching grass in B's swamp. A when exercising his easement must cut the grass so that the plants may not be destroyed.

**Notes**—Under this section the dominant owner must exercise his right in the mode which is least onerous to the servient owner. He can not impose any additional burden on the servient owner. If a way could be enjoyed in the mode as being the tract over which as 375

23 Subject to the provisions of section 22 the dominant owner may, from time to time alter the mode and place of enjoying the easement provided that he does not thereby impose any additional burden on the servient heritage.

**Right to alter mode of enjoyment**

**Exception**—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

### Illustrations

(a) A the owner of a saw mill has a right to a flow of water sufficient to work the mill. He may convert the saw mill into a corn mill, provided that it can be worked by the same amount of water.

(b) A has a right to discharge on B's land the rain water from the eaves of A's house. This does not entitle A to advance his eaves if by so doing, he imposes a greater burden on B's land.

(c) A, as the owner of a paper mill, acquires a right to pollute a stream by pouring in the refuse liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill

paper by a new process from bamboos provided that he does not substantially increase the amount, or injuriously change the nature of the pollution

(d) A, a riparian owner, acquire as against the lower riparian owners a prescriptive right to pollute a stream by throwing saw dust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor

**Notes**—The burden on the servient tenement cannot be increased by the owner of the dominant tenement 58 Ind Cas 967=24 C W N 896=32 C L J 27=58 Ind Cas 854. The dominant owner may from time to time alter the mode and place of enjoying the easement provided that he does not thereby impose an additional burden on the servient heritage *Campbell v Russell* 26 L J Ex 34, 97 Ind Cas 169=24 A J J 810, see also A I R 1926 Nag 221. When a person projects his eaves over his neighbour's land for the statutory period he can, when he raises the wall, project the eaves to the same extent at a correspondingly increased height, so long as he does not throw an increased burden upon the servient tenement 15 Bom L R 876=21 Ind Cas 352, see also 28 Ind Cas 169. A reconstruction of a house involving a change in the situation of the *roshowdars* does not mean a fresh easement requiring a fresh period of 20 years 45 Ind Cas 985

The defendant had a right to discharge water from his thatched roof on to the plaintiff's land. He pulled down his house and built a three storied *pukka* house with spouts on his roof to discharge water on the plaintiff's land. Held that the burden on the plaintiff's land was increased within the meaning of this section 13 A L J 791

24 The dominant owner is entitled, as against the servient owner, to do

|                                      |                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Right to do acts to secure enjoyment | all acts necessary to secure the full enjoyment of the easement but such acts must be done at such time and in such manner as, without detriment to the dominant owner to cause the servient owner as little inconvenience as possible, and the dominant owner must repair as far as practicable, the damage (if any) caused by the act to the servient heritage |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Accessory rights

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights

### Illustrations

(a) A, has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state

(b) A has a easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land, and alter the drain to adopt it to the new sewer, provided that he does not thereby impose any additional burden on B's land

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way, or remove the tree from it

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B provided that the deviation is reasonable

(e) A, as owner of a certain house has a right of way over B's field. A may remove rocks to make the way

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land, and repair the dam

**Notes**—The pipes and reservoirs laid by a Spinning and Weaving Company beneath the railway line belonged to the Company and were all along kept in repairs by them. They therefore had the right, as dominant owners, to enter on the premises of the Railway Company who were the servient owners to effect any repairs that might be necessary. The flow of pipe was stopped and there was the necessity to repair and the exercise of the right of entry for such purpose could not be deemed to be

unlawful 22 B 52, Where the plaintiff had acquired an easement of discharging rain for an injunction as to prevent the fall which support

25 The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner

Notes—As a general rule, easements impose no personal obligation upon the owner of the servient tenement to do anything—the burden of repair falls upon the owner of the dominant tenement *Gale on Easements* p 475 'If the grantee of a way himself *Per Coleridge J in Duncan v Louch N Buckley* (1898) 2 Q B 608, *Pomfret* (1806) 2 Bor & Bull N R 109 By the *cell in Tayler v Whitehead* 2 Douglas repair it See also *Ingram v Morcrist* 221, *Colebeck v Girdler & Co* L R 1 Q 357

26 Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work

Notes—Where the enjoyment of the easement is had by an artificial work (*opus manufactum*) the owner of the dominant tenement is liable for any damages arising from its want of repair *Gale on Easements* p 476 see also *Bell v Twentyman* (1841) 1 Q B 766 *Lord Agnew v Pulman* M & M 404 *Humphries v Cousins* L R 2 C P D 239 but see *Nathan v Rouse* (1905) 1 K B 527 It would appear to be more accurate to say that if the dominant owner can not exercise the easement strictly within its limits without repairing the artificial work he must do the necessary repairs if he wishes to exercise the easement *Gale on Easements* p 476

27 The servient owner is not bound to do any thing for the benefit of the dominant heritage, and he is entitled, as against the dominant owner to use the servient heritage in any way consistent with the enjoyment of the easement, but he must not do any act tending to restrict the easement, or to render its exercise less convenient

#### Illustrations

(a) A as a owner of a house, has a right to lead water and send sewage through B's land B is not bound as servient owner to clear the water course or scour the sewer

(b) A grants a right of way through his land to B as owner of a field A may feed his cattle on grass growing on the way provided that B's right of way is not thereby obstructed but he must not build a wall at the end of his land so as to prevent B from going beyond it nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant

(c) A in respect of his house is entitled to an easement of support from B's wall B is not bound as servient owner to keep the wall standing and in repair But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support

land B must

passing over that quantity of light so as to obstruct the passage to A's windows of

Notes—Where water flowing underground in a defined subterranean channel forms the source of supply for the plaintiff's springs the defendant is not at liberty



to obstruct it by cutting of channel on his own land very near the springs 25 Bom L R 784

28 With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect —

Extent of easement

Easement of necessity

An easement of necessity is co extensive with the necessity as it existed when the easement was imposed

The extent of any other easement and the mode of its enjoyment must be

Other easements

fixed with reference to the probable intention of the parties and the purpose for which the

right was imposed or acquired —

In the absence of evidence as to such intention and purpose—(a) a right

Right of way

of way of any one kind does not include a right of way of any other kind

(b) the extent of a right to the passage of light or air to a certain window,

Right to light or air acquired by grant

door, or other opening imposed by a testamentary or non testamentary instrument, is the quantity of light or air that entered the opening at the

time the testator died, or the non testamentary instrument was made

(c) the extent of a prescriptive right to the passage of light or air to a

Prescriptive right to light or air

certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole

of the prescriptive period irrespective of the purposes for which it has been used

(d) the extent of a prescriptive right to pollute air or water is the extent

Prescriptive right to pollute air and water

of the pollution at the commencement of the period of user on completion of which the right arose, and

(e) the extent of every other prescriptive right and the mode of its

Other prescriptive rights

enjoyment must be determined by the accustomed user of the right

Notes —The accessory right which the law thus confers is to be measured by the nature of the grant or reservation to which it is incident. *Doud v Kings Cole*, (1840) 6 M & W 174, *Corporation of London v Riggs* L R 13 Ch D 798, *Ray v Hazeldine*, (1904) 2 Ch 17

The mere non user of a mode cannot deprive a person of his right to enjoy the easement in that particular mode unless there was any intentional abandonment of that particular mode giving rise to an agreement express or implied between the parties by which the person can be said to have relinquished it. The evidence as to relinquishment must be clear and unequivocal 6 Bom L R 287

Clause (a) —Vide 22 Bom L R 1131

Clause (c) —Where a plaintiff is claiming relief upon the ground that his prescriptive right to the passage of light and air to a certain window has been interfered with it is enough to show that the right has in fact been interfered with 4 A L J 477=29 A 571=A W N 1907, 175, see also 30 B 319, 7 Bom L R 357. The dominant owner has the right that the servient owner shall not obstruct the free access to the ancient window of those cones and pencils of rays that have hitherto found access to it 33 Ind Cas 615

Clause (d) —This clause expressly recognises the right to pollute air as a right capable of being acquired by prescription 22 B 831

Limits of easement —Where the area over which an easement of way has been acquired is small and the points of egress and ingress are fixed it is not necessary for the Court to delineate the particular portion of the ground which persons enjoying the easement are entitled to sue 45 Ind Cas 585



user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

*Illustration*

A having right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

## CHAPTER IV

### THE DISTURBANCE OF EASEMENTS

Right to enjoyment without disturbance

**32** The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person

*Illustration,*

A as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

**Notes**—‘As it is the duty of the owner of the dominant tenement not to do any act which imposes an additional burden upon the owner of the servient tenements so the latter must not do an act which interferes with the exercise of the right already acquired, or those secondary easements which are requisite for its full and free enjoyment’—*Gale on Easements* p 507

**33** The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto, provided that the disturbance has actually caused substantial damage to the plaintiff

**Explanation I**—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34

**Explanation II**—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

**Explanation III**—Where the easement disturbed is a right to the free passage of air to the openings in a house damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health

*Illustrations*

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement

(b) A as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot passengers using the way. This is not substantial damage to A

meaning of this section and in the case of an easement of an open area need not necessarily be a substantial damage to a person accustomed to living in a congested area. A I R (1924) 392, 97 Ind Cas 500 = A I R 1926 All. 764. This section allows compensation to be recovered provided that the disturbance has actually caused substantial damage to the plaintiff as explained in the section. The law does not concern itself with a disturbance which is trivial or immaterial. 13 A L J 385 = 28 Ind Cas 962.

34 The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage is actually sustained.

When cause of action arises for removal of support

35 Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance

(a) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this chapter

(b) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement

Notes—It is not every interference with the right of easement that gives a right of suit. To give a right of suit must be a substantial diminution of the easement. It was found that the proposed buildings would materially interfere with the fact the defendant has not begun to build within the meaning of section 33 and would not afford adequate relief and that an injunction should be granted. 7 S L R 21 = 20 Ind Cas 544.

36. Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement

## CHAPTER V

### THE EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS

37 When from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner

*Exception*—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

#### Illustrations

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement.

(b) A in 1860, lets B in 1861 imposes an easement peaceably and openly as B's interest in Sultanpur. On the date of the lease B enjoys the easement for twenty-nine years.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage debt. The easement is not thereby extinguished.

Notes—"The implied grant cannot, of course, operate for or against the lessee, but it takes effect immediately on the determination of his interest." *Gale on Easements* p 126. As regards the rights of the mortgagor, vide *Born v Turner*, (1900) 2 Ch 211.

38. An easement is extinguished when the dominant owner releases it, Extinction by release expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

*Explanation I* An easement is impliedly released—

- (a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority.
- (b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

*Explanation. II* Mere non-user of an easement is not an implied release within the meaning of this section.

### *Illustrations*

(a) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eaves droppings into B's yard expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly, A's easement is extinguished to the extent of the interference.

(d) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge eaves droppings on B's land permanently alters the roof, so as to direct the rain water into a different channel, and discharge it on C's land. The easement is impliedly released.

Notes—In order to disentitle a dominant owner to an easement on the ground of non user the permanent alteration made in the dominant heritage must be of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future. If mere failure to keep the servient tenement in good repair is insufficient to establish an intention to abandon the easement, vide 25 Ind Cas 383. A release may be either express or implied. *Gale on Easements* p 512. An ex-

... an easement may  
623, *Waterloo v*  
the effect of non-  
The right to light  
continue so long  
as the party either  
In the same case  
that he abandon  
he may lose his

of the old pond was discontinued only because the plaintiff obtained the same or a greater one, he did not thereby abandon it—and a substitution of this nature is not  
W 789

**39.** An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement  
Extinction by revocation

**Notes**—Where an easement is revocable by the servient owner it will terminate with such revocation

**40** An easement is extinguished where it has been imposed for a limited period, or, acquired on condition that it shall become void on the performance or non performance of a specified act, and the period expires, or the condition is fulfilled  
Extinction on expiration of limited period or happening of dissolving condition

**Notes**—An easement imposed for a limited period will terminate when the period expires. So also it terminates with the fulfilment or non fulfilment of a condition, when it is conditional

**41.** An easement of necessity is extinguished when the necessity comes to an end  
Extinction on termination of necessity

#### Illustrations

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished

**Notes**—Such an easement ceases when it is no longer required in order to render the grant or reservation effectual. *Gale on Easements* p. 178. A grant arising out of the implication of necessity cannot be carried further than the necessity of the case required, and this principle is consistent with all the cases which have been decided. *Per Best C J in Holmes v Going*, 2 Bing 76

**42** An easement is extinguished when it becomes incapable of being at any time, and under any circumstances, beneficial to the dominant owner  
Extinction of useless easement

**43** Where by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—  
Extinction by permanent change in dominant heritage

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used, or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it, or

(c) the easement is an easement of necessity

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support the dominant heritage

**Notes**—"By the civil law, the mere destruction either of the dominant or servient tenement extinguished a servitude though it was held to revive if the house was as before. *Gale on Easements*, the dominant tenement, of such perception of the peculiar case which the easement was attached to determine." *Gale on Easements*

Extinction on permanent alteration of servient heritage by superior force

44. An easement is extinguished where the servient heritage is by superior force, so permanently altered that the dominant owner can no longer enjoy such easement.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage, and the provisions of section 14 apply to such way.

#### *Illustrations*

(a) A grants to B as the owner of certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Notes—A tenant may have a customary right or customary easement to irrigate his lands with water from his landlord's tank but where owing to natural causes the tank becomes unfit for use as an irrigation source such right becomes extinguished under this section. 56 Ind. Cas. 598.

Extinction by destruction of either heritage

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

#### *Illustrations*

A has a right of way over a road running along the foot of a sea cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Notes—By the civil law the mere destruction either of the dominant or servient tenement extinguished a servitude, though it was held to revive if the house was built on the same site and of the same dimensions as before.—*Gale on Easements*, p. 502.

Extinction by unity of ownership

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

#### *Illustrations*

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field, to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient heritage, the easement is not extinguished except in the case illustrated in section 41.

(c) The servient owner acquires the dominant heritage in connection with a third person, the easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages, the easements are not

ant heritage jointly acquire the servient

er two servient heritages for the beneficial

The dominant owner acquires one only of not extinguished

(g) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Notes—A man can not acquire a right of easement upon his own land, and possibly this may extend also to joint co-sharership of land. In order to extinguish an easement, it is necessary that some person should be entitled to absolute ownership of the whole of the dominant and servient tenements, so that a mere acquisition

of qualified ownership on the one hand or partial ownership on the other would not extinguish an easement A W N 1887, 260

**Extinction by non enjoyment** 47 A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner, and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner

Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section

The circumstance that, during the said period no one was in possession of the servient heritage or that the easement could not be enjoyed, or that a right accessory, thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section

An easement is not extinguished under this section—

- (a) Where the cessation is in pursuance of a contract between the dominant and servient owners,
- (b) where the dominant heritage is held in co ownership, and one of the co owners enjoys the easement within the said period, or
- (c) where the easement is a necessary easement

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous such rights shall, for the purposes of this section be deemed to be a single easement

#### *Illustration*

A has as annexed to this house rights of way from the high road thither over the heritages X and Z and the intervening heritage Y Before the twenty years expired, A exercises his right of way over X His rights of way over Y and Z are not extinguished

**Notes**—This section comes into operation only where an easement has been acquired under section 15 9 Bom L R 1101 Where the easement in question is not an easement of necessity, but is an ordinary easement, it is liable to be extinguished by non user for more than 20 years 45 Bom 80=22 Bom L R 415=57 Ind Cas 143 Once the existence of an easement is shown, it is for the other party to show under this section that it interrupted that easement more than 20 years ago or that the plaintiff rendered its use impossible 31 Ind Cas 982 An easement is not extinguished, when the cessation is in pursuance of a contract between the dominant and servient owners 34 P L R 1918=45 Ind Cas 618 A mere diversions is not obstruction 13 A L J 821

**Extinction of accessory rights** 48 When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

#### *Illustration*

A has an easement to draw water from B's well As accessory thereto, he has a right of way over B's land to and from the well The easement to draw water is extinguished under section 47 The right of way is also extinguished



49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein

*Suspension of easement* Notes—According to ss 49 and 51, an easement suspended for more than 20 years would be destroyed. So where the servient owner was in possession both of the dominant and servient heritages for a period of 20 years the right of easement (a right of way) becomes extinguished (1913) M W N 95=16 Ind Cas 375

50 The servient owner has no right to require that an easement be continued, and, notwithstanding the provisions of section 26 he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him without unreasonable expense, to protect the servient heritage from such damage

*Servient owner not entitled to require continuance* Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension

#### *Illustration*

A in exercise of an easement diverts to his canal the water of B's stream. The diversion continues for many years and during that time the bed of the stream partly fills up. A then abandons his easement and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B 7 months' notice of the intention to abandon the easement and that such notice was sufficient to enable B without unreasonable expense, to have prevented the damage. The suit must be dismissed.

Notes—Servient owner can not insist on the continuance of easement. 46 Ind Cas 67, 20 Ind Cas 815=17 C W N 1066=18 C L J 131, 4 P L T 81=2 P 110=(1922) Pat 305, 4 P L T 81

51 An easement extinguished under section 45 revives (a) when the destroyed heritage is before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building, and, before twenty years have expired, such building is rebuilt upon the same site, and (c) when the destroyed heritage is a dominant building, and before twenty years have expired, such building is rebuilt upon the the same site, and in such a manner as not to impose a greater burden on the servient heritage

*Revival of easements* An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47

#### *Illustration*

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C or surrenders it to B the right of way revives.

of qualified ownership on the one hand or partial ownership on the other would not extinguish an easement A W N 1887, 260

Extinction by non enjoyment **47** A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years

A discontinuous easement is extinguished when for a like period, it has not been enjoyed as such

Such period shall be reckoned, in the case of a continuous easement from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner, and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner

Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory, thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section

An easement is not extinguished under this section—

- (a) Where the cessation is in pursuance of a contract between the dominant and servient owners,
- (b) where the dominant heritage is held in co ownership, and one of the co owners enjoys the easement within the said period, or
- (c) where the easement is a necessary easement

Where several heritages are respectively subject to rights of way for the benefit of a single heritage and the ways are continuous such rights shall, for the purposes of this section, be deemed to be a single easement

#### *Illustration*

A has as annexed to his house rights of way from the high road thither over the heritages X and Z and the intervening heritage Y Before the twenty years expired, A exercises his right of way over X His rights of way over Y and Z are not extinguished

**Notes**—This section comes into operation only where an easement has been acquired under section 15 9 Bom L R 1101 Where the easement in question is not an easement of necessity, but is an ordinary easement, it is liable to be extinguished by non user for more than 20 years 45 Bom 80=22 Bom L R 415=145 Ind Cas 143 Once the existence of an easement is shown it is for the other party to show under this section that it interrupted that easement more than 20 years ago or that the plaintiff rendered its use impossible 31 Ind Cas 982 An easement is not extinguished, when the cessation is in pursuance of a contract between the dominant and servient owners 34 P L R 1918=45 Ind Cas 618 A mere diversion is not obstruction 13 A L J 821

Extinction of accessory rights **48** When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

#### *Illustration*

A has an easement to draw water from B's well As accessory thereto, he has a right of way over B's land to and from the well The easement to draw water is extinguished under section 47 The right of way is also extinguished

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein

*Suspension of easement*  
*Notes*—According to ss 49 and 51, an easement suspended for more than 20 years would be destroyed. So where the servient owner was in possession both of the dominant and servient heritages for a period of 20 years the right of easement (a right of way) becomes extinguished (1913) M W N 95—16 Ind Cas 375

50 The servient owner has no right to require that an easement be continued, and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him without unreasonable expense, to protect the servient heritage from such damage

*Servient owner not entitled to require continuance*  
*Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension*  
*Compensation for damage caused by extinguishment*

#### *Illustration*

divi The water of B's stream has fallen into the bed of the stream and restores the stream to its par B sues A for compensation anc for the damage caused by the flooding. It is proved that A gave B a month's notice of the intention to abandon the easement and that such notice was sufficient to enable B without unreasonable expense, to have prevented the damage. The suit must be dismissed

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as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47

#### *Illustration*

A as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B the right of way revives.

**Notes**—The word such in s 51 clause (b) can not be so construed as to mean a building of the same dimension' 7 Bom L R 352 An easement suspended for more than 20 years would be destroyed 16 Ind Cas 375 Where the dominant tenement has been rebuilt the relief to which the dominant owner is entitled is still further limited by the terms of this section There must be no greater burden imposed on the servient tenement 33 Ind Cas 615

## CHAPTER VI

### LICENCES

**52** Where one person grants to another, or to definite number of other persons, a right to do, or continue to do, 'Licence' defined in or upon the immovable property of the grantor something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence

**Notes**—A dispensation or licence properly passes no interest nor alters or transfers any property in anything but only makes an action lawful which without it had been unlawful A licence to go beyond the seas to hunt in a man's park, to come into his house are only actions which without licence had been unlawful But a licence to hunt in a man's park and carry away the deer killed to his own use to cut down a tree in a man's ground and to carry it away the next day after to his own use are licences as to the acts of hunting and cutting down the tree but as to the carrying away of the deer killed and tree cut down they are grants *Thomas v Sorrel* (1679) Vough 351, see also *Musket v Hill* (1839) 5 Bing N C 694 Both the benefit and the burden of an easement are annexed to land *Hastings v North Eastern Railway* (1898) 2 Ch 674, (1899) 1 Ch 650, (1900) C 260 But a mere licence when it is not coupled with a grant is personal to both grantor and grantee *Gale on Easement* p 886, see also 38 A 171=32 Ind Cas 346=14 A L J 137 13 B 397, 16 M 304, 7 Bom L R 352=8 Bom L R 310 An action by a licence for infringement of licence against a stranger is not maintainable *Hill v Taper* 2 H & C 121, *Stockport v Potter* 3 H & C 300 A licence is not generally assignable *Musket v Hill* 5 Bing N C 694, *Metcalf v Westaway* 34 L J C P 43, see also 84 Ind Cas 284=(1924) All 825

**53** A licence may be granted by any one in the circumstances and to the extent, in and to which he may transfer his interests in the property affected by the licence

**Notes**—A beneficial licence to be exercised upon land may be granted without deed and without writing *Taylor v Watters* 7 Taunt 374 Transfers of different rights in two properties may be simultaneous and yet distinct, e.g. transfer of a mill and a licence to use the site on which it is built 12 N L R 75=34 Ind Cas 71

**54** The grant of a licence may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a licence

**Notes**—A licence is not implied by law to a purchaser of goods (though sold under an execution of a distress) to enter upon the premises of the former owner and take them away *Williams v Morris* 8 M & W 1011, the express grant of a mere licence is coupled with a grant of immovable property on which the express licence is coupled for which writing and registration are independently of the licence and when the grant, if unwritten and unregistered its accompaniment, would remain a mere licence

55. All licences necessary for the enjoyment of any interest or the exercise of any right, are implied in the constitution of such interest or right. Such licences are called accessory licences.

Accessory licences annexed by law

### Illustration

A sells the trees growing on his land to B. B is entitled to go on the land and take away the tree.

Notes—A licensee is not a trespasser until the licence is revoked and he has a reasonable time after the withdrawal of the licence to go off the land and to remove goods which he has been licensed to place there. *Cornish v Stebble* (1870) L. R. 5 C. P. 334, *Mellor v Watkins*, (1874) L. R. 9 Q. B. 409, *Wilson v Tavener* (1901) 1 Ch. 578. A parol devise of land reserved to the landlord all the hedges, trees, thorn, bushes, fences with top and top. Held, that such reservation operated as a licence to enter the land for the purpose of cutting and carrying away the tree. *Heast v Isham*, 7 Ex. 77.

56. Unless a different intention is expressed or necessarily implied a licence to attend a place of public entertainment may be transferred by the licensee, but save as aforesaid, a licence cannot be transferred by the licensee, or exercised by his servants or agents.

Licence when transferable

### Illustrations

(1) A grants B a licence to go on his land whenever he pleases. The right is not transferable. (2) A grants B a licence to go on his land and use temporary grain sheds as a provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

Notes—A licence is not generally assignable by the licensee. *Muskett v Hill*, (1839) 5 Bing. N. C. 694, *Metcalfe v Westway*, 34 L. J. C. P. 43.

57. The grantor of a licence is bound to disclose to the licensee, any defect in the property affected by the licence, likely to be dangerous to the person or property of the licensee of which the grantor is, and the licensee is not, aware.

Grantor's duty to disclose defects

58. The grantor of a licence is bound not to do anything likely to render the property affected by the licence dangerous to the person or property of the licensee.

Grantor's duty not to render property unsafe

59. When the grantor of the licence transfers the property affected thereby, the transferee is not, as such, bound by the licence.

Grantor's transferee not bound by licence

Notes—A licence is determined by an assignment of the subject matter in respect of which the privilege is to be enjoyed. *Coleman v Foster*, 1 H. & N. 37, see also *Wallis v Harrison*, 4 M. & W. 535, *Roff v Henderson* 17 Q. B. 574, *Richards v Hasper*, (1866) L. R. 1 Ex. 199, *Pentel v Tucker* (1907) 2 Ch. 191. A licensee cannot by enjoying the licence for any length of time acquire right adverse to that of the licensor. 44 A. 726.

60. A licence may be revoked by the grantor, unless—

Licence when revocable

- it is coupled with a transfer of property, and such transfer is in fact
- the licensee acting upon the licence, has executed a work of permanent character, and incurred expenses in the execution

Notes—If a licence was granted by the zemindars to the predecessor of the judgment-debtor and they acting upon that licence, built a house

of a permanent character, the zemindars could not revoke the licence and seek possession of the site 3 A L J 760=A W N 1906 305=29 A 133 Clause (b) applies to a case in which the licensor gives permission to a party to execute works of a permanent character and to expend money in the execution of such works but not to a case where a licensor merely gives a licence to occupy a house already existing 5 Ind Cas 175 A *katcha*—thatched house may be 'a work of a permanent character' 3 A L J 765=28 A 741=A W N 1906, 216 The principle of this section applies to places where this Act is not in force 8 A 69=A W N 1884 3 A licence to be exercised upon land for twenty one years, granted for a valuable consideration and acted upon, cannot be countermanded *Walter v Harrison*, 4 M & W 538 An auctioneer who is employed to sell goods on the premises of the proprietor has not such an interest in the goods as will make a licence to enter on the premises irrevocable *Tophin v Florence* 10 C B 744 A parol licence after it is executed at the expense of the grantee is not countermandable by the grantor *Liggins v Inge*, 5 M & P 712 A licensee is not liable to ejectment for denying the title of the licensor 75 Ind Cas 596=1923 All 403 A licence cannot be revoked where the licensee has erected certain buildings of a permanent nature on the land 12 A L J 455, see also 48 Ind Cas 723, 91 Ind Cas 1031=13 O L J 170 Whether the building is a work of a permanent character depends on the nature of the building and not on the intention of the persons occupying it 97 Ind Cas 337=A I R (1926) All 714 Where the grantee acting on the licence, executes a work of a permanent character and a suit for ejectment is brought by the grantor's heirs, he cannot be ejected 94 Ind Cas 923 Where a permanent structure has been erected by the transferor's licensee his transferee has no right to revoke the licence 97 Ind Cas 337, see also 47 Ind Cas 166 A licensee unlike a lessee does not forfeit his licence by merely denying the title of the licensor 15 A L J 592=39 A 621

61 The revocation of a licence may be express or implied

#### Illustrations

(a) A the owner of a field, grants a licence to B to use a path across it A, with intent to revoke the licence, locks a gate across the path The licence is revoked

(b) A the owner of a field, grants a licence to B to stack hay on the field A lets or sells the field to C The licence is revoked

Notes.—The locking of a gate, through which parol leave has been given to pass is of itself a sufficient notice of revocation of the leave *Hyde v Graham* 1 H & C 593 A licence is determined by an assignment of the subject matter in respect of which the privilege is to be enjoyed *Coleman v Fraser*, 1 H & H 37 In *Wallis v Harrison* 4 M & W 538 Lord Abinger C B said A mere parol licence to enjoy an easement on the land of another does not bind the grantor, after he has transferred his interest and possession on the land to a third person I never heard it supposed that if a man out of kindness to a neighbour allows him to pass over his land, the transferee of that land is bound to do so likewise

License when deemed revoked

62 A licence is deemed to be revoked—

- when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the licence,
- when the licensee releases it, expressly or impliedly to the grantor or his representative,
- where it has been granted for a limited period, or acquired, on condition that it shall become, void on the performance or non performance of a specified act and the period expires, or the condition is fulfilled,
- where the property affected by the licence is destroyed, or by superior force so permanently altered that the licensee can no longer exercise his rights
- where the licensee becomes entitled to the absolute ownership of the property affected by the licence,

- (f) where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable ;
- (g) where the licence is granted to the licensee as holding a particular office, employment, or character, and such office, employment or character ceases to exist ;
- (h) where the licence totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract, between the grantor and the licensee ;
- (i) in the case of an accessory licence, when the interest or right to which it is accessory ceases to exist

Notes.—That of a licence

63. Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property

Licencee's rights on revocation

Notes.—Although a licence to place articles on the property of another may be revokable at any moment the licensee is entitled to notice of the revocation, and to a reasonable time for the removal of the articles. *Mellor v Watkins* L. R. 9 Q. B. 400. A allowed B to stack timber upon a wharf adjoining the premises let to him

condition that it might remain there, and be carried away from time to time by the purchaser up to Lady day next. Held that this licence could not be revoked. *Wood Manly*, 3 P. & D. 5

64. Where a licence has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

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- (d) where the property affected by the licence is destroyed, or by superior force so permanently altered that the licensee can no longer exercise his rights
- (e) where the licensee becomes entitled to the absolute ownership of the property affected by the licence,



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## OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

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## SCHEDULE—ENACTMENTS REPEALED

## THE INDIAN EVIDENCE ACT, 1872

## ACT NO. 1 OF 1872

[16th March, 1872]

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence, it is hereby

Preamble  
 enacted as follows —

## C L J 375

**Lex Fori**—"The law of evidence is the *lex fori* which governs the Courts. Whether a witness is competent or not whether a certain matter requires to be proved by writing or not whether certain evidence proves a certain fact or not, that is to be determined by the law of the country where the question arises where the remedy is sought to be enforced and where the Court sits to enforce it *Per Lord Brougham in Bain v Whitehaven and Furness Junction Railway Company* 3 H L C 1

**English decisions**—The English decisions relating to evidence can be relied upon in India. The rules of evidence are subject to the general 39 M 449=28 M L J 379 with few exceptions *Gujju Lal*, B 129, 4 B 576 But the Act is

**History of the Law of Evidence**—Reasoning, the rational method of settling disputed questions is the modern substitute for certain formal and mechanical tests which flourished among our ancestors for centuries and in the midst of which the trial by jury emerged. When two men to-day settle which is the best man by a prize fight we get an accurate notion of the old German trial. Who it is that tries is the question? The men themselves. There are referees and rules of the game but no determination of the dispute on grounds of reason—by the rational method. So it was with 'trial by battle' in our old law the issue of right, in a writ of right, including all elements of law and fact was tried by this physical



## SECTIONS

- 149 Questions not to be asked without  
reasonable grounds
- 150
- 151 Indecent and scandalous questions
- 152 Questions intended to insult or annoy
- 153 Exclusion of evidence to contradict answers to questions testing veracity
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- 160 Testimony to facts stated in document mentioned in section 159
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- 165 Judge's power to put questions or order production
- 166 Power of jury or assessors to put questions

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enacted as follows —

**Scope of the Act**—This Act does not contain the whole law of evidence governing this country. Section 2 of the Act saves rules of evidence contained in any Statute Act or Regulation in force. *In Re Radolph Stallman*, 15 C W N 1053=39 C 164=14 C L J 375

**Lex Fori**—'The law of evidence is the *lex fori* which governs the Courts. Whether a witness is competent or not whether a certain matter requires to be proved by writing or not whether certain evidence proves a certain fact or not, that is to be determined by the law of the country where the question arises where the remedy is sought to be enforced, and where the Court sits to enforce it' *Per Lord Brougham in Bain v Whitehaven and Furness Junction Railway Company*, 3 H L C 1

**English decisions**—The English decisions relating to evidence can be relied upon in India. The rules of evidence are subject to the general principles of jurisprudence. *Annaji v Emperor*, 39 M 449=28 M L J 329. This Act has codified the English law of evidence with few exceptions. *Gujju Lal, v Fatch Lal*, 6 C 171=6 C L R 439, see also 17 B 129, 4 B 576. But the Act is not a servile copy of the English Law 10 B 439

**History of the Law of Evidence**—'Reasoning the rational method of settling disputed questions, is the modern substitute for certain formal and mechanical tests which flourished among our ancestors for centuries, and in the midst of which the trial by jury emerged. When two men to-day settle which is the best man by a prize fight we get an accurate notion of the old Germanic trial by combat'.

... was tried by ...

struggle, and the Judges of the common Pleas Act, like the referee at a prize fight, simply to administer the procedure the rules of the game. So of the King's Bench in Criminal Appeals, and so sat Richard II at the trial of the appeal of treason between Bolingbroke and Norfolk, as Shakespeare represents it in the play. So of the various ordeals, the accused party tried his own case by undergoing the given requirement as to hot iron or water, or the crumb. So of the oath, the questioning both law and fact, was tried merely by the oath with or without fellow swearers. The old 'trial by witness' was a testing of the question in like manner by their mere oath. So a record was said to try itself. And so when out of the midst of these methods first came the trial by jury, it was the jury's oath or rather their verdict, that tried the case. How this method of trial came to swallow up the others, and then to lose its chief features and becomes shaped into an instrument of our modern purely rational procedure, is a long story, and is not for this place. But now, when we use the phrases 'trial' and 'trial by jury' we mean a rational ascertainment of facts and a rational ascertaining and application of rules. What was formerly tried by the method of force or the mechanical 'reason'—*Thayer Cases on Evidence*

of the law of evidence into marked periods is from the primitive time up to the 12th century, thence to the sixteenth thence to the seveneenth, thence to 1793 A. D. thence to 1830, and thence to the present time. As regards development during the first period no reliable data are available—though certain rules can be traced up to that earliest time. The next three centuries marked the establishment of the trial by jury and the separation of the processes of pleading and procedure from that of proof. Between 1500 A. D. and 1700 A. D., the foundation of the present system was laid. During that period we find the regulation of the competency of witnesses, the rules of privileges and privileged communications, the rules for attorneys, the compulsory attendance of witnesses the privilege against self incriminations the parole evidence rule and the enactments of the Statute of Frauds. The fourth period of ninety years saw the final establishment of cross examination by counsel the rule for the impeachment and corroboration of witnesses the "best evidence" doctrine and the publication of the first treatise on the law of evidence, by chief *Baron Gilbert*. The next forty years (1790-1830) saw a tremendous increase of the rulings upon evidence, there being more than in the preceding two centuries. The thirty years ending with 1860 will ever be associated with the names of *Bentham Brougham and Denham—Burr Jones*. In 1872 the Indian Evidence Act was enacted which is based on English law.

**Origin of the Law of Evidence**—In the submission of the facts which constitute the evidence in a case there have been embarrassments real and imaginary, which have resulted in the development of a set of rules. These rules relate to the use of such facts in Court as evidence and make up the "law of evidence." The embarrassments referred to above may be attributed in the early stages of law mainly to the jury—the one feature of the English judicial system in which it differs from all others. The jury from the time it began to take on the character of an arbiter of facts must have been a disturbing element in the work of the Court. It was an uncertain quantity which in the eyes of the Judge needed to be guarded against.

When the jury existed merely as a body of witness, supposedly familiar with

the jury came into contact with the development of the jury into a reasoning inference-drawing body of men possessing the power to determine the ultimate facts in issue and by their verdict to judicially settle the controversy, the situation, to the mind of the Judge was full of embarrassments. To what conclusions might not these men come, men ignorant of the law and its methods unfamiliar with the ways of counsel, open to the influence of testimony and arguments presented solely for the purpose of playing upon their sympathy passion and prejudice. This was a situation to be deplored, and to be relieved of its danger as far as possible.

Accordingly, with the beginning of the use of evidence before juries, we find the beginnings of the law of evidence. Statements to which the Courts might listen with impunity were carefully kept, from the jury by excluding rules, established by the judges.

It must not be supposed that these excluding rules came into existence all at once. The development of the jury into its final shape was a gradual one, and the



growth of rules governing the use of evidence before the jury was equally gradual. It is immaterial to enquire here as to the kind of evidence which was excluded, that is to be found in any English treatise on the Law of Evidence. It is sufficient to say that, in general everything except what was actually within knowledge of the witness was considered unsafe to put before the jury. Thus hearsay and opinion were both objectionable. In this way this susceptibility of the jury played its part in moulding the law of evidence into its modern form.

The supposed ignorance of the average jury was also an important factor in the evolution of the rules of evidence. Things likely to complicate the case to confuse the mind, or mislead as to the real facts in issue were accordingly excluded.

With the expansion of the work of the Courts and the ever increasing volume of business brought before them, a necessity arose for shortening of trials and the expediting of the work in every possible way. This influence was a powerful one in its effect upon the admission of evidence. Much that was logically relevant, and indeed worthy of consideration if minute enquiry was possible, became inadmissible, upon the theory that it was too remote or of slight importance. collateral matters these were in the main—matters likely to lead to prolonged collateral enquiry with a meager result in the way of inference compelling proof when finished.

Other things operated to make it easy and natural for the Courts to establish rules relating to the use of evidence. The policy of the law in respect to persons charged with wrongs which extends to them the extreme limit of fairness is responsible for the growth of an important class of excluding rules. Such rules shut out from the consideration of the jury any facts bearing upon character or habit and this, although in many instances previous character would be logically a most important piece of evidence from which to infer the truth as to facts in issue.

for centuries been at work  
dical tribunals must be first  
and wearing grooves along  
*lies Law of Evidence*

pp 9, 10

## PART I

### Relevancy of Facts

#### CHAPTER I

##### PRELIMINARY

Short title 1 This Act may be called the Indian Evidence Act, 1872

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts martial, 'other than Courts martial convened under the Army Act" [or the Air Force Act]\* but not to affidavits presented to any Court or officer, not to proceedings before an arbitrator,

Commencement of Act and it shall come into force on the first day of September, 1872.

Legislative changes—The words within quotations have been added by Act 18 of 1919

Application—It extends to the whole of British India. For definition of the term of British India vide Act X of 1907 s 7. It has been declared in force in the Santhal Parganas by Reg 3 of 1873 s 3 as amended by Reg 3 of 1899 s 3, in the Angul District, by Reg 3 of 1913 s 3 in the Chittagong Hill tracts by Reg 1 of 1900 s 4, in the Arakan Hill District by Reg 1 of 1916, s 2, in Kachin Hill tracts, as regards Hill tribes by Reg 1 of 1899 s 3 in certain tracts in the Chin Hills by Reg 5 of 1896 s 3 in Upper Burma, except Shan States (with an addition) by Act 13 of 1898 s 4 in British Baluchistan (with a modification) by Reg 2 of 1913 s 3

\* Added by Act X of 1917

**Judicial proceedings** — An enquiry is judicial if the object of it is to determine a legal relation between one person and another, or a group of persons, or between him and the community generally, but even a Judge acting without such an object in view is not acting judicially. 12 B 35, see also 15 M 138

**Court** — For definition of the term vide s 3

\* m i in the shape of affidavits cannot be received as 14 C 653 In England discretionary powers are any particular fact or facts to be proved by affidavit, witness to be read at a hearing or trial on such conditions as it may think reasonable with this proviso that when the opposite party *bonafide* desires to cross examine a witness and the witness can be produced such witness's evidence shall not be allowed to be given by affidavit. *Powell*, 695

**Courts Martial** — The rules of evidence as contained in this Act do not apply to Courts martial held either under 38 Vict c 7 or under 44 & 45 Vict c 58 Courts Martial must adopt the same rules of evidence as those followed in the Courts of ordinary criminal jurisdiction in England (*Powell*, p 28)

**Arbitrator** — Vide 11 M 85, 1 W R 12 but see 4 C 231

**Repeal of enactments** 2 On and from that day the following laws shall be repealed —

- (1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India,
- (2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861, in so far as they relate to any matter herein provided for and
- (3) the enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed

**Scope** — This section repeals all rules of evidence not contained in any Statute or Regulation. Thus the English common law on the subject of evidence is repealed 71 A 70 = 5 C 754 The Hindu and Mahomedan law of evidence is also repealed 76 P R 1891 But this Act does not contain the whole law of evidence 39 C 164 See also 7 A 385 1 A 53 1 A 297 11 A 433 10 A 289

3 In this Act the following words and expressions are used in the following Interpretation clause senses unless a contrary intention appears from the context —

**Court** includes all Judges and Magistrates and all persons, except arbitrators legally authorized to take evidence

**Fact** "Fact" means and includes —

- (1) any thing state of things or relation of things capable of being perceived by the senses,
- (2) any mental condition of which any person is conscious

#### Illustrations,

(a) That there are certain objects arranged in a certain order in a certain place, is a fact

(b) That a man heard or saw something is a fact

(c) That a man said certain words is a fact

(d) That a man holds a certain opinion has a certain intention acts in good faith or fraudulently or uses a particular word in a particular sense or is or was at a specified time conscious of a particular sensation is a fact

(e) That a man has a certain reputation is a fact

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts

'Facts in issue' means and includes—

any fact from which, either by itself or in connection with other facts the existence, non existence nature or extent of any right liability, or disability asserted or denied in any suit or proceeding necessarily follows

*Explanation*—Whenever under the provisions of the law for the time being in force relating to Civil Procedure \* any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue

#### *Illustrations*

A is accused of the murder of B

At his trial the following facts may be in issue —

that A caused B's death

that A intended to cause B's death

that A had received grave and sudden provocation from B

that A at the time of doing the act which caused B's death was by reason of unsoundness of mind, incapable of knowing its nature

'Document' means any matter expressed or described upon any substance by means of letters figures or marks or by more than

one of those means intended to be used or which

may be used, for the purpose of recording that matter

#### *Illustrations*

A writing is a document

Words printed lithographed or photographed are documents

A map or plan is a document

An inscription on a metal plate or stone is a document

A caricature is a document

Evidence

'Evidence' means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry,

Such statements are called oral evidence

(2) all documents produced for the inspection of the Court such documents are called documentary evidence

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers

Proved

its existence so probable that a prudent man

ought, under the circumstances of the particular case, to act upon the supposition that it exists

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not

Disproved

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'Not proved

A fact is said not to be proved when it is neither proved nor disproved

*Court*—The definition of 'Court' is framed only for the purposes of the Act itself and should not be extended beyond its legitimate scope. 13 B 36 The word Court in the above section means and includes in a trial by jury, both Judge and Jury 4 C 483-3 C L R 270 (F B) A sub-registrar is a Court as defined in this Act 13 B L R App 10-11 W R Cr 10

\* See now Act 5 of 1908

**Judicial proceedings** — An enquiry is judicial if the object of it is to determine a legal relation between one person and another, or a group of persons, or between him and the community generally, but even a Judge acting without such an object in view is not acting judicially' 12 B 36, see also 15 M 138

**Court** — For definition of the term vide s 3

**Affidavits** — A declaration in the shape of affidavits cannot be received as evidence of the facts stated in it 14 C 653 In England discretionary powers are vested in the Court, (i) to order any particular fact or facts to be proved by affidavit, (ii) to allow the affidavit of any witness to be read at a hearing or trial on such conditions as it may think reasonable with this proviso that when the opposite party *bonafide* desires to cross examine a witness and the witness can be produced such witness's evidence shall not be allowed to be given by affidavit " *Powell* 695

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**3** In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context —

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(e) That a man has a certain reputation is a fact

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts

"Relevant"

"Facts in issue"

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts the existence, non existence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding, necessarily follows

*Explanation*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure \* any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue

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A fact is said to be disproved when, after considering the matters before

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"Not proved"

A fact is said not to be proved when it is neither proved nor disproved

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\* See now Act 5 of 1908

**Fact**—'Ordinarily, a fact is something done or which has come to pass; an act or deed or event, an effect produced or a result achieved; anything regarded as strictly true or actually existent, whether material or mental; reality, actuality. In legal use it includes the fact that any mental condition, of which any person is conscious, exists. The legal meaning is not limited to what is tangible or visible or in any way the object of sense. Things invisible, mere thoughts, intentions, fancies

complete idea to the mind, unless in connection with the object to which it necessarily relates. That object is fact or matter of fact"—*Burr Jones, Ev 66*

course both words must be taken in

Common sense of logical relevancy  
Judge might, in ordinary transaction  
upon it himself, when, in Court, he

the facts, although relevant  
issue. *Cockle Cas 56*

ntary fact is offered, must  
must furnish a basis from  
the Court is to apply the

underlying principle of the law of evidence, namely, logical relevancy for the purpose of determining whether or not the fact offered can be evidence. If the fact meet this test it may or may not be admitted. For flanked round the general principle on the law of evidence that what is logically relevant is admissible, are numerous excluding rules which say that this or that fact, though logically relevant, is inadmissible. The jury as a feature of the English judicial system, is responsible for the existence of many of these rules though each has its own peculiar principle upon which it is founded. These rules and their application form a large portion of the bar of evidence—*McKelvey's Law of Evidence* p 13. The word "relevant" in this Act means admissible. *Per Lord Hobhouse in Lala Lakshmi v Chand Haider Shah 3 C W N 268 (notes)*

**Facts in issue**—Facts in issue are those which are alleged by one party and denied by the other on the pleading in a civil case, or alleged in the indictment and denied by the plea of not guilty in a criminal case, so far as they are in either case material. There is therefore little difficulty in ascertaining what are the facts in issue. *Cockle Cas 56* Facts in issue are those facts which are necessary by law to establish the claim liability, or defence, forming the subject matter of the proceedings and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are determinable primarily by the substantive law, and secondly by the pleadings. *Phip Ev 53*

**Documents**—The term "document" is one of difficult definition many so-called

are so-called as an instrument on which are recorded, by means of letters figures, or marks "matters which may be evidentially used" (*1 Whart Ev s 614*) *Stephen's* definition is similar, though more restricted "any matter expressed or described upon it by" *Ev art 1*) Within those definitions, a

*Best 213*  
*1 Stephens*

**Evidence**—This definition is open to the criticism that it does not include those facts which in judicial proceedings may be addressed directly to the sense of the Court or jury (*Burr Jones Ev s 3*) Says *Professor Greenleaf*

"Evidence in legal acceptance includes all the means by which alleged matter, of fact the truth of which is submitted to investigation, is established or disproved" (*Green Ev s 1*) It includes "all the legal means, exclusive of mere argument which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation" (*Taylor § 1, Pozell, 1*) The term 'evidence' in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to prove before a judicial tribunal but it is not necessarily confined to this sense, it applies with equal correctness to information information acquired by any person, who undertakes an enquiry on any matter in question 4 M 393 The demeanour of a witness is evidence (21 W R C R 13 F B, 21 C 279) The best and simplest definition of the word 'evidence' is that it is any matter of fact from which an inference may be drawn as to another matter of fact. *Bentham* in his *Rationale of Judicial Evidence* (vol I p 17) states that evidence includes 'any matter of fact the effect, tendency or design of which, when presented to the mind, is to produce a persuasion either affirmative or disaffirmative of the existence' *Prof Thayer* substantially follows *Bentham's* idea but narrows the scope of the word to 'any matter of fact which is furnished to a legal tribunal otherwise than by reasoning or a reference to which is noticed without proof as the basis of inference in ascertaining some other matter of fact' (3 *Harv Law Rev* 143)

**Proved**—A fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, under the circumstances of the particular case, to act upon it as required in the persuasion of the tribunal of the probability of the proposition.

cution to bring guilt home to the accused, to the satisfaction of the minds of the jury, to be such as not to shelter honestly

and conscientiously entertain 3 L B R 216=4 Cr L J 382 "There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof is a sufficient basis of decision but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. The serious consequence of an erroneous condemnation, both to accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal have induced the laws of every wise and civilised nation to lay down the principle though often lost sight of in practice that the persuasion of guilt ought to amount to a moral certainty, or as an eminent judge expressed it, such a moral certainty, as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt' The expression 'moral certainty' is here used in contra distinction to physical certainty, or certainty properly so called, for the physical possibility of the innocence of any accused person can never be excluded *Best § 95* See also 5 W R Cr 28, 21 W R Cr 13, 4 W R Cr 19, 7 W R Cr 14, 11 W R Cr 20, 11 C 642, 22 C 323, 8 C W N 828

**Matters before it**—It would appear that the Legislature intentionally re-

take into consideration *Ibid* But a judge without giving evidence can not impart his own knowledge into a case 3 I A 286, 11 M I A 213, 22 W R 9, 24 W R 81, 24 W R Cr 28

**Distinction between proof and evidence**—The word "evidence" in acceptance includes all the means by which any alleged matter of fact is

**Fact**—“Ordinarily, a fact is some act or deed or event, an effect produced by a strictly true or actually existent, legal use it includes the fact that it is conscious, exists. The legal meaning in any way the object of the mind, when it is presented to the mind. For the student, the first step in the classification of the complete idea of a fact is that it presents no other matter of fact.”—*Burr Jones Ev 66*

**Relevant**—“The relevant facts are facts which are in the eye of the law so connected with the fact in question that they are indeed be considered as appearing in discussions their legal meaning which is generally restricted to common sense of logical relevancy. A Judge might, in ordinary transaction take one fact as evidence of another, and act upon it himself, when, in Court, he would rule that it was legally irrelevant. And he may exclude facts, although relevant, if they appear to him too remote to be really material. The first condition which a fact, proof of which is that it must be evidential of the main fact can be inferred. The underlying principle of the law of evidence, namely, logical relevancy for the purpose of determining whether or not the fact is admissible, is that it may or may not be admitted. The principle on the law of evidence that what is numerous excluding rules which say that this or that is inadmissible. The jury as a feature of the English judicial system, is responsible for the existence of many of these rules though each has its own peculiar principle upon which it is founded. These rules and their application form a large portion of the bar of evidence—*McKelvey's Law of Evidence* p 13. The word “relevant” in this Act means admissible. *Per Lord Hobhouse in Lal Laksimi v Chand Haider Shah* 3 C W N 268 (notes)

**Facts in issue**—Facts in issue are those which are alleged by one party and denied by the other on the pleading in a civil case, or alleged in the indictment and denied by the plea of not guilty in a criminal case, so far as they are in either case material. There is therefore little difficulty in ascertaining what are the facts in issue. *Cockle Cas* 56. Facts in issue are those facts which are necessary by law to establish the claim, liability, or defence forming the subject matter of the proceedings and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are determinable primarily by the substantive law, and secondly by the pleadings. *Phip Ev* 53.

**Documents**—The term “document” is one of difficult definition, many so-called documents being more properly classed under the head of real evidence. *Best* defines “document” as including “all material substance on which the thoughts of men are represented by writing, or any other species of conventional mark or symbol,” and expressly includes milkman's score, exchequer tallies and the like. (*Best* s 215) *Wharton* defines documents as an instrument on which are recorded, by means of letters, figures or marks, matters which may be evidentially used. (*Whart Ev* s 614) *Stephen's* definition is similar, though more restricted. “Any substance having any matter expressed or described upon it by writing, or by any other mode of communication, capable of being read” (*Dig Law* s 1). Within these words are included a document with an inscription, a musical score, a picture, a map, a seal, a stamp, and the like, would all be included under the others. *Best* 213.

**Evidence**—This definition is open to the criticism that it does not include those facts which in judicial proceedings may be addressed directly to the sense of the Court or jury. (*Burr Jones Ev* s 3) Says *Professor Greenleaf* “The definition seems to include all these things mentioned above.”



"Evidence in legal acceptance includes all the means by which alleged matter, of fact the truth of which is submitted to investigation, is established or disproved" (*1 Green Ev s 1*) It includes "all the legal means, exclusive of mere argument which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation" (*Taylor § 1, Powell, 1*) The term 'evidence' in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to prove before a judicial tribunal but it is not necessarily confined to this sense, it applies with equal correctness to information obtained by any person who undertakes an enquiry on any matter in question 4 M 393 The demeanour of a witness is evidence (21 W R C R 13 F B, 21 C 279) The best and simplest definition of the word 'evidence' is that it is any matter of fact from which an inference may be drawn as to another matter of fact. *Bentham* in his *Rationality of Judicial Evidence* (vol I p 17) states that evidence includes "any matter of fact the effect, tendency or design of which, when presented to the mind, is to produce a persuasion either affirmative or disaffirmative of the existence" *Prof Thayer* substantially follows *Bentham's* idea but narrows the scope of the word to any matter of fact which is furnished to a legal tribunal otherwise than by reasoning or a reference to which is made without proof as the basis of inference in ascertaining some other matter of fact" (*3 Harv Law Rev 143*)

**Proved**—A fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A much stricter degree of proof is required in criminal proceedings than in civil ones, and in criminal proceedings the persuasion of guilt must amount to such a moral certainty as convinces the mind of the tribunal as reasonable men, beyond all reasonable doubt. It is the business of the prosecution to bring guilt home to the accused, to the satisfaction of the minds of the jury, but the doubt to the benefit of which the accused is entitled must be such as a rational, thinking, sensible man may fairly and reasonably entertain, not the doubt, of a vacillating mind, that has not the moral courage to decide, but shelters in a vain and idle scepticism. There must be doubts which a man may honestly and conscientiously entertain. 3 L B R 216=4 Cr L J 382 "There is a strong

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from an erroneous acquittal have induced the laws of every wise and civilised nation to lay down the principle though often lost sight of in practice that the persuasion of guilt ought to amount to a moral certainty, or as an eminent judge expressed it, such a moral certainty, as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt. The expression 'moral certainty' is here used in contra distinction to physical certainty, or certainty properly so called, for the physical possibility of the innocence of any accused person can never be excluded. *Best § 95* See also 5 W R Cr 28, 21 W R Cr 13; 4 W R Cr 19, 7 W R Cr 14, 11 W R Cr 20, 11 C 642, 22 C 323, 8 C W N 8-8

**Matters before it**—It would appear that the Legislature intentionally re-

fact was proved or not" *Per Miller J* in 9 C 303=12 C L R 490. Therefore in determining what is evidence other than evidence in the phraseology of the Act, the definition of "evidence" must be read with that of "proved." Thus though the result of the enquiry instituted by the Junsif is not evidence according to the definition in the Evidence Act, it is a matter before the Court, which the Court can take into consideration. *Ibid* But a judge without giving evidence can not impart his own knowledge into a case. 3 J A 286, 11 M L A 213, 22 W R 9; 24 W R 81, 24 W R Cr 28

**Distinction between proof and evidence**—The word "evidence" in legal acceptance includes all the means by which any alleged matter of fact the truth

of which is submitted to investigation is established or disproved. This term, and the word *proof* are often used indifferently, as synonymous with each other, but the latter is applied by the most accurate logicians to the effect of evidence, and *not to the medium by which truth is established*. None but mathematical truth is susceptible of that high degree of evidence called demonstration which excludes all possibility of error, and which, therefore may reasonably be required in support of every mathematical deduction. Matters of fact are proved by moral evidence *alone*, by which is meant not only that kind of evidence which is employed on subject, connected with moral conduct but all the evidence which is not obtained *either from intuition or from demonstration*. In the ordinary affairs of life we do not require demonstrative evidence, because it is not inconsistent with the nature of the subject and to insist upon it would be unreasonable and absurd. The most that can be affirmed of such things is, that there is no reasonable doubt concerning them. The true question therefore in trials of facts, is not whether it is possible that the testimony may be false but whether there is sufficient possibility of its truth, that is whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to be proved — *Greenleaf on the Law of Evidence* p. 4

May presume 4 Whenever it is provided by this Act that the Court may presume a fact it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it

Conclusio proof

as an inference as to a matter of fact which a court may draw as a matter of law — *Powell* 387 Presump

*prima facie* assumptions are to cast upon the party against whom they operate the duty of going forward in argument or evidence on the particular point to which themselves either argument or evidence, in the result of both. Presumption, many names for an act or process. *Thayer* C. 13 38

Division of presumption — English text writers divide presumptions into three classes — (1) Presumption of fact (2) Rebuttable presumption of law and (3) Irrebuttable presumption of law

May presume — The first class of presumption mentioned by English text writers comes under this definition. It is nothing more than an argument more or less cogent, it is an inference of one fact drawn from other facts. (*Vide Powell* 386)

Shall presume — A presumption of law must be distinguished from *prima facie* evidence of fact. The latter no doubt seems to shift the burden of proof. A presumption of law can also be rebutted. But until it is rebutted the presumption stands good and the judge must give effect to it without calling further proof of the same. (*Vide Powell*, 388)

This presumption derives its force from strictly speaking it is an 'assumption' of fact are obviously of aggregates certain of the stronger evidence is the correct one, unless and in. Such a presumption may be

*Bish*, 304

**Conclusive proof**—On the other hand an irrebutable presumption of law is no presumption at all, it is simply an indisputable proposition of law. For example, the rule that a child under seven cannot commit a crime is a rigid rule of law—in fact, part of the definition of crime (*Powell*, 386)

**Origin of the Rules**—These rules it is likely, all had their beginnings in logical inference, however independent of it they may have become in their final shape. Now the basis of inference is experience. The Judge and the Jury go into Court with the experience of ordinary human beings and in the process of drawing inference, constantly call upon such experience. Coupled with the facts introduced as evidence at the trial it forms the basis of the inferences necessary to arrive at a determination of the facts in issue. It happens that in the almost innumerable cases that are tried, certain facts or groups of fact have been repeatedly presented to Courts as foundations for inferences, and the inferences being reasonable ones, judged by experience of the Court and Jury have been repeatedly drawn until a rule has crystalized. It is not difficult to see why these developed so early and were so readily adopted by the Courts. Judges have always been suspicious of the Jurors and have seized every opportunity to establish rules for their guidance, and to control their conclusions from the evidence introduced. The mind of the Judges was supposedly nothing if not logical, while the untrained minds of the Jury were open to influences of prejudice sympathy, and a thousand other things. Logical inference was therefore made a basis of a vast number of such rules which the Judges established and which they called 'presumptions'—rules relating to the manner of proving cases and in this sense having to do with the law of evidence, fixing, for example, when sufficient evidence was introduced, or when a party must introduce further evidence if he would win his case—*McKelvey's Laws of Evidence* p. 80

## CHAPTER II.

### OF THE RELEVANCY OF FACTS.

5 Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others

**Explanation**—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure

#### *Illustrations*

(a) A is tried for the murder of B by beating him with a club with the intention

: . . .

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure

**Scope of the Law of Evidence**—"The question therefore, of what propositions

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such are really equivalent to a pleading, because they formally waive proof; they are therefore no part of the law of evidence except for the necessity of distinguishing them from other things mis-called admissions. The fourth class alone concerns intrinsically with the law of evidence. *Wigmore Cas*, 3. Thus the law of evidence relates to the use of evidence before judicial tribunal, and in its proper significance, consists of (a) certain rules as to the exclusion of evidence, and (b) the rules which prescribe the manner of presenting evidence in the Courts—*McKelvey's Law of Evidence* p 6

**What facts may be presented as evidence**—Evidence can only be given of facts in issue or relevant facts. What are facts in issue are ascertained by the substantive law and the law of procedure. What facts are relevant or admissible in evidence is answered by the law of evidence. This chapter contains the law of relevancy. There is still a further restriction. Evidence is barred by some provisions of Civil Procedure even if they be relevant. This restriction is in the section.

**Legal relevancy**—The testimony offered must be logically probative of the matter to be proved, and if it is, it is legally relevant. While this proposition, of course includes direct evidence it does not exclude, as irrelevant evidence of facts not directly in issue but which create a presumption of the fact in issue. The qualification to the general rule is that it does not always follow merely because a fact is logically relevant, that it is always relevant. Certain evidence thought not logically incompetent, may be excluded on the ground of its unimportance when compared with an abundance of better evidence easily available, on the ground that it has so slight or remote a bearing on the case either in point of time or value, that it would be unjust and unreasonable to prolong and complicate a trial by its investigation, on the ground of public policy (*Bur Jones* § 135). In this connection it must be borne in mind that the whole law of evidence has evolved from trial by jury system. 'Legal relevancy which is essential to admissible evidence requires a higher standard of evidentiary force. It includes logical relevancy, and for reasons of practical convenience, demands a close connection between the facts to be proved and the fact offered to prove it. All evidence must be logically relevant, that is absolutely essential. The fact however, that it is logically relevant does not ensure admissibility. It must also be legally relevant. A fact which in connection with other facts renders probable the existence of a fact in issue, may still be rejected if in the opinion of the Judge, and under the circumstances of the case it is considered essentially misleading or too remote'—*Best Evidence* (Camb § 251). Stephen defines the word 'relevant' as meaning 'that any two facts to which it is applied are so related to each other, that according to the common course of events one, either renders probable the past present or future existence or non-existence of the other' *Stephen's Dig Ev*. This is a definition of logical relevancy. Logical relevancy plays a certain important part in the law of evidence, in that no evidence is admissible unless it is relevant. It does not follow that all evidence which is logically relevant is admissible and in fact much that is logically relevant is excluded. Certain rules are laid down founded on various considerations, by which many matters which are logically relevant are declared inadmissible. Legal relevancy is not different in its nature from logical relevancy. The only distinction is in its field of application. Legal relevancy is the attribute of all those logically relevant matters which are not declared inadmissible by one or more of the excluding rules. Stephen proceeds upon the theory that logical relevancy is the main condition of admissibility, and that all logically relevant are, therefore, exceptions to the rule. As Best have distinguished between logical and legal relevancy, and apply to all those facts which are not excluded by any of the excluding rules of evidence. But if what is legally relevant can only be determined by this exclusionary method, it is of little use to retain the term. In general it may be said, that what is logically relevant is admissible, unless it comes within the terms of one or more of the rules of exclusion. *McKelvey's Law of Evidence* p 166, see also 1914 M W N 931.

**Exclusion of evidence**—Under the Evidence Act, admissibility is the rule and exclusion is the exception, and circumstances which under other system, might operate to exclude are under the Act, to be taken into consideration only in judging of the value to be allowed to evidence when admitted. 16 B 661.

6 Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction are relevant whether they occurred at the same time and place or at different times and places

### Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts though they do not contain the libel itself.

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Scope.—All facts which are parts of the same transaction are relevant to each other, so that when one of such facts is in issue the others are admissible. Such facts which are thus parts of the transaction in issue are generally known as *res gestæ* (R v Ellis, 6 B E C 145). The rules as to *res gestæ* is one of the clearest illustrations of relevancy, the connection between the facts being that they are all parts of the same transaction. Once established that they are all parts of the same transaction, then each of such facts is relevant to the others so that if any of them is admissible all are admissible as relevant facts. The real and very simple principle is that facts are relevant if they are connected with the transaction, and what facts are relevant is a question of fact. The sections relating to relevancy of facts are mere rules of logic. (1914) M W N 931

Basis of the theory.—Every act which is done, every event which happens,

these circumstances do not consist of declarations and statements they are introduced as a matter of course, proved by either side without question, unless indeed, they got too far away from the main fact, when, under rules having no relation to the subject of hearsay, they are excluded. It is when they comprise statements, exclamations, answers to questions and other verbal utterances by the participants

utterances of the mind under circumstances and at times where there has been

It was clearly admissible, both as a part of the transaction and, having been received as evidence also that the step was not let down until after the plaintiff fell. In this case the statement was spontaneous and coincident with the event. Taken altogether it is perhaps safe to say that in the case of no exception to the hearsay rule is there as little danger and as much assistance to the cause of justice as in this, taking in

consideration the manner in which it has been applied — *McKelvey's Evidence* pp 343 345

**Transaction**—A transaction is a group of facts connected together as to be referred to by a single legal name, as a crime, contract a wrong or any other subject of inquiry which may be in issue. Every fact which is part of the same transaction it may be admissible, it is of the principle different decisions (*Stephen's Digest*, art 3) See also 11 C W N 266 Acts are not parts of the same transaction, unless they were done substantially at the same time although they are similar in other respects (*R v. Birdseye* 4 C & P 386) A transaction may be a continuous one extending over a length of time (*Rawson v Haigh*, 9 Moore, 217) Acts, declarations, and circumstances which constitute, or accompany and explain the fact or transaction in issue, are admissible, for or against either party, as forming parts of *res gestae* (*Phip Ev* 46) A 'transaction' consists both of the physical acts and the words

L J 184

**Verbal Act or Verbal parts of an Act**—There are other declarations which are admitted as original evidence, being distinguished from hearsay by their connection with the principal fact under investigation. The affairs of men consist of a complication of circumstances so intimate, and so interwoven as to be hardly separable from each other. Each owes its birth to birth to some preceding circumstances, and, in its turn, becomes the parent of others, and each during its existence has its inseparable attributes, and its kindred facts, materially affecting its character, and essential to be known in order to a right understanding of its nature. These surrounding circumstances, constituting parts of the *res gestae* may always be shown to the Court, along with the principal fact, and their admission is not merely difficult if not impossible to describe the circumstances and main fact under consideration. Its character *Green v* 8 100. Declarations in order to become part of the *res gestae* must have been made at the time of the act done which they are supposed to characterize and have been well calculated to unfold the nature and quality of the facts they were intended to explain and so to harmonize with them as obviously to constitute one transaction. *Per Hossmer C J* in *Enos v Tuttle*, 3 Conn 250

\* Many acts are in themselves of an equivocal nature, and the effect of them depends upon the intention or disposition from which they proceed which is in general best determined by the expressions accompanying them. Whenever, therefore, the expressions are ambiguous, the object of enquiry, the intent and the dictating his present irrelevant. *Evans v* 11 C W N 266. A thing, shows the nature of a fact which is a part of the act, it determines its character and effect, during the tenancy by a man that he is a tenant and of a particular person may be put as a part of *res gestae*. *Rankin v Trainbrook*, 6 Watts, 390

**Declarations**—A statement, in order to be admissible in evidence as part of the transaction or *res gestae*, must strictly accompany, or be made at the same time as the physical acts in question. *R v Bedingsfield* 14 Cox C C 341. But in *R v Foster*, 6 C & P 325, a statement, which followed the physical act, was admitted in evidence as a part of the transaction, although it was the last item of the transaction. A statement made by a third party may be relevant as part of the trans-

action, if he be actually present at the time (*R v Forster* Stephen 4) "There is a principle in the law of evidence which is known as *res gestae*, that is, the declarations of an individual made at the moment of a particular occurrence when the circumstances are such that we may assume that his mind is controlled by the event, may be received in evidence because they are supposed to be expressions involuntarily forced out of him by the particular event and thus have an element of truthfulness they might otherwise not have. But you are not to give any more weight to a declaration thus made, or any weight at all unless you are satisfied that it was made at a time when it was forced out as the utterance of a truth forced out against his will or without his will, and at a period of time so closely connected with

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dormant so far as any deliberations in concocting matter for speech or selecting words is concerned. Moreover his speech, besides being in the present time of the transaction, must be in the presence of it in respect to space. He must be on or near the scene of action or of some material part of the action. His declarations must be the utterance of a truth. Only an oral declaration may be sufficient in this or that particular of an individual.

is for the time being suppressed and silenced, so that he utters the voice of humanity rather than of himself, what he says is regarded by the law as in some degree trustworthy." *Per Blackwell C J in Traveller's Ind Co v Sheppard*, 85 Ga 751, 776. "While it is said that the declaration must be contemporaneous with the main fact, no rule can be formulated by which to determine how near, in point of time they must be. No two cases are exactly alike and the determination of this question is separable from the circumstances of the case at bar. The transaction in question may be such that the *res gestae* would extend over a day or a week or a month." *Per Shelby in Jack v Mutual R P Life Association* 113 Fe1, 49. See 10 C 302, 11 C W N 265, 9 B H C 358. As regards statement made to police, vide 50 Ind Crs 487, 20 Cr L J 311 = 17 A L J 760. In a case of rape, the statement of the woman is admissible if made just after the occurrence. 43 Ind Cas 443 = 19 Cr L J, 155, see also 4 Lah L J 491.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which are the occasion  
cause or effect of facts in  
issue

#### Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons are relevant.

(b) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Scope—This section admits a very large class of connected facts in addition to those admitted by the 1st section. Here it should again be observed that the weight to be attached to such facts when admitted must, of necessity, vary. An effect may be conclusive proof of the primary act having been done, e.g. the birth of a very short child, the same fact may be of great importance in one case and of little in another.

part of a transaction" within the meaning of section 6. This section meets this object, for the transaction itself it provides for, forming part of the transaction, are relevant facts. The facts which are relevant under section 6 are (1) as being the occasion or cause of a fact; (2) as being its effect; (3), as giving opportunity for its occurrence, (4), as constituting the state of things under which it happened. They are in truth different aspects of causation (*Cun Ev* 91).

**Principle**—"The competency of collateral fact to be used as the basis of an inference, is not to be determined by the conclusiveness of the inferences, but by the probability of their being true. It is enough if these may tend, even remotely, to assist in the proof of a fact." (*Colmes v Goldsmith*, 147 U S 150, 164).

**Occasion, Cause and effect**—These are different aspects of causation. If they are parts of the same transaction, they are admissible under s. 6, and also under the section. Now the question is what facts not part of the same transaction are admissible in evidence. Such facts are either similar or dissimilar. When the facts are dissimilar they are clearly inadmissible. Facts of this class, though often not destitute of moral weight, are rejected as legal evidence, since they tend to embarrass the enquiry with

facts without any logical connection. It is frequently supposed to express the principle of this relation, but it is incorrect, for similar transaction *inter partes* is not a test of relevancy. The principle of the maxim appears indeed to fail altogether as a test of relevancy, since as examination of this chapter will show that most of the transactions here is declared relevant are *res inter alios* while others that are irrelevant are *res inter partes*. The maxim has its principal utility in the domain of substantive law (*Phil* 126). The logical connection between the fact offered as proof of the former tends to make the latter more relevant, if not too remote. The probability of a similar fact as direct proof of the fact in issue depends, not on personal, but on logical probability, and is mainly a question of degree, or of our knowledge and understanding of the causes of events, as to which in many cases, the progress of science may change the law. In proportion as the element of personality, the interjection of the free will of the human being diminishes, we become more certain of the effects of a causative force and more ready to admit such evidence (*Phil Ev* 126). On this principle this section lays down that those facts which are the occasion, cause and effect of relevant facts or facts in issue are admissible in evidence.

in the house but the deceased and the prisoner and the doors and windows were closed and secure as usual. The prisoner was condemned and executed chiefly on the presumption that no one else could have had access to the house, but it afterwards appeared by the confession of one of the real murderers, that they had gained admittance into the house which was situated in a narrow street by means of board across the street from an upper window of an opposite house, to an upper window of that in which the deceased lived and that they had left no traces behind them. The position of the parties was such that the prisoner could not have committed the act without the assistance of the deceased. So, evidence of the fact that the deceased was in the house at the time the act was done is direct evidence, but also in the circumstances, it is evidence of the fact that the prisoner committed the act, for no circumstances could have been so favorable to the prisoner as to have had an opportunity of committing the act without the assistance of the deceased. The evidence is not admissible as evidence of the fact that the prisoner committed the act, but it is admissible as evidence of the fact that the deceased was in the house at the time the act was done. (*Starkie* in which the prisoner was condemned and executed chiefly on the presumption that no one else could have had access to the house, but it afterwards appeared by the confession of one of the real murderers, that they had gained admittance into the house which was situated in a narrow street by means of board across the street from an upper window of an opposite house, to an upper window of that in which the deceased lived and that they had left no traces behind them. The position of the parties was such that the prisoner could not have committed the act without the assistance of the deceased. So, evidence of the fact that the deceased was in the house at the time the act was done is direct evidence, but also in the circumstances, it is evidence of the fact that the prisoner committed the act, for no circumstances could have been so favorable to the prisoner as to have had an opportunity of committing the act without the assistance of the deceased. The evidence is not admissible as evidence of the fact that the prisoner committed the act, but it is admissible as evidence of the fact that the deceased was in the house at the time the act was done.)

**Illustrations**—"The facts that a person was in the house at the time the act was done, or opportunity; (b) the state of things under which the act was done."

the facts that a person was in the house at the time the act was done, or opportunity; (b) the state of things under which the act was done."



Motive, preparation and previous or subsequent conduct

8 Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact

The conduct of any party or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto

*Explanation 1*—The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act

*Explanation 2*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

### *Illustrations*

(a) A is tried for the murder of B

The facts that A murdered C that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public are relevant

(b) A sues B upon a bond for the payment of money B denies the making of the bond

The fact that, at the time when the bond was alleged to be made B required money for a particular purpose, is relevant

(c) A is tried for the murder of B by poison

The fact that, before the death of B, A procured poison similar to that which was administered to B is relevant

(d) The question is whether a certain document is the will of A The facts that not long before the date of the alleged will A made inquiry into matters to which he was entitled, that he consulted vakils in reference to drafts of other wills to be prepared, of which he

The facts that either before or at the time of, or after the alleged crime, A provided evidence, which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant

(f) The question, is whether A robbed B

The facts that, after B was robbed, C said in A's presence— the police are coming to look for the man who robbed B," and that immediately afterwards A ran

1 to C in A's presence  
0000 rupees," and

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant

(g) A is accused of a crime

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant

(h) The question is whether A was ravished

The facts that, shortly after the alleged rape she made a complaint relating to the crime the circumstances under which, and the terms in which the complaint was made are relevant



Cas 38; 91 P R 1866 Cr, 7 W R 60, 15 W R 46, 5 W R 28, 1 W R 19. In the proof of certain crimes, where motive is an important element evidence of motive will involve the placing before the jury of a plan or scheme carried out or attempted by the accused, which may include the commission of other crimes. *McKelvey's Evidence* p 190. In *Com v Robinson* (1888) 146 Mass 571=16 N E 452, X was tried for murder of M. Evidence was offered of a scheme by X to kill Y, then to induce M to make X beneficiary under a policy under which Y had been beneficiary, and then to kill M. Is the evidence admissible? *Allen J* observed "In such cases there is a distinct and significant probative effect resulting from the continuance of the same plan or scheme and from the doing of other acts in pursuance thereof. It is somewhat of the nature of threats or declarations of intention, but more specially of the preparations for the commission of the crime which is subject of the indictments." Motive for a crime while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence direct or circumstantial of the commission of the crime with which he is charged. 94 Ind as 90= A I R 1926 Lah 88. It is not competent to the prosecution to adduce evidence other than those conclusion that the to have committed mere fact that the ies does not render

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**Preparation**—Previous attempts to commit an offence are closely allied to preparations for the commission of it, and only differs in being carried one step further and nearer to the criminal act of which however, like the former they fall short (*Best Evidence* 404)

**Conduct**—Vide 17 Cr L J 402, 22 C 406 24 W R 176 7 A 385 82 Ind Cas 142, 52 Ind Cas 601=21 Bom L R 724 54 Ind Cas 775

**Expl (2)**—Vide 12 Ind Cas 87=12 Cr L J 479, 7 A 385, *Reg v Mallony*, 15 Cox 456, 52 Ind Cas 601=20 Cr L J 681=21 Bom L R 724, 1924 N 17g 22

**9 Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.**

#### Illustrations

(a) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts

(b) A sues B for a libel imputing disgraceful conduct to A, B affirms that the matter alleged to be libellous is true

The position and relations of the parties at the time when the libel was published

a matter unconnected with there was a dispute may be

(c) A is accused of a crime

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent



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(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B, says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

**Principle**—It would be practically impossible in the conduct of an action, to plunge direct in *medias res*, and Judge and jury alike seek for some introductory evidence, just as one hearing only the main incident of a story desires to know the circumstances leading up to it and the results that flow from it. Those circumstances in relation to an action or suit may not *per se* be relevant, but in connection with the main issue to be put before the tribunal they are treated as the introduction to main matters or by way of inducement to it. They take the place of the preamble to a statute, which while it has no power in itself, combined with the enacting clauses becomes the statute. The variety of these introductory or preliminary proofs as great in number as the variety of the causes of action, prevents any attempt at classification, but the rule as to their relevancy is abundantly established in view of these facts the preliminary questions leading to the introduction of relevant fact was held entirely proper. It follows that if introductory testimony, not inherently

should be relevant which will explain illustrate. Indeed, it is now an every day occurrence for evidence which if considered abstractly amount to nothing, but taken in connection illustrate them either by way he force of that given by ther reason for depreciation and in a conversation, the ny showing the conduct of

SECTION WHICH  
related to *Burr*

**Explanation of facts**—If after the commission of a crime a person, whose name is mentioned as a participator in the crime, absconds, his conduct shows that he is indeed concerned in the crime. Therefore anything which tends to explain his conduct and furnishes a motive other than a guilty conscience is relevant under this section. *Gongaram v Imperator*, 62 Ind Cas 545=22 Bom L R 1274. Oral evidence is admissible to prove that the recital of consideration in a document is innocent. 4 Mys L J 104. A recital in a sale deed between strangers to the suit comprising property not in suit to the effect that it is bounded by the suit property belonging to one of the parties to the suit is not admissible in the suit. 3 C W N 761=97 Ind Cas 265=A I R 1926 Cal 948.

**Identity**—It remains to observe on identity in the section, that some times so either as serving to sion as connected with the arson, evidence has been time of the fire was afterwards discovered in the prisoner's possession. *R v Rickman*, 2 East P C 1035, (*Norton* Ev 119), see also 18 A 78, 1 C W N 33, 9 C W N 520.

10 When there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done

Things said or done by conspirator in reference to common design

or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.



*Illustration*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Calcutta the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant both to prove the existence of the conspiracy and to prove A's complicity in it although he may have been ignorant of all of them and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it

**Principle**—A rule is well established that in cases where conspiracy is charged the admission of one of the accused may become, by reason of the other proof in the case, admissible against the other. By themselves, and without other proof, they are not admissible against the fact of the conspiracy, but if the fact of the conspiracy is proved, they are admissible against the fact of the

procure a conviction it is necessary that proof shall reach to both facts. Suppose now, that the only proof of the former fact consisted of statements in respect to it made by one of the parties. It is clear that since both are shown to have been interested together, and to have set out to commit the act the statements made by one as to what was done should be received against the other. It must be borne in mind however, that the fact of the conspiracy is to be proved by evidence entirely outside the admission. It is probable that in all cases of conspiracy where admissions are received their reception could be explained on the ground that they are a part of the *res gestae*—*MacKelvey's Law of Evidence* p 144

**Scope**—The operation of this section is strictly conditional upon there being a reasonable ground to believe that two or more persons have conspired to commit an offence 37 C 467=4 C W N 1114. This section is intended to make evidence communications between different conspirators while the conspiracy is going on, with reference to the carrying out of the conspiracy 38 C 169=15 C W N 25, 28 C 797. A conspiracy within the terms of this section contemplates something more than the joint act of two or more persons to commit an offence 4 C W N 528. This section says that reasonable ground for belief in the existence of a conspiracy should be shown before evidence is given of the acts of persons who but for such conspiracy would be strangers to one another. The existence or fact of a conspiracy must be proved before evidence can be given of the facts of any person not done in the presence of the prisoner 5 O C 351. See also 11 P W R 1915. What has to be established under this section to make documents found in the possession of one of several persons accused of conspiracy admissible against other accused is that there is reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators 16 C W N 1105, 30 C 983. See also 25 B 230, 9 B L R App 36, 7 B L R 63, 46 C 700, 25 Bom L R 748, 46 C 215=23 C W N 193=46 Ind Crs 152, 42 C 957=19 C W N 676=21 C L J 331.

But the statement of an accused after arrest is not admissible under the section, 46 C 700. This section is wider than the English law on the subject which requires that acts and declarations of other conspirators must be in furtherance of the common purpose. Nor a conspirator who has severed his connection with the conspiracy is liable for the acts or declarations of the conspirators after such severance (*Phipson* 74).

**Actionable wrong**—The acts and declarations of co-trespassers in civil actions and indeed of all persons combined for a common object whether civil or criminal are governed by the same rule. The acts and declarations of joint tortfeasors are not however reciprocally admissible unless combinations for a common object be proved [*Phipson*, 64]. In civil actions the declarations of co-trespassers are subject to the same rule. If they are mere narratives, they are evidence on

against the makers, if they form part of the *res gestae* they are evidence against all. This section applies to an actionable wrong as well as a criminal offence (*Norton v 123*)

When facts not otherwise relevant become relevant      11 Facts not otherwise relevant are relevant—

- (1) if any are inconsistent with any fact in issue or relevant fact,
- (2) if by themselves or in connection with other facts they make the existence or non existence of any fact in issue or relevant fact highly probable or improbable

### Illustrations

(a) The question is whether A committed a crime at Calcutta, on a certain day. The fact that on that day, A was at Lahore is relevant

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed which would render it highly improbable, though not impossible that he committed it is relevant

(b) The question is whether A committed a crime

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant

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sive that any fact which can by a chain of ratiocination, be brought into connection with another so as to have a bearing upon a point in issue may possibly be held to be relevant within its meaning. But the connections of human affairs are so infinitely various and so far reaching, that thus to take the section in its widest admissible sense would be to complicate every ... in the mass of ...  
ries limited only by the patience and the means of the law of evidence is to restrict the invasions prescribed by general convenience, and frustrated by the admission on all occasions, having some remote and conjectural probative force, the precise amount of which might itself be ascertainable  
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*Introduction P 161*) In order that  
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made by a person who is not called or cannot be called, the statement cannot be  
admitted unless it comes within the purview of subsequent sections of the Act for  
example ss 32 and 33 9 A L J 351, see also 9 Bom L R 1047

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Cases—6 Bom L R 983, 5 M 252, 3 Bom L R 465, 11 C L R 528, 14 C L J 467, 2 C W N 91=25 C 210, 9 C W N 402, 20 Ind Cas 292, 23 C W N 933, 28 C W N 1092, 1975 Pat 68, 37 M 238, 43 Ind Cas 439, 39 A 273; A I R 1926 (Cal) 115, 97 Ind Cas 694=9 N L J 215, A I R (1926) Cal 479=1 Ind Cas 688, A I R (19 6) Cal 415

Horoscope—48 Ind Cas 400

In suits for damages facts tending to enable Court to determine amount are relevant

12 In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages, which ought to be awarded, is relevant

Notes—Damages unless expressly admitted are deemed to be fact in issue. Evidence tending to increase or diminish the damage is of course admissible though not expressly involved in the issue. Thus in an action for breach of promise of marriage, plaintiff may give evidence of the defendant's fortune for it obviously tends to prove the loss sustained by the plaintiff but not in an action for adultery, *James v Biffington* 6 C and P 589 nor for seduction, *Hodsoll v Taylor* L R 9 Q B 79, nor for malicious prosecution, for it is nothing to the purpose that damages are taken from a 'deep pocket' *Short v Story*, Winton Sm As 1835 per *Alderson B*—Roscoe's N S 86. Where the question is as to the amount of compensation for defamation of character it is plausible argument for them the defendant should be allowed to show how little the plaintiff had to lose. *Scott v Sampson* 8 Q B D 491, *Foot v Tra y* 1 Jol ns 46

Damages as subject of opinion evidence—In ordinary cases the Court is to determine the amount of damages. *Lincoln v Rulford Co* 23 Wand (N Y) 425. But there are questions of damages dependent by some rule of law, upon subsidiary question of value of property and upon these latter questions persons specially qualified are often called upon for opinions so that opinions of experts as to values may furnish the basis upon which the jury arrives at a measure of damages. *McKelvey's Evidence* p 247. In *Miller v Smith* 112 Mass 470, *Gray J* said 'Whenever the value of any particular kind of property, which may not be presumed to be within the actual knowledge of all the jurors, is in issue the testimony of witnesses acquainted with the value of similar property is admissible although they have never seen the very article in question'

Facts relevant when right of custom is in question

13 Where the question is as to the existence of any right or custom, the following facts are relevant —

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence
- (b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from

#### Illustration

The question is whether A has right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts

But the majority of Full Bench in *Gujju Lal v Fatch Lal*, 6 C 187 (F B) held that the word right includes only incorporeal rights. But *Mitter J* dissented from the views taken by the majority and held that such contention is not warranted by any general principle. See also 2 C W N 501

Custom—'Custom' is used in the sense of a rule which in particular district, class or family has from long usage obtained the force of law must be (a) ancient



\* (d) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it he knew to be counterfeit

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant

The fact that A had been previously convicted of delivering to another person it to be counterfeit is relevant  
a dog of B's which B knew to be ferocious  
iously bitten X, Y and Z, and that they had

(d) The question, is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B

The fact of previous publications by A respecting B, showing ill will on the part of A towards B, is relevant as proving A's intention to harm B's reputation by the particular publication in question

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B

(f) A is sued by B for fraudulently representing to B that C was solvent, where by B, being induced to trust C, who was insolvent, suffered loss

The fact that, at the time when A represented C to be solvent C was supposed to be solvent by his neighbours and by persons dealing with him is relevant as showing that A made the representation in good faith

(g) A is sued by B for the price of work done by B upon a house of which A is owner, by the order of C, a contractor

A's defence is that B's contract was with C

The fact that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C

where A was is relevant as showing that A did not in good faith believe that the real owner of the property could not be found

The fact A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith

cruelty are relevant facts

(f) The question is, whether A's death was caused by poison

Statements made by A during his illness as to his symptoms are relevant facts

(m) The question is, what was the state of A's health at the time an assurance on his life was effected

Statements made by A as to the state of his health at or near the time in question are relevant facts

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use whereby A was injured

The facts that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

(b) continued, unaltered, uninterrupted, uniform, constant, (c) peaceable and acquiesced in, (d) reasonable, (e) certain and definite, (f) compulsory and not optional to every person to follow or not. The acts required for the establishment of customary law spring from a legal

judgments not *inter partes* are admissible in evidence as 838, 64 Ind Cas

465, 65 Ind Cas 522, 65 Ind Cas 525, 65 Ind Cas 690, 65 Ind Cas 398, 1 Pat L T 221, 78 Ind Cas 895. It is well established that, although a judgment not *inter partes* may be used in evidence in certain circumstances as a fact in issue or a relevant fact or possibly as a transaction the recitals in the judgment cannot be used as evidence in a litigation between the parties. 20 C W N 643=23 C L J 583=35 Ind Cas 298, 28 C W N 942, 82 Ind Cas 99, 40 C L J 30=82 Ind Cas 392. See also 15 M 12, 22 I A 60, 24 I A 101, 12 A 1, 12 C W N 730, 22 C 533, *contra* 6 C 171 (F B), 13 C 352, 10 B 439, 11 M 116, 12 M 9. In this connection *Ranade*, J in *Lakshman v Amrit*, 24 B 598 observed 'It is not easy to reconcile this conflict of views in particular instances, but apparently the cases which decide that judgments not *inter partes*, are not admissible in evidence proceed chiefly on the ground that those judgments are sought to be used as having the effect more or less, of *resjudicata*. For that purpose a judgment *inter partes* alone can be admitted in evidence, but for other purposes, where judgments are sought to be used to show the conduct of the parties or to show particular instances of the exercise of a right or admission made by ancestors, or how the property was dealt with previously they may be used under secs 11 and 13 as exceptions recognised under s 43 as relevant evidence'. The words of this section are very wide. There is nothing which should further have been successful in right asserted interpretation to the A I R 1926 100 30 C W N also A I R 853=A I R 1926 100 30 C W N transaction is not under this

1926 Outh 5/3 92 Ind Cas 366  
fictitious transaction and is not  
section 31 C W N 32

Cases—33 Ind Cas 446, 36 Ind Cas 882, 33 Ind Cas 142, 19 C W N 1038, 51 Ind Cas 866

Map—49 Ind Cas 95, 5 C 287

14 Facts showing the existence of any state of mind, such a intention, knowledge, good faith negligence, rashness, ill will or good will towards any particular person, or showing the existence of any state of body or bodily feeling are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant

\*Explanation 1—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question

\*Explanation 2—But where, upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact

### Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen

\* (b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it he knew to be counterfeit

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant

(c) A sues B for damage done by a dog of B's which B knew to be ferocious

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B are relevant

(d) The question, is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B

The fact of previous publications by A respecting B, showing ill will on the part of A towards B, is relevant as proving A's intent on to harm B's reputation by the particular publication in question

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B

(f) A is sued by B for fraudulently representing to B that C was solvent, where by B, being induced to trust C, who was insolvent, suffered loss

The fact that, at the time when A represented C to be solvent C was supposed to be solvent by his neighbours and by persons dealing with him is relevant as showing that A made the representation in good faith

that the real owner could not be found

The fact that public notice of the loss of the property had been given in the place where A was, is relevant as showing that A did not in good faith believe that the real owner of the property could not be found

The fact A knew, or had reason to believe, that the notice was given fraudulently  
a false claim  
did not disprove

order to show

atening letters  
he letters  
, his wife

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts

(l) The question is, whether A's death was caused by poison

Statements made by A during his illness as to his symptoms are relevant facts

(m) The question is, what was the state of A's health at the time an assurance on his life was effected

Statements made by A as to the state of his health at or near the time in question are relevant facts

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use whereby A was injured

The facts that B's attention was drawn on other occasions to the defect of that particular carriage is relevant

\* This Illustration was substituted for the original Illustration (b) to s. 14 of the Act of 1891, s. 1 (2).

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant

(p) A is tried for a crime

The fact that he said something indicating an intention to commit that particular crime is relevant

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant

Principle — Where the —

or mental state  
intent, motive,  
proof of other  
2 Crown Cas 1  
by representing  
guilty knowledge on X  
to other pawn broker  
ment Lord Coleridge said “  
acts and thereby it raises a  
It is not conclusive for a man  
many times the dupe of another  
once and every circumstance which shows he was not under a mistake on any one  
of these occasions, strengthens the presumption that he was not on the last, and  
this is amply borne out by the authorities’ In *Com v Russel*, 156 Mass, 196 at p  
197 *Barker* observed: ‘The admission of such evidence is necessary, because  
guilty knowledge is a fact not susceptible of proof by direct evidence, and can rarely  
be shown by explicit admissions, but only by acts and conduct’ So also on a  
question of malice, evidence of other criminal acts leading up to one in question,  
which show the state of mind of the accused, is admissible There is no  
to extend the doctrine, but to confine it  
its application on account of necessity  
ledge *Reg v Oddy*, 2 Den Cr Cas 264  
should be very unwilling to apply this to criminal cases’ Where  
however, the bodily or mental estate is not a material fact in issue, evidence as to  
such state is inadmissible *McKelvey’s Evidence* p 19”

offered, in order, to prove  
ffered other false articles  
he judg-  
similar  
mistake  
may be  
or than

Scope — This important

seve-  
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To admit therefore as evidence  
clearly is to  
the jury  
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that he a  
intention c  
on the pr  
in ord-  
18 L.  
where  
subsequ-  
scheme or system of operations The matter may be roughly stated thus unconnec-  
ted conduct on other occasions is never admissible to prove the *actus reus*, but is  
admissible to prove the *mens rea* or other state of mind The rule applies to both

remarks upon the  
ie cases in which the  
collateral circum-  
Where a man is  
a forged note or coin, or receiving  
specific act.  
nilar nature’  
of inducing  
similar des-  
the defence  
he had no  
(c) (d) are  
(e) (f) and (g), of intention, the sixth  
(h) of feeling, (i), (m) of states of body, (n)  
and (o) (p) and (q) illustrate the explanation,  
with or without  
some act  
proof of the  
s, but only  
v *Geering*  
1 Q B 77



civil and criminal cases. With regard to criminal charges, in the case of *R v Bond* (1906) 2 K B 389, *Bray J.* summarised the law as follows —“(1) Where the prosecution seeks to prove a system or course of conduct, (2) Where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake, (3) Where the prosecution seeks to prove knowledge by the prisoner of some fact” *Cockle Et 100*

**Intention**—In criminal cases the conduct of the prisoner on other occasions is sometimes relevant, enquiry than that it doing the act compl

titutes often the burden of the inquiry, and to prove the intent it becomes necessary, isaction con e, of proving her criminal (*Burr Jones* yes of the

jury by the needless admission of testimony tending to prove another crime, yet whenever the evidence which tends to prove the other crime tends also to prove this one, not merely showing the prisoner to be a bad man, but by showing the particular bad intent to have existed in his mind at the time when he did the act complained of it is admissible; and it is also admissible, if it really tends to this, as in the facts of most cases it does not to prove the act itself’ (1 *R v C* 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

**Explanation 1**—Evidence as to general dishonesty of character is not admissible for the purpose of raising a presumption of dishonesty in the particular case under trial 8 Cr L J 411, see also 13 Ind Cas 781

not admissible 1 C W N 146

**15.** When there is a question whether an act was accidental or intentional [or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

#### Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured

The fact that A had burned several houses successively, each of which he insured, after each of which fires A received payment relevant, as tending to show that the fires were

entr that

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant

feft accidental, . . . . . lvered counter ry to B was not

**Legislative changes**—The words in the brackets have been inserted by Act 3 of 1891

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant is showing his intention to shoot B

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant

(p) A is tried for a crime

The fact that he said something indicating an intention to commit that particular crime is relevant

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant

D-... or any bodily knowledge involves the (1874) L. R. pretences,

by...  
guilt...  
to...

ment Lord Coleridge said :

acts and thereby it raises a presumption, that he was not acting under...  
It is not conclusive for a man may be many times under a similar mistake, or may be many times the dupe of another, but it is less likely he should be so oftener than once, and every circumstance which shows of these occasions, strengthens the presumption this is amply borne out by the authorities.

per Butler observed : "The admission of such evidence is necessary, because

is very clear reason for  
ive, intent or guilty know-  
Campbell C J said I  
o criminal cases " Where  
in issue, evidence as to

such state is inadmissible *Alchewey's Law & Co.*

**Scope**—This important section had better be considered by remarks upon the

an article of stolen property, the issue is whether he is guilty of that specific act.  
To admit therefore as evidence may not be...  
clearly is to introc  
the jury to infer  
cription on other  
that he acted in  
intention or motiv  
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v Geering  
i Q B 77,  
acts were

scheme or system of operations The matter may be roughly stated thus unconnected conduct on other occasions is never admissible to prove the *actus reus*, but is admissible to prove the *mens rea* or other state of mind The rule applies to both

civil and criminal cases With regard to criminal charges, in the case of *R v Bond* (1906) 2 K B 389, *Bray J* summarised the law as follows —“(1) Where the prosecution seeks to prove a system or course of conduct, (2) Where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake, (3) Where the prosecution seeks to prove knowledge by the prisoner of some fact *Cockle Et* 100

**Intention**—In criminal cases the conduct of the prisoner on other occasions is sometimes relevant, where such conduct has no other connection with the charge under enquiry than that it tends to throw light on what were his *motives and intentions* in doing the act complained of. The intention with which a particular act is done constitutes often the burden of the inquiry, and to prove the intent it becomes necessary, beyond the particular transaction con- or the purpose, therefore, of proving transactions of the same sort springing from the like mental condition (*Burr Jones* s 143) ‘It is, that though the prisoner is not to be prejudiced in the eyes of the jury by the needless admission of testimony tending to prove another crime, yet whenever the evidence which tends to prove the other crime tends also to prove this one not merely showing the prisoner to be a bad man, but by showing the particular bad intent to have existed in his mind at the time when he did the act complained of it is admissible, and it is also admissible, if it really tends to this as in the facts of most cases it does not to prove the act itself’ (1 *Bish Cr Pro S* 1067) See also 16 B 414, 11 B H C 90, 8 B 223, 6 C 655, U B R (1907 1909) Ev 1, 22 Ind Cas 187, 22 C W N 494 40 C 713=20 C W N 262, 46 B 938 See also 34 A 93=12 Ind Cas 987 61 Ind Cas 647=22 Cr L J 407, 38 Ind Cas 971

**Explanation I**—Evidence as to general dishonesty of character is not admissible for the purpose of raising a presumption of dishonesty in the particular case under trial 8 Cr L J 411, see also 13 Ind Cas 781

**Explanation II**—As regards an offence under s 400 I P C previous commission of dacoity by the same accused is relevant under s 14 of the Evidence Act. Convictions previous to the time specified in the charge, or previous to the framing of the charge are relevant under this explanation. But subsequent conviction are not admissible 1 C W N 146

## 15 When there is a question whether an act was accidental or intentional

Facts bearing on question whether act was accidental or intentional [or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant

### Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive

The question is, whether this false entry was accidental or intentional

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee

The question is, whether the delivery of the rupee was accidental

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E, are relevant as showing that the delivery to B was not accidental

**Legislative changes**—The words in the brackets have been inserted b



**Registered letter.**—Where a registered letter is posted to a firm's correct address but is returned with the word 'refused' endorsed upon it the presumption under this section in favour of the existence of common course of business is that the letter reached the place of firm's business and it may also be presumed that it was refused by an agent or partner of the firm. 50 Ind Cas 149 see also 15 C 681, 9 A 366

### ADMISSIONS

**17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons**  
**Admission defined**  
 and under the circumstances, hereinafter mentioned

**Admission**—An admission is a statement oral or written suggesting any inference as to any fact in issue or relevant or deemed to be relevant to any such fact, made by or on behalf of any party to any proceedings " (Reynolds's Step Ev art, 15) Admissions have been subdivided into direct and indirect express implied incidental judicial and extra judicial and the names of some of them sufficiently indicate the description of any particular admission to obviate special definition. Direct and express admissions are practically having done or omitted to do some act. Admissions was not made in connection with judicial admission are such as may be made in a trial or generally in the course of a trial made may be grouped as extra judicial admissions. *Burr Jones's* 735 Silence or conduct may amount to an admission when it is natural to expect a reply or statement. *Bessela v Stern* L R 2 P D 265. A vague admission is no admission 21 A. L. J 869

**Admission and confession**—In English law admission is confined in civil cases and confessions in criminal cases. But in the Evidence Act such distinction has not been observed. Sections 17-22 are applicable both to civil and criminal cases. But confession is used only in relation to criminal cases and herein the Act followed the English law.

**Cases**—105 P R 1915, 28 M L J 92, 36 C L J 186, 65 Ind Cas 345, 65 Ind Cas 398, 65 Ind Cas 368, 26 C W N 273, 22 C W N 530 1974 Nag 387

**18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are**  
**Admission by party to proceeding or his agent,**  
 admissions

**Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character**  
 by suitor in representative character,

**Statements made by—**

**(1) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding and who make the statement in their character of persons so interested or**  
 by party interested in subject matter

**(2) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,**  
 by person from whom interest derived

are admissions, if they are made during the continuance of the interest of the persons making the statements

**Scope**—Let us confine ourselves to civil admission for the present. The persons by whom admission may be made are the parties to the suit or their agents, or those identified in interest with them, or the persons *sub modo* in (1) and (2). If they proceed from a stranger they are generally inadmissible, unless he be dead as to which see section 32 *post*. An admission made by an infant after he arrives at

age will bind him. No distinction should be drawn between the *nominal* and *real* parties to a suit. The Courts of India being Courts of Equity should deal directly with admissions made by nominal parties as for instance consignees suing in the name of consignors. When the Court considers the admission of such a party fraudulent it should be at once rejected (*Norton Et al* 143)

**Cases**—A statement made by defendant in another suit may be used as an admission within the meaning of this section. 22 W R 303. An admission against her own interest by the predecessor in title of the defendant is relevant under ss 18 and 21 though not conclusive, and is sufficient by itself to shift the burden of proof. 7 N I R 23. See also 69 Ind. Cas 35, 9 O L J 262, 46 Ind Cas 709.

**Parties**—An admission once made is binding against the party making it for all the purposes of the suit unless it be shown that such admission was recorded erroneously. 2 W R Act V R 1. An admission made by parties to a previous suit or an arbitration proceedings may be used as evidence against them in subsequent suit. 7 W R 249, 9 W R 167, 5 B L R 529, 14 W R 28, 13 M I A 438, 17 W R 372, 23 W R 27, 15 W R 437, 27 W R 303. Where a person uses the admission of another as evidence the whole admission must be put in. 7 W R 29. The admission by defendants in a former suit of a map as correct was held to be legal though not conclusive evidence against them in a boundary suit. 8 W R 291.

**Pleader**—A pleader's statement on behalf of his client after full consideration and consultation is relevant evidence against that client in another case to which he is a party. 15 W R 35. A barrister (or other advocate) may make any admission on behalf of his client which, in the honest exercise of his judgment he thinks proper but he has no authority on matters collateral to the suit (*Swift v Lord Chelmsford* 29 L J Ex 382).

**principal**—An agent or servant may therefore made within the scope of his authority or duty. *Kirkstall Brewery Co v Furness Ry Co* L R 9 O B 468. *G W Ry Co v Willis* 34 L J C P 195, *Gavindji v Chota Lal* 2 Bom L R 651. Statements made by an agent about past transactions will not bind the principal as admissions, when the agent's authority to act in the particular matter has ceased the principal cannot be affected by his subsequent statements (*Peto v Hague* 5 Esp 134). See also 3 B L R 273, 46 Ind Cas 709.

**Admission by one of several persons**—Where several persons are interested in the subject matter of a suit the general rule is that the admission of any one of them is relevant.

**Cases**—69 Ind Cas 35, 66 Ind Cas 15

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## 19 Statements made by persons whose position or liability it is necessary

Admissions by persons whose position must be proved as against party to suit to prove as against any party to the suit, are relevant

and if they are made whilst the person making them occupies such position or is subject to such liability

### Illustrations:

A undertakes to collect rents for B

B sues A for not collecting rent due from C to B

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission and is a relevant fact as against A, if A denies that C did owe rent to B

**Cases**—The question at issue was whether a party was the legitimate issue of a person with whom her mother was living after having been previously married to

another who, it was alleged had divorced her. A deposition given by the mother was tendered in evidence in which she was described at the heading as the wife of her previous husband but in the body of which she stated she had been living with the alleged father for 10 or 12 years past. Held that the deposition even if admissible was of no weight for the reason that her statement did not amount to an admission that she was living in adultery. 26 A 108 P C = 8 C W N 241. Guardians of infants are not competent to bind the infants by their admissions. 29 C L J 577. An admission made by a landlord is not binding on the tenant. 52 Ind Cas 739.

#### Case—64 Ind Cas 334

Admissions by persons expressly referred to by party to suit

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

#### Illustration

The question is whether a horse sold by A to B is sound. A says to B—Go and ask C, C knows all about it. C's statement is an admission.

**Scope**—An admission may be made by agents. If one party directs or requests another party to apply to any other persons for information on a certain matter, such reference may constitute such other person as agent in such matters for such purpose. *Williams v Innes* 10 R R (707). Whenever a party refers to the evidence of another, he is bound by it—and this is constantly good evidence. *Daniel v Pitt* 1 Camp 366. It matters not whether the question was one of law or fact. *Price v Holis*, 1 M and S 105, *Downe v Cooper*, 2 Q B 256. The reference need not be refer to another by the statement the parties. 4 must be an express reference. L R, 2 N S 204.

#### 21. Admissions are relevant and may be proved as against the persons

Proof of admissions against persons making them, and by or on their behalf

who makes them, or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

#### Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged, but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to shew that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements,

because they would be admissible, between third parties, if he were dead, under section 32, clause (2)

(c) A is accused of a crime committed by him at Calcutta

He produces letter written by himself and dated at Lahore on that day, and bearing the Lahore post mark of that day

The statement in the date of the letter is admissible, because if A were dead, it would be admissible under section 32, clause (2)

(d) A is accused of receiving stolen goods knowing them to be stolen

He offers to prove that he refused to sell them below their value

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that the person did examine it and told him it was genuine

A may prove these facts for the reasons stated in the last preceding illustration

**Why admissions competent—**When a man voluntarily makes an admission to be true, though the admission be contrary to the truth. The same rule, it will be seen, is so identified in situation and interest with the truth that the law considers it to have been made by himself. When truth are properly dispensed with, they are inadmissible. It is administered to a witness in order to impose an additional obligation on his conscience and so to ascertain his means of

one of the exceptions to the hearsay evidence. Strictly speaking they are open to but few of the objections which may be urged against hearsay testimony. Admission made by a party is of considerable weight as evidence against him and may if unexplained be even decisive. 51 Ind Cas 876, 13 C W N 409, 7 Ind Cas 505

Cases—68 Ind Cas 566, 4 Lah L J 437, 45 Ind Cas 843, 22 C 909 1924 Nag 281, 17 Ind Cas 961 54 Ind Cas 478

**22** Oral admissions as to the contents of a document are not relevant,

When oral admissions as to contents of documents are relevant.

unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question

**Notes—**

of fact are of a deed or Indian law case. The and F 356.

those attacks (Powell Ev 444) But their Lordships of the Judicial Committee of the Privy Council in 10 I A 79 observed 'They consider that it is a very dangerous thing to rest a judgment upon verbal admissions of a sum due, without very clear evidence especially when there are other means of proving the case, if a true one

as to any matter as to the contents and W 664) The was in the above

v. Karnell 1 F

**23** In civil cases an admission is relevant, if it is made either upon

Admissions in civil cases when relevant an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given

**Explanation—**Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126



**Statement without prejudice**—Communications admissions or statements written or verbal, made by a party to an action pending the dispute of action and made expressly or impliedly without prejudice with the object of compromise or settlement, cannot be given in evidence against the person making them. A letter written by a person to another, the whole of the correspondence between them, is admissible in evidence. 7 R R 634 cited in Cockle this section the Court is precluded of compromise which was entered into and subsequently set aside on the ground that the agent of one of the parties was not empowered to enter into it 83 P R 1877

**Cases**—Vide 20 C W N 1217 57 Ind Cas 348 57 Ind Cas 443

**24** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him

**Confessions**—The word confession as used in the sections of the Evidence Act includes a mere inculcation of guilt 7 A 646—A W N 181 confession made at any time by a person, esting the inference that he made a confessing statement which falls short of absolute confession but from which the inference of guilt follows is a 'confession' 51 P L R 1905 Cr 6 C 509, (F R), 14 B 260 (F B) It is admissible even when it is not sworn 3 P R 1880 Cr, see also 13 Ind Cas 96

Confession  
caution  
evidence

**Must be taken as a whole**—The confession must be taken as a whole 15 B 452 When confession contains extenuating as well as incriminating matter, the extenuating portion must be taken into consideration no less than the incriminating portion, except when there is evidence to contradict it 4 P R 1872 Cr, A W N 1883 148

**Scope**—In criminal cases a confession made by the prisoner can be given in evidence against him if the prosecution show it was free and voluntary not otherwise. It will be held not to be free and voluntary if it were induced by any threat or promise made by a person in authority. Any expressions suggesting that it would be better for the prisoner to tell the truth import a threat or promise R v Bridley 5 Cox C C 523=21 L J M C 130 A confession

that such an inducement might cause the accused to make an untrue confession (Powell Ev 150) See also U B R (1897 1901) Vol I 147

... need not be expressed, it may be implied. The inducement comes from the police constable R (1871 1872) 376 See also 21 P R 1911 57, U B R (1897 1901) Vol I 197 75 Ind



**26** No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person

Confession by accused while in custody of police not to be proved against him

*Explanation*—In this section 'Magistrate' does not include the head of a village discharging magisterial functions in the Presidency of Fort St George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882

**Legislative Charges**—The explanation was added in this section by Act 3 of 1891

**Scope**—A confession made to a police officer, but not in the presence of a Magistrate is inadmissible S C, 98 Oudh, 26 M L J 352 A confession made by a person while in police custody is inadmissible in evidence Rat Un Cr C 855, 20 B 165 12 P R, 1900 Cr A chaulikdar is a police officer 9 C W N 474 The exclusion of confessional statements under this section is based on the presumption arising from the custody of the police that they are untrustworthy As the fact is rebutted that presumption, e.g. the presence of a Magistrate's presence or to the extent to

**Cases**—21 C W N 694, 19 Bom L R 683 50 Ind Cas 431 26 Bom L R 706, 77 Ind Cas 429

**27.** Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved

How much of information received from accused may be proved

**Scope**—The provisions of this section for the admission of a certain class of statements made by prisoners while under police custody is an exception to the general rule excluding all statements made while in such custody and as such, its operation must be confined to only such statements as properly fall within its description therein given If they amount to confession, they ought to be excluded 11 B, H C R 242 10 C P L R Cr 25 The fact to be discovered by such a statement must be a material thing, and not a mere mental state induced in another by that statement 16 C P L R 122 See also 32 Ind Cas 321 Two men cannot make a statement leading to a discovery Both no doubt may give information to the police but it is only the information first given which can be admitted under this section 7 P R 1919 Cr, but see 36 Ind Cas 474 A statement made by the accused persons while in police custody in consequence of which arms are found buried in a field is admissible in evidence against the accused 72 P L R 1916 See also 32 Ind Cas 136 The exception contained in this section to the general rule must be very strictly confined within its legitimate limits 11 P R 1915 Cr = 16 Cr L J 545

**Cases**—13 A L J 1077 9 O L J 190 9 P L R 192 20 A L J 171, 19 C L J 439, 42 Ind Cas 1002, 43 Ind Cas 111, 48 C 557, 54 Ind Cas 479, 55 Ind Cas 685

Confession made after removal of impression caused by inducement threat or promise, relevant

**28** If such a confession as is referred to in section 24, is made after the impression caused by any such inducement threat or promise has, in the opinion of the Court, been fully removed, it is relevant

**Note**—When the legislature wished to make an exception to the general rule it did so by a separate section, this section accordingly declares under what circumstances a confession rendered irrelevant by s 24 may become relevant 2 L B R 168

**Scope**—If the impression produced by the promise or threat is clearly shown to have been removed e.g. by lapse of time or by an intervening caution given by

person of superior (but not of equal or inferior) authority to the person holding out the inducement—a confession subsequently made will be strictly receivable (*Phipson* 231), 4, Ind Cas 703.

**29** If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

**Scope**—A confession shall not be inadmissible in evidence merely because it has been obtained by deception. Even when the prisoner has made it only on receiving a preliminary oath of secrecy from the person trusted, such person will be competent and compellable to reveal it (*R v Shaw*, 6 C & P 372) and a confession made by a prisoner while drunk has been received (*P. v Spilsbury*, 7 C & P 187) —*Powell* 111.

**30** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

**Explanation**—"Offence" as used in this section, includes the abetment of or attempt to commit the offence.

#### Illustrations

(1) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(2) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A as B is not being jointly tried.

**Legislative changes**—The explanation was inserted by Act III of 1891.

**Scope**—This section relates to the confessions made by accused persons who are being jointly tried for the same offence 5 C P L R Cr 9. A confession duly made at any time, by one of the several accused persons under trial jointly for the same offence can be used under the same section. Rat Un Cr C 510. The confession need not be made in the presence of the other accused 2 Weir 745. Such confession is an evidence of the weakest kind 8 Cr L, J 393, 2 Weir 741.

**Principle**—Where a person admits his guilt to the fullest extent and exposes himself to the pains and penalties provided for his guilt, there is guarantee for its truth and the Legislature provides that his statement may be considered against his fellow prisoners charged with the same crime 6 B 288=6 Ind Jur 460 see also S C 133 Oudh Rat Un Cr C 84 24 P R 1910 Cr 81 Ind Cas 891 81 Ind Cas 249 76 Ind Cas 1025, 75 Ind Cas 701.

**Court**—includes both judge and the jury 4 C 348=3 C L R 270 (F B) 1.

**Value of such evidence**—The statement of a fellow prisoner jointly tried is by itself evidence of the weakest kind and it is the duty of the judge to point this out to the jury Rat Un Cr C 436, Rat Un Cr C 456, 11 O C 328=8 Cr L J 393 2 Weir 742 29 A 434 Rat Un Cr C 771, 7 C 65, L B R (1872-1897) 388 38 L 156 19 P L R 1911 19 Ind Cas, 179 1924 All 511.

**Court may take into consideration**—These words mean "take into consideration for the purpose of arriving at a conclusion of fact" Rat Un Cr C 311 4 O C 69 53 Ind Cas 691.

**Tried jointly**—These words indicate that the confession should be made before the charge is framed. L. B. R. (1893 1900) 64. The offence for which they are being tried must also be the same. Rat. Un. Cr. C. 450. When the confessing accused is not on trial, his confession cannot be used. 11 P. R. 1900 Cr., 10 C. L. R. 553, 15 P. R. 1911 Cr., 22 Ind. Cas. 157.

**Abetment**—Vide 39 P. R. 1885 Cr., S. C. 143 Oudh.

**Retracted confession**—Retracted confession unless corroborated cannot be the basis of conviction. Rat. Un. Cr. C. 108, 5 P. R. 1911 Cr. 81 Ind. Cas. 62, 40 C. L. J. 551, 68 Ind. Cas. 401.

**Magistrate in a Native state**—A confession made before a Magistrate in a Native State cannot be admitted into evidence under this section. 16 Bur. L. R. 261.

**Corroboration**—53 Ind. Cas. 521, 43 B. 39, 81 Ind. Cas. 817.

**Cases**—20 A. L. J. 178, 6, Ind. Cas. 56, 22 C. W. N. 408, 46 Ind. Cas. 842, 41 Ind. Cas. 160, 57 Ind. Cas. 46.

**Admission not conclusive proof, but may estop** the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

**Scope**—An admission made before a Registrar or contained in a deed of sale that the consideration has been received by the vendor raises only a rebuttable presumption the weight of which varies with the circumstances of each case. A. W. N. 1899, 142. Admission must be taken as a whole. 60 Ind. Cas. 483.

#### STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

**32 Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases—**

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, or is made in course of any other business, or is made in discharge of professional duty, or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind, or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him,

(3) When the statement is against the pecuniary or proprietary interest of the person making it or when, if true, it would expose him or would have exposed him to a criminal prosecution, or to a suit for damages,

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen,

(5) When the statement relates to the existence of any relationship\* [by blood marriage or adoption] between person as to whose relationship\* [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised

(6) When the statement relates to the existence of any relationship\* [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised

or in document relating to transaction mentioned in section 13 clause (a)

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a)

or is made by several persons and expresses feelings relevant to matter in question

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question

### Illustrations

— A is ordered by B or the course of which she was ravished by B or under such circumstances that a suit

her death, referring respectively to the murder the rape and the actionable wrong under consideration are relevant facts

nes  
s a

(c) The question is, whether A was in Calcutta on a given day  
A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact

(d) The question is whether a ship sailed from Bombay harbour, on a given day

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour is a relevant fact

(e) The question is, whether rent was paid to A for certain land  
A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders is a relevant fact

\* These words in s. 32 cls (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872)

(f) The question is, whether A and B were legally married

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant

(g) The question is, whether A a person who cannot be found wrote a letter on a certain day The fact that a letter written by him is dated on that day is relevant

(h) The question is, what was the cause of the wreck of a ship

A protest made by the Captain whose attendance cannot be procured, is a relevant fact

(i) The question is whether a given road is a public way

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact

(j) The question is what was the price of grain on a certain day in a particular market A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact

(k) The question is whether A, who is dead was the father of B

A statement by A that B was his son is a relevant fact

(l) The question is what was the date of the birth of A

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact

(m) The question is, whether, and when, A and B were married

An entry in a memorandum book by C, the deceased father of B of his daughter's marriage with A on a given date is a relevant fact

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window The question is as to the similarity of the caricature and its libellous character The remarks of a crowd of spectators on these points may be proved

**Scope**—This section is also an exception to the hearsay evidence. Secondary evidence of any oral statement is called hearsay. The repetition by a witness of that which he was told by some one else who is called as a witness is hearsay, and is therefore as a general rule, inadmissible. The reasons for this rule are obvious. We can generally trust a witness who states something which he himself has either seen or heard, but when he tells us something which he has heard from another person his statement is obviously less reliable and satisfactory. A multitude of probable contingencies diminish its value. The witness may have or even may be wilfully misrepresenting or latter may have spoken hastily, inaccurately on who is really responsible for the statement did not make it on oath, he was not cross examined upon it, and the Court had no opportunity of observing his demeanour when he made it. It is a fundamental principle of our law that evidence has no claim to credibility, and unless the party witness (*Powell v. Evans*) are based on good—Statements written

or verbal, of relevant facts when made by a person who is (a) dead, or (b) who cannot be found, or (c) who has become incapable of giving evidence or (d) whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are admissible, (1) when it relates to the cause of his death, or (2) when it is made in course of business, or (3) when it is made against the interest of the maker, or (4) when it gives opinion as to public right or custom or matters of general interest, or (5) when it is made in will or deed relating to transaction men s made by several persons and

**Verbal**—Includes sign 7A 385 (F B), 2 P R 1886 Cr.

**Cause of death**—In England such declarations are admissible only in trials for murder or man slaughter made under a sense of impending death. The grounds of admissions are (1) death (2) necessity and (3) the sense of impending death which creates a sanction equal to obligations of an oath. But this clause states that accused need not be in expectation of death 6 C L R 278. Moreover according to this clause such a statement is admissible irrespective of the nature of the proceedings. The admission of dying declarations is not limited to cases in which the death of

the injured party is the sole object of inquiry. It is admissible in all criminal cases 3 N W P 212, 13 P R 1889 Cr, 25 B, 45, 8 C 211, 6 W R Cr 75, 19 W R Cr 44, 9 W R 211. Cases are not uncommon in this country of false deposition being made by a dying man 4 Ind Cas 1127. A Court should receive a dying declaration with caution 117 P R 1866, see also 4 P W R 1909=1 Ind Cas 100, 2 Weir 753. Such declarations need not be made in the presence of the accused 2 Weir 750. Oral evidence of such declarations is admissible 2 Weir 755, 2 Weir 753, 6 C W N. 621.

Cases—67 Ind Cas 577, 49 C 358, 49 C 600, 4 Bom L R 434; 20 Ind Cas 220, 34 C 698, 23 Ind Cas 195, 2 Bom L R 1129; 6 C W N 72; 8 C 211, 9 P R 1900, Cr, 18 P R 1886, Cr, 17 P R 1886 Cr, 17 P R 1901 Cr, 29 P R 1887 Cr, 15 W R Cr 11, 5 Lah 305.

**Course of business.**—The grounds for reception of such evidence is the presumption that a person engaged in a course of business is generally disinterested in the nature of the transaction, and is not liable to be generally disinterested, if false to be instant liability, if false to be o) The phrase 'course of business' is of an exceptional kind, such as the professional employment in which the business referred to may be of a temporary character 13 C W N, 71=1 Ind Cas 376. The law under this clause does not require corroboration as under s 34 16 C L J 24.

Cases—4 Lah L J 36, 1912 P 111=67 Ind Cas 57, 18 N L R 85, 46 B 753, 9 B L R App 42, 77 I C 798, 26 Bom L R 563, 199 Pat 352, 48 Ind Cas 375, 25 C W N 908, 62 Ind Cas 946.

**Clause (3).**—The reception of this evidence is upon the presumption that what a man states against his interest is probably true. But the interest involved must be pecuniary or proprietary. Any statement by a person tending to show that he owes money, or has received money, owing to him is considered to be against his interest (*Highman v Ridgway*, 10 East, 109, Cockle Cas 196). In *Sussex Peerage Case* 11 C and F 108 it was laid down that where the statement was made under circumstances, which showed that the person making it would be liable to criminal prosecution it was not sufficient to come under this clause. But the Indian Legislature departed from that view of the law and distinctly laid down that such statement are relevant. If any part of a statement by a deceased person is against his interest, the whole statement is admissible *Taylor v Witham*, L R 3 Ch D 605. The declarations must also have been against such interest at the time they were made, it is not sufficient that they might possibly turn out to be so afterwards (*Smith v Blakey*, L R 2 Q B 326 *Massy v Allen*, 13 Ch D 558 *Edwards v Tollenmache*, 14 Q B D 415)—*Phipson* 241. A statement by a deceased landlord that there was a tenant on the land is a statement against the landlord's proprietary right 31 C 965. See also 23 B 63, 32 C 6, 11 Ind Cas 380, 35 C 751, 30 I A 94=7 C W N 465 (P C) 68 Ind Cas 314, 78 I C 1033, 78 Ind Cas 219, 53 Ind Cas 863, 63 Ind Cas 685.

**Clause (4).**—The grounds of admission are—(1) death (2) necessity ancient facts being generally incapable of direct proof, and (3) the guarantee of truth afforded by the public nature of the rights, which tends to preclude individual bias and to render misstatements difficult by exposing them to constant contradiction (*Phipson Ev* 257). Public rights are rights of highway, ferry, fishery in a tidal river, etc. General rights are those affecting any considerable section of the community—e.g. questions of boundaries of a parish or manor (*Ibid*). In proof of public or general rights or customs or matters of public or general interest, statements made by a deceased person of competent knowledge as to the existence of such rights, etc., and as to the general reputation thereof in the neighbourhood, if made 'ante litem motam' are admissible (*Weeks v Parks*, 1 M & S 679, Cockle Cas 212). Such evidence is not admissible as to private right 25 B 433. Public or general right must be common to all not within individual manner of evidence of the right only to be



received as showing a general reputation and not as evidence of particular facts *R Biss*, 7 L J Q B 4, *Mercer v Dunne* (1904, 2 Ch 534. Persons whose statements are receivable in evidence as declarations must be shown to have been 'competent declarants' that is, they must have been so situated as to the place in questions, residence duty or other both the means and the motive for *Broxlowe*, 4 B & Ad 73, Cockl to a case where the evidence is required to prove a fact in issue, and not merely a relevant fact 15 B 565

Clause (5) —According to English law, the statements verbal or written, and conduct of in question, family success and deaths controversy cient to ex

servants or intimate acquaintances, whatever their position or knowledge may be, are not admissible (*Johnson v Lenson*) 9 Moore, 183 *Cockle Cas* 209. But there in the Indian Legislators departed also from the English law and laid down that statement of persons having special means of knowledge would be relevant. So a statement as to the age of member of a family made by another member is no doubt admissible after the latter's death under this clause 2, M 182. But special means of knowledge should be shown 10 Ind Cas 199. The statement in a pedigree made by a deceased member of one branch of a family regarding the descendants of another branch thereof, before any dispute arose as to the latter, is relevant and admissible in evidence 32 C 6. But this clause does not cover statements of facts made by interested parties in denial in the course of litigation, of pedigrees set up by the opposite parties 9 A 467. The effect of the section is to make a statement made by a deceased person relating to the existence of any relationship by blood, marriage or adoption, admissible to prove the facts contained in the statements on any issue 24 C 265=1 C W N 270. A family priest's statement is also admissible 4 C L R 473. But a Muktear's statement is not admissible 12 C 219=12 I A 183 (P C). See also 20 C 758, 13 C W N 1 P C, 20 C 115, 24 A 94 P C=29 I A 1, 8 Ind Cas 728, 27 I A 238, 66 Ind Cas 66, 9 O L J 186, 11 O L J 164, 22 A L J 657, 10 O & A L R 1226, 10 L W 67.

Clause (6)—Horoscope to prove age is not admissible under this clause 17 C 849. The words 'family pedigree' do not necessarily include such a pedigree as is in the possession of a member of the family concerned, nor do they indicate that the with the family concerned. In order that a evidence under this clause it is not essential and have special means of knowledge 63 Ind

Cas 900

Clause (7)—A deed of mortgage containing an assertion of title as owner by the mortgagor is relevant under s 13 as evidence of the title asserted. Where the mortgagor is dead, the recitals in the deed as to how he got the title are also evidence under this clause as statements made by deceased person in a document relating to transaction mentioned in s 13—1921 M W N 560.

Clause (8)—The meaning of this clause is that where a number of persons assemble together to give vent to a common statement expressing the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witness and is evidence 73 W R 36 C R.

33. Evidence given by a witness in a judicial proceeding or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a latter stage of the same judicial proceeding the truth of the facts which it states, when the witness is dead or

Relevancy of certain evidence for proving, in subsequent proceeding the truth of facts therein stated

cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross examine ;

that the questions in issue were substantially the same in the first as in the second proceeding

**Explanation**—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section

**Scope**—It has long been settled as one of the exceptions to the general rule excluding hearsay that the testimony of a witness given in a former action or at a former stage of the same action is competent in a subsequent action or in a subsequent proceeding in the same action where it is shown that the witness is dead or that a valid legal reason exists for his non production, that the parties and questions in issue are substantially the same, and that such former testimony can be *substantially* reproduced upon the second hearing (*Burr Jones* § 336)

**Parties**—The rule is that such evidence is proper, not only when the point in issue is the same in a subsequent suit between the same parties, but also for or against persons standing in the relation of privies in blood, privies in state or privies in law. The testimony will not necessarily be rejected, although there were other parties to the record in the former proceedings, when the issues are substantially the same and the parties affected by the second suit had the opportunity to cross examine the witnesses. But the parties must be substantially the same, and it is for the party offering the testimony to establish this (*Burr Jones* § 338). In two suits the parties must be the same or their representatives in interest. 12 C 627, See 7 C 42, 8 A 672, A W N 1896, 182

**Form of proceedings**—If the parties and the issues are the same in each case it is not necessary to the admission of the testimony that the form of the second proceeding should be the same as that of the first. Nor that the former trial should be a trial immediately preceding that in which the testimony is offered. The rule covers any former trial, where evidence was given by a party since deceased which it is subsequently desired to use. A testimony given in a preliminary examination on a criminal charge may be admitted at the trial (*Burr Jones* § 339). Evidence in section 9 case is admissible in a subsequent suit. 23 C 44. Depositions given before a counsel is admissible. 3 B 334

**Criminal cases**—The application of this section in criminal cases ought to be confined within the narrowest limits. 17 Bom L R 570. See also 18 Bom L R 284, 25 O C 142, 2 A 696, L B R (1872 1802) 134, 3 B 334, Rat Un Cr C 347, A W N 1898, 721, A W N 1881, 138, 2 Weir 755, 17 P R Cr 1919, 42 A 24, 12 P L R 1919, 52 Ind Cas 385, 35 M L J 657

**Cross Examination**—The ground upon which the exception stands is that, in an authorized action or proceeding testimony being given under the solemnity of an oath where the witness was or might have been cross examined, the probability of the truth having been told are so great as to justify the resort to that testimony when the witness has died or become insane since the former trial. It is immaterial to the admission of the evidence whether the party actually cross examined or did not cross examine if he were here. that he had an oppc here a plaintiff was here a admissible is not examine in cross 25 B 168-2 A 214,

**Incapable of giving evidence**—These words denote incapacity of a permanent character, and not of a momentary or temporary character. 4 C L R 504 ;

*contra* 6 C 774 See 22 W R 343, 2 A L J 91, 7 C 42=8 C L R 273 A party's deposition is not admissible under this section 14 B L R App 3 It is only in extreme cases of expense or delay that the personal attendance of a witness should be dispensed with 2 A 646 For meaning of 'could not be found' vide A W N 1905, 232 See also 21 W R Cr 56, 20 W R Cr 69 21 W R Cr 12

### STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

34 Entries in books of account regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability

### Illustration

A sues B for Rs. 1,000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

**Scope**—Entries to be admissible as evidence by way of corroboration of other testimony must be made in the regular course of business Rat Un Cr C 344 Although this section makes an entry in a book of account relevant such a book is not by itself relevant to disprove an alleged transaction by the absence of any entry concerning it 10 C 1024 It must be kept in regular course of business in order to be admitted under this section 8 Ind Cas 81 A W N 1881 65, 2 O C 311, 63 P R 1897, 29 C 334, 45 P R 1899, 25 B 433 52 Ind Cas 704

**35** An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of duty specially enjoined by the law of the country in which such book, register or record is kept, as itself a relevant fact

**Scope**—This section only provides that “any entry in an official book which is duly made by a public servant in the execution of his duty is itself a relevant fact.” But it is no evidence for the purpose of proving the absence in them of any particular entry. 7 C L R 356. The entries must be in a book, register or record and they must be made by public servant in the discharge of their official duties. 5 Ind Cas 827. See also 59 P R 1901, 6 C L R 139, 15 M 19, 17 C 849, 23 C 366, 25 C 90, 8 B 543, 35 M 21, 9 C 431, 9 C 586, 2 S L R 82 U B R 1906, Ev 3, 15 M 378, 25 A 90, 14 O C 68, 9 Ind Cas 567, 33 M L J 60, 35 Ind Cas 551, 1 Bur L J 111, 3 Pat L R 60, 66 Ind Cas 923, 65 Ind Cas 866, 65 Ind Cas 182, 1922 P 87, 45 M 332, 36 C L J 389, 20 A L J 601, 25 O C 229, 68 I C 676, 28 C W N 679, 22 A L J 690, 76 Ind Cas 449, 3 Pat 85, 49 Ind Cas 984, 22 O C 250, 1919 Past 323, 12 Bur L T 88, 52 Ind Cas 851, 46 C 152, 22 O C 174, 53 Ind Cas 20, 29 C L J 607, 51 Ind Cas 876, 34 C L J 465, 34 C L J 465, 34 C L J 141, 25 C W N 857, 59 Ind Cas 8, 59 Ind Cas 298, 61 Ind Cas 177, 63 Ind Cas 226, 59 Ind Cas 963.

36 Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government as to matters usually represented or stated in such maps, charts or plans are themselves relevant facts

bet -- " which the boundary line  
En " cation 11 C W \ 220  
ma " 7 C. W \ 849. Kutzari,  
Ind Cas 326. tries quantum valet 64

**37** When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of any other legislative authority in British India constituted for the time being under the Indian Councils Act, 1861, the Indian Councils Acts 1861 and 1892 or the Indian Councils Acts, 1861 to 1909\* or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government or in any printed paper purporting to be the London Gazette, or the Government Gazette of any colony or possession of the Queen, is a relevant fact †

**38** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant

**Scope**—Unauthorized translation of the Code Napoleon is not a work to which reference can be made under this section 26 C 931—3 C W N 614 But Ceylon Insolvency Ordinance can be looked into 14 Ind Cas 560

#### HOW MUCH OF A STATEMENT IS TO BE PROVED

**39** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made

**Principle**—If a part of the conversation or transaction has been given in direct testimony, the remainder so far as it is relevant, may be called out by the cross examination, as the inquiry and answer in such case may tend to impeach, rebut, explain or qualify the testimony already given. A party will not be permitted to clean out certain facts from his witness which without explanation would give a false colouring to the matter about which he testifies, and then save his witness the sifting process of cross examination by which the real transaction could be shown (*Burr Jones Ev* § 822)

#### JUDGMENT OF COURTS OF JUSTICE WHEN RELEVANT.

**40** The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial

**Judgment**—Judgments are of two kinds—in *Rem* and in *Personam*. The former term seems never to have been clearly defined but it is commonly understood to apply to all judgments affecting the legal status of some subject matter, person or thing, e.g. Admiralty judgments in cases of forfeiture or prize, Divorce Court decrees, grant of Probate and Administration, and adjudications in Bank-

\* Substituted by Act 10 of 1914

† The last paragraph added by s 2 of the Indian Evidence Act, 1899 (5 of 1899) was repealed by the Schedule No II of Act 10 of 1914

Such judgments are conclusive against all persons, whether parties or strangers. Judgments in *personam* are all ordinary judgments between persons not so affecting status. Such judgments bind only parties and privies as to the fact in issue. But all judgments are conclusive against all persons of their legal effect as distinguished from the facts upon which they are based (*Cockle Cas* 41). All judgments whatever are conclusive proof as against all persons of the existence of that state of things which they actually effect when the existence of the state of things so effected is a fact in issue or is deemed to be relevant to the issue (*Stephen's Digest* § 40).

**Scope**—This section lays down that judgment, order or decree in a previous suit is a relevant fact, i. e., admissible in evidence if it operates as *res judicata* or prevents any Court from taking cognizance of a suit or holding a trial. According to the phraseology of English lawyers such judgments are admissible when they operate as estoppel by record. A person who was a party to legal proceedings in which judgment was given or who claims under a person who was a party thereto is estopped from denying the facts upon which such judgment was based, if such judgment be pleaded as estoppel. But a judgment "*in personam*" does not estop persons who were neither parties nor privies thereto. Nor are parties or their privies estopped from denying matters which merely came collaterally into question in such legal proceedings, or which were incidentally cognizable, or which might be inferred by argument from the judgment. *The Duchess of Kingston's Case*, (29 How St Trial, 355, *Cockle Cas* 40). A former judgment between the same parties on the same subject matter will operate as an estoppel and be conclusive only when it is so pleaded or there is no opportunity of so pleading it. Otherwise it is only a relevant fact from which the Court may draw a conclusion in favour of the person who tenders it in evidence (*Vooght v Winch* 2 B & Ald 662, *Cockle Cas* 44). This section was intended to include all judgments which by law operate to prevent a Court whether civil or criminal from taking cognizance of a suit or trying any particular issue and admits as evidence all judgment *inter partes* which would operate as *res judicata* in a second suit. 6 C 171.

**Cases**—A finding in a former suit where the question was tried between all the parties to the subsequent suit, is admissible as evidence. 27 W R 457. 'It is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision'. *Per Lord Macnaghten in Badier Bee v Hibin Merican Noordin* (1909) A C at p 623.

"The plea of *res judicata* applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the time. *Henderson v Henderson*, 3 Hare, 115.

**41** A final judgment, or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character, which it confers accrued at the time when judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment (order or decree) declares it to have accrued to that person,

that any legal character which it takes away from any such person ceased at the time from which such judgment, (order or decree) declared that it had ceased or should cease,

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, (order or decree) declares that or should be his property.

**Legislative changes**—The words within brackets have been inserted by Act 18 of 1872

**Scope**—These are judgments *in rem*. They are conclusive on every body, and as such admissible against every body. Such adjudication, being the solemn declaration of the properly accredited Court, which has the best right so to adjudicate concludes not merely the parties to the action and their privies, but all persons, from asserting the contrary (*Powell* Ex 66). Such judgements are conclusive "not merely as to the point actually decided, but as to a matter which it was necessary to decide, and which was actually decided as the groundwork of the decision itself, though not then directly the point at issue." *Per Coleridge, J in R v Horlinton* 4 L. and B at p 794. But it must clearly appear that a decision on such matter was actually necessary to the judgment. *Concha v Concha*, 11 App Cas 541. *Ballintyne v Mackinn* (1896) 2 Q B 455. Judgments *in rem* affecting the status of a person or thing e.g., a decision of a Prize Court, Probate, Divorce or Admiralty Court, or Ecclesiastical Court, bind all the world. A judgment in bankruptcy proceeding has the effect of a judgment *in rem* (*Ex parte Leasoyed In re Foulas*, 10 Ch D 2). Such judgments are binding not only on the parties to the proceedings but upon all the world and not only on the tribunals of the country where pronounced, but on the tribunals of other countries, but such a judgment must not have been obtained by fraud, must not carry a manifest error on its face and must not be contrary to natural justice (*Powell* Ex 451). A final judgement or order of a competent Court, in the exercise of probate jurisdiction as conferring the status of executor on the grantee of a probate is conclusive proof of the existence of such status and the fact that the will is genuine. It operates as a judgment *in rem* and its effect cannot be nullified except by a proceeding for revocation of probate. 31 C 357=8 C W N 197, see also 14 C 861, 16 M 380, 14 P R 1912, 22 A 270 (F B). The expression "legal character" when it has reference to a judgment of a Court of Probate, means the status of an Administrator or Executor and that only though, when it has reference to a Matrimonial Court it includes widowhood and widowhood and a judgment of a Court of Probate is conclusive proof that the person to whom letters or probate have been granted has been clothed with the powers and the responsibilities of the deceased and with nothing else and a question of status decided by a Court of Probate cannot be raised again. (U B R 1910, 4th Qr 61)

**42 Judgements orders or decrees other than those mentioned in section 41**  
 Relevancy and effect of judgments order or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry, but such judgements, orders or decrees are not conclusive proof of that which they state

#### Illustrations

A sues B for trespass on his land. B alleges the existence of a public right of way over the land which A denies.

The existence of a decree in favour of the defendant in a suit by A against C a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

**Scope**—Judgments are not deemed to be relevant as rendering probable facts which may be inferred from their existence, but which they neither state nor decide—

as between strangers,  
 as between parties and privies in suits where the issue is different even though they relate to the same occurrence or subject matter,  
 or in favour of strangers against parties and privies.

But a judgment is deemed to be relevant as between strangers

(1) if it is an admission, or

(2) if it relates to a matter of public or general interest so as to be a statement under s 13—*Stephen's Dig* § 44

Where an action

persons who  
 evidence A  
 is held under  
 is evidence of the  
 is in issue judgments  
 certificate cases rent  
 387

**43** Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act

Judgments, etc., other than those mentioned in sections 40 to 42 when relevant

### Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true and the circumstances are such that it is probably true in each case or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's life time. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

**Legislative changes**—Illustrations (e) and (f) were added by Act 3 of 1891.

**Scope**—"Having now disposed of judgments which render the matter *res judicata* between the parties, judgments which from their special character are conclusive all the world, and judgments which as relating to matters of a public nature, are relevant though not conclusive, between strangers to the suit, we come to the general rule of exclusion *viz*, that all other judgments are irrelevant. To this rule however, there is a highly important limitation. A judgment though inadmissible for proving the truth of what it asserts, may be valuable as evidence for some other purpose. Its very existence may be a fact in issue, and then, of course, evidence of it may be given, or it may be a fact relevant within some one of the classes of relevant facts given in the Act, and then again, evidence of it can be given." (*Cunningham Ev* 190) "The cases contemplated by s 43 are those where a judgment is used not as *res judicata* or as evidence more or less binding upon an opponent by reason of the adjudication which it contains. But the cases referred to in s 43 are such. I conceive, as the section itself illustrates *viz*, when the fact of any particular judgment having been given in a matter to be proved in the case

been convicted of  
"it was true,  
any other fact, in  
of the forgery  
in s 43" *Per*  
"it / in 12 A  
"nt, orde s and

decrees other than those mentioned in ss 40, 41 and 42 are of themselves irrelevant that is, in the sense that they can have any such effect or operation as is mentioned in those recited sections as *quod* judgments, orders and decrees, but I do not take this make them absolutely inadmissible, when they are the best evidence of something that may be proved *aliunde*.

**Cases**—Decrees in former suit are relevant under this section but not sufficient

P R 1875 A judgment between

1925 Pat 68 The judgment of a

Rang 143

44 Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion

Scope—In the case of the *Duchess of Kingston's Case*, 20 H S T 355, *Sir William De Grey, C J* observed 'Yet like all other acts of the highest judicial authority, it is impeachable from without, although it is not permitted to show that it is an extrin-

of justice Lord  
his section lays  
procedure 27 C  
is not binding  
12 M 228

The words 'not compete

So long as the terms of the

tion that it is invalid cannot be entertained 10 C W N 421, this section does not enumerate the grounds on which a decree can be attacked by a separate suit 9 A L J 1, see 26 A 272, 27 C 11, 21 B 205, 3 N L R 185, 8 Ind Cas 1179, 1 C L J 65, 5 C W N 559, 21 C W N 594, 1921 Pat 209

Judgments in rem—Having regard to the wide terms of this section it is possible to say that it is not open to a Court other than the Court from which a grant has been issued in cases of fraud or collusion to deal with the matter and decide whether the grant has been obtained by fraud or collusion. But the better course in such cases would be when it is open to the party alleging fraud to apply to the Court from which the grant issued to stay the suit to enable an application to be made to revoke the grant 25 C W N 207

#### OPINIONS OF THIRD PERSONS WHEN RELEVANT.

45 When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of hand

Opinion of experts writing [or finger impressions] \* the opinions upon that point of persons specially skilled in such foreign law, science or art, † [or in questions as to identity of handwriting] [or finger impressions] \* are relevant facts

Such persons are called experts

#### Illustrations

(a) The question is whether the death of A was caused by poison

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant

(b) The question is whether A at the time of doing a certain act was by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law

The opinions of experts upon the questions whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind, usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do is either wrong or contrary to law, are relevant

(c) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant

\* The word "or finger impressions" in both places where they occur in s 45 were added by the Indian Evidence Act, 1897 (5 of 1897). For discussion in Council as to whether "finger impressions" include thumb impressions see Gazette of India 1898 Pt VI p 24

† The words within brackets in s 45 were inserted by the Indian Evidence Act Amendment Act (18 of 1872)



**Scope**—An expert witness is one who has devoted time and study to a special branch of learning, and thus is specially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the tribunal to come to a satisfactory conclusion. An expert may be called to answer questions on any matters of science, art, medicine, architecture, handwriting, valuations or foreign law—indeed any matter on which special skill or learning is necessary in order that a reliable opinion may be formed. He need not be a paid professional expert who makes a living by giving such evidence, but he must have devoted sufficient time and study to the subject to render his evidence trustworthy. The Judge decides on the competency of an expert witness, the jury decides on the weight of his evidence (*Powell, Ev* 41). The evidence can be given in the following cases:—*inter alia*, causes of genuineness of works of art, value of articles, navigation of vessels, meaning of trade terms, of such opinion evidence the witness may prove facts upon which he bases his opinion although they were made or done in the absence of the party. (See *R v Heseltine* 12 Cox 404; *Cockle Cas Ev* 119. An expert can cite books of admitted authority. *Nelson v Bridport*, 8 Beav 527, *Sussex Peerage Case*, 11 Cl and F at p 114. The opinions of experts are not binding on the jury, for it is with the jury, and not with the experts, that the determination of the case rests; the weights due to their testimony is a matter to be determined by the jury and it will be proportionate to the soundness of the reason adduced in its support. 1 C W N 465, 32 C 759.

**Cases**—To base a conviction on the evidence of an expert in hand writing, as a general rule, is very unsafe. There may be cases in which the hand writing is of such a peculiar character that the conclusion as to the identity of the writer is irresistible. 1 A L J 184=9 Cr L J 498. 15 Ind Cas 979. Comparison of hand writing is permissible in criminal no less than in civil cases. 2 Weir 759. It is not right to assume that a Sub Registrar is an expert in the matter of thumb marks. 2 Weir 760. The evidence of an expert in hand writing is inadmissible if there is no comparison with proved or admitted hand writing in open Court in the presence of the party affected. 16 C W N 812=14 Ind Cas 753=39 C 606. The value of ordinary or non expert oral evidence mainly rests on the credibility of the witness—his inclination and capacity for telling the truth, the value of expert evidence rests on the skill of the witness—the extent of his competency for forming a reliable opinion. 3 N L R 1=5 Cr L J 220. A medical man, who had not seen the dead body, was asked to give his opinion as to the cause of death. He was asked to give his opinion together with the opinions of the post mortem. Evidence of the weight of the body where much evidence was given. 9 C 455, 13 O C 1, 4 L B R 125. But if he has not been cross examined the weight of his evidence is not diminished. 55 Ind Cas 273.

Facts bearing upon opinion of experts

46 Facts not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

### Illustration

(a) The question is whether A was poisoned by a certain poison. The fact that other persons who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea walls, began to be obstructed at about the same time, is relevant.

**Scope**—Facts not otherwise relevant, have in some cases been permitted to be proved as supporting or being inconsistent with the opinion of experts (*Step Dig art 50*) Facts although otherwise irrelevant may be given in evidence in corroboration illustration, or rebuttal of opinion So on cross examination he may be asked *inter alia*, whether he has not expressed opinions inconsistent with his present testimony and if he deny the fact it may be independently proved (*Phipson, Ev 347*)

**47** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact

**Explanation**—A person is said to be acquainted with the handwriting of another person when he has seen that person write or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him

#### Illustration

The question is, whether a given letter is in the hand-writing of A, a merchant in London

B is a merchant in letters purporting to be and file B's correspondence letters purporting to be

The opinions of B, C and D on the question whether the letter is in the hand-writing of A are relevant, though neither B, C nor D ever saw A write

**Scope**—Hand writing may be proved not only by the person who saw the particular document signed, but also by any person acquainted in any manner with the hand writing of the person said to have signed the document in question e.g. having received documents purporting in the ordinary course of business observe his hand writing *Doe v Suckermore* only evidence of hand writing which is evidence of a witness who proves that he himself wrote or signed the document in question or that of a witness who proves that he saw the document signed or written All other evidence of hand writing must rest in greater or less degree upon inferences drawn from the appearance of the writing in question or other circumstances (*Wills Cir Ev 184*)

**Cases**—A witness need not state in the first instance how he knew the hand writing, since it is the duty of the opposite party to explore on cross examination the sources of his knowledge if he be dissatisfied with the testimony as it stands It is permissible and may often be expedient that the matters referred to in the explanation should be elicited on the examination in chief Yet it is within the power of the presiding Judge and often may be expedient to permit the opposite advocate to intervene and cross examine so that the Court may be in a position to come to a definite conclusion on adequate materials as to the proof of the hand writing 5 Bom L R 663=28 B 58 The ordinary methods of proving hand writing are (i) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the hand writing by virtue of his admission of hand writing (ii) by the comparison of the handwriting with very great care or carefully studied the art of caligraphy is not as a rule of every great utility 64 Ind Cas 234

48 When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant

*Explanation*—The expression 'general custom or right' includes customs or rights common to any considerable class of persons

#### *Illustration*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section

*Scope*—By s 98, evidence may be given with reference to a document, to show the meaning of technical, local and provincial expressions, abbreviations and words used in a peculiar sense. For this purpose the opinions of persons having special means of knowledge on the subject would be the best evidence (*Cun Ev 202*). Section 32 clause (4) makes the statement of dead persons, as regards the existence of public right or custom or matters of public or general interest, relevant. These are all exceptions to the rule of rejection of opinion evidence. So the statements made by persons who are in a position to know of the existence of a custom or usage in their locality are admissible under this section. 26 C 184. A general custom or general right may be proved by evidence, under this section—by the opinions of person who would be likely to know of its existence, if it existed, such opinions are relevant but such opinions must be given by witnesses who gave evidence. 1 L B R 80. It is admissible evidence for a witness to give his opinion on the existence of a family custom. 23 A 37 (P C). See 10 C W N 730 P C 5 C 744 P C 23 C 427 12 C W N 74 P C

Opinions as to usages tenets etc, when relevant 49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,  
the constitution and government of any religious or charitable foundation or  
the meaning of words or terms used in particular districts or by particular classes of people,  
the opinions of persons having special means of knowledge thereon are relevant facts

*Cases*—Where witness, members of a family have special means of knowledge as to the usages of the family, their evidence will be relevant under this section, so far as the existence of such usage is concerned. It is admissible evidence for a witness to give his opinion on the existence of a family custom, and to state as the grounds of that opinion information derived from deceased persons. But it must be the expression of independent opinion based on hearsay and not mere repetition of hearsay. 10 M L J 267 P C = 23 A 37. As regards proof of paternity of illegitimate child vide 27 M 32

50 When the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct, as to the existence of such relationship, of any person who as a member of the family or otherwise has special means of knowledge on the subject, is a relevant fact

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code

#### *Illustrations*

(a) The question is whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

**Scope**—The scope of this section, leaving the exception out of consideration seems to be that the person himself is not to be called to state his own opinion but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to afford an exceptional way of proving a relationship but by no means to prevent any person from stating a fact of which he or she has special means of knowledge. A husband or wife is not therefore precluded from proving his or her marriage. 9 M 9=1 W 172. Under the proviso to this section in proceedings of the kind therein specified, opinion relevant under this section is not by itself sufficient to prove marriage which must, in consequence, be proved in some other way. 5 P R 189; Cr., see also 5 A 233=A W N 1883. Where marriage is an ingredient in any offence, e.g. adultery, bigamy and the like there must be according to this section strict proof, in the regular way of the fact of the marriage. 5 C 565 (F B). A person claiming as an illegitimate son must establish his alleged paternity like any other disputed question of relationship, and can, of course, rely upon statements of deceased persons under s 32, cl (5), upon opinion expressed by conduct under s 50 27 M 32.

Grounds of opinion when relevant

51 Whenever the opinion of any living person is relevant the grounds on which such opinion is based are also relevant

### Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

**Object**—An important test of the value of the expert's evidence is thus provided. The Court is not left to the bare statement of an opinion but can inquire into the grounds on which it is based, and thus ascertain whether there are any grounds or whether they are reasonably adequate. This section is to a great extent a repetition of sect on 46 (*Cun Ev* 204). See also 10 Bom L R 97, 26 B 1 (P C).

### CHARACTER, WHEN RELEVANT

52 In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases, character to prove conduct imputed irrelevant

**Principle**—The general character is not in issue. The business of the Court is to try the case, and not the man, and a very bad man may have a very righteous cause" (*Thompson v Church* 1 Rost 312, *Wig Cas* 29).

**Criticism**—The accepted general rule is that evidence of the general character of parties to civil actions where character is not a part of the issue, convenience for the purpose however, it would seem as much as the general rule one of convenience, it ought not to require that the inconvenience of the issues should be disregarded and he be permitted to give evidence of his character. The words that such

evidence ought

to be given

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serious consequences than the payment, perhaps, of a fine of five dollars, is accorded

the absolute right to give such evidence—*Per Sturt C J* in *Heu v Holdridge* (1900) 81 N W 522 See also 6 W R Cr 67, 7 W R Cr 7, 59 Ind Cas 560, 1 C W N 145, 26 Ind Cas 545, 13 Ind Cas 102, 16 C W N 69

**Scope**—The character of the parties to civil action is generally irrelevant and inadmissible *Attorney General v Bowman*, 2 B and P 537

In criminal cases previous good character relevant

**53** In criminal proceedings the fact that the person accused is of a good character is relevant

**Principle**—The accused in a criminal case can always give evidence of his good character *R v Rowton* 34 L J M C 57 A man's character is often of the utmost importance in explaining his conduct and judging of his innocence or criminality. Many acts, which standing alone would be suspicious, are freed from all suspicion when we come to know the circumstances and character of the person by whom they are done (*Cunningham Et* 205). No importance can be attached to evidence of good character when the case against the accused is clear

**Evidence of character**—Evidence of character is admissible for the prisoner if it is such that he is not likely to be convicted. He can only support that part of the evidence not by evidence of his own character. The form of the question is "From your knowledge of the prisoner does he bear a good character for honesty, humanity etc. as the case may be" (*Ruscoe Et* 25)

**54** In criminal proceedings the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character in which case it becomes relevant

**Explanation 1**—This section does not apply to cases in which the bad character of any person is itself a fact in issue

**Explanation 2**—A previous conviction is relevant as evidence of bad character.

**Legislative changes**—This section has been substituted by Act 3 of 1891

**Scope**—It is generally stated that evidence of a prisoner's good character is admissible in answer to the question whether he is a person of good character. It seems that his bad character, if it is relevant to the particular nature of the charge, to prove for instance that a party has borne a good character for humanity and kindness can have no bearing in the mode of inquiry as to the general character of the accused. Evidence of bad character is admissible in criminal cases. *W R Cr 37, 7 W R Cr 7, 8 W R Cr 4, 15 P R 1888 Cr, 5 Bom*

L. R 1034

**Explanation 1**—In all actions or proceedings in which a plaintiff's character, is actually in issue as in actions for defamation evidence of the plaintiff's character may be given *Scott v Sampson*, L R 8 Q B D 91. In prosecution for rape, or assault to commit rape or indecent assault evidence of the bad character of the prosecutrix may be given in defence, her character, under the circumstances, being considered to some extent in issue (*R v Clarke 2 Sturkle 241, Cockle's Cas 112*). In a bad livelihood case, the character of the accused is a fact in issue and as such evidence of his bad character is admissible in evidence. See 11 C W N 789 Upon the conviction of an accused, the Court has to determine what punishment to award and to do this should take into consideration not only the nature and gravity of the offence committed but also the character of the accused. The bad character of the accused then becomes a fact in issue. Evidence of bad character being admissible as affecting the sentence, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition is shown. Evidence as to previous convictions



with him, for, by bringing the action the husband put her general behaviour in issue. So, in seduction, the defendant may show the previous bad character of the person seduced. But even in such cases it has been held that the plaintiff cannot give evidence of the good character of the wife or daughter, until evidence has been offered on the other side to impeach it. *Barnfield v Massey* 1 Camp 460, and if such evidence be not general but go only to a specific instance it has been ruled that the plaintiff cannot, in reply, give evidence of a good character. *Camp 519*. So, in an action for slander imputing a crime, the plaintiff cannot adduce evidence, in the first instance, of good character. *2 Stark. 93*; *Cornwall v Richardson*, Ry and M 305, *Col Rossed Ev 87*.

disposition. The judgment of the particular witness is superior in quality and value to mere rumour. Numerous cases may be put in which a man may have no general character—in the sense of any reputation or rumour about him at all, and yet may have a good disposition. For instance, he may be of a shy, retiring disposition, and known, only to a few, or again, he may be a person of the vilest character and disposition, and only his intimates may be able to testify that this is the case. One man may deserve that character [reputation] without having acquired it, while another man may have acquired without deserving it. In such cases the value of the judgment of a man's intimates upon his character becomes manifest. In ordinary life when we want to know the character of a servant, we apply to his master. A servant may be known to none but members of his master's family, so the character of a child is only known to its parents and teachers, and the character of a man of business to those with whom he deals. According to the experience of mankind one would ordinarily rely rather on the

that only general reputation and general disposition are admissible

## PART II.

### On Proof

#### CHAPTER III.

##### FACTS WHICH NEED NOT BE PROVED

58 No fact of which the Court will take judicial notice need be proved

Principle.—There are certain matters which are considered too notorious to require proof, such matters are therefore "judicially noticed" that is to say, the Judge takes notice of their existence without the necessity of adducing evidence thereof. English law is dealt with in this respect, rather, in the "breast" of the Judge (*Cockle's* known need not be proved, *manifest* (or

our own books, and it is principle also very old, and *notum sit judi, si notum* imitate the whole doctrine. When a case is presented at the bar for trial, the Court and Jury are presumed to be uninformed concerning the facts involved in it. It is incumbent upon the litigant parties to esta-

is an exception to this rule. Evidence of departmental punishment is inadmissible for the purpose. L B R (1893 1900), 352

**Explanation 2**—It has been held that if prisoner's counsel elicited on cross examination from the witnesses for the prosecution that the prisoner has borne a good character, a previous conviction might be put in evidence against him, in like manner as if witness to his character had been called. *Per Parke B*, in *R v Gadbury*, 8 C & P 676. See also *R v Srimton* 2 Den C C R 319=21 L J M C 37. Where a man is being tried upon four corners of the law, proof of a previous conviction proving guilty knowledge, or whatever it might be, and no evidence allowed to show that he is a man. But if the accused at his trial choose to put in issue the question of general character, it is then competent to rebut such evidence by giving evidence of general evil reputation. 14 A 25. This section has no bearing whatever upon the question of the relevancy of a previous conviction after an accused has been convicted of the offence with which he has been charged, and for the purpose of enhancing the sentence to be passed upon him. It refers solely to the relevancy of a previous conviction as evidence to prove that the accused is guilty, and should be convicted of the particular offence with which he is charged. L B R (1872 1892) 449

The Evidence Act gives the Court a discretion to admit previous conviction in all cases in which there is such utility on the previous conviction of the prisoner. The facts to be proved stated in ss 6 to 16. 2 Weir 760. See also 14 C 721. But in other cases the proof of previous convictions as evidence giving rise to an inference regarding the character of the prisoner is not admissible. 5 C 768=6 C L R 219, L B R (1893 1900), 93, 2 Pat L J 706

not contemplated by s 75 Penal Code, may be given, provided the previous conviction is 34=26 Ind Cas 996

**Cases**—The fact that the accused had a bad character is not irrelevant under this section when the evidence relating to it is not given for the purpose of showing that the accused was a bad character and was therefore likely to commit offences of the kind of which he has been convicted. 2 Lab L J 653

**Character as affecting damages** 55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant

**Explanation**—In sections 52, 53, 54, and 55, the word "character" includes both reputations and disposition, but [except as provided in section 54] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown

**Legislative changes**—The words within brackets have been substituted by Act 3 of 1891

**Scope**—In all actions or proceedings in which a plaintiff's character is actually in issue as in actions for defamation evidence of the plaintiff's character may be given (*Scott v Simpson*, L R 8 Q B D 491). In a few cases where the amount of damages depends upon character as in seduction and breach of promise of marriage evidence may be given of the character of the woman seduced or the female plaintiff, but upon the question of damages only. *Very v Watkins* 7 C and P 308. In general in actions unconnected with character, evidence as to the character of either of the parties to a suit is inadmissible, being foreign to the point in issue, and only calculated to create prejudice. For the same reason, where particular acts of misconduct are imputed to a party, evidence of general character is excluded, but it is otherwise where general character is put in issue, (*Doed Faar v Hicks*, per Buller J) for evidence of bad character is admitted in some actions with a view to the amount of damages. Thus, in actions of criminal conspiracy, the defendant could adduce evidence of the wife's bad character for chastity, and even of particular acts of adultery committed by her before her intercourse



with him; for, by bringing the action the husband put her general behaviour in issue. So, in seduction, the defendant may show the previous bad character of the person seduced. But even in such cases it has been held that the plaintiff cannot give evidence of the good character of the wife or daughter, until evidence has been offered on the other side to impeach it *Bamfield v Massey* 1 Camp 460, and if such evidence be not general but go only to a specific instance, it has been ruled that the plaintiff cannot in reply, give must be restricted to disproof of the specific inst  
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and that his reputation is merely accessory, and admissible only as evidence of disposition. The judgment of the particular witness is superior in quality and value to mere rumour. Numerous cases may be put in which a man may have no general character—in the sense of any reputation or rumour about him at all, and yet may have a good disposition. For instance, he may be of a shy, retiring disposition, and known, only to a few, or again, he may be a person of the vilest character and disposition, and only his intimates may be able to testify that this is the case. One man may deserve that character [reputation] without having acquired it, while another man may have acquired without deserving it. In such cases the value of the judgment of a man's intimates upon his character becomes manifest. In ordinary life when we want to know the character of a servant, we apply to his master. A servant may be known to none but members of his master's family, so the character of a child is only known to his parents and teachers, and the character of a man of business to those with whom he deals. According to the experience of mankind, one would ordinarily rely rather on the

## PART II.

### On Proof

#### CHAPTER III.

##### FACTS WHICH NEED NOT BE PROVED

Fact judicially noticeable      56      No fact of which the Court will take  
need not be proved      judicial notice need be proved

**Principle**—There are certain matters which are considered too notorious to require proof, such matters are therefore "judicially noticed" that is to say, the Judge takes notice of their existence without the necessity of evidence thereof. English law is dealt with in  
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with legal procedure itself. We find it as a maxim in our own books, and it is applied in every part of our law. It is qualified by another principle, also very old, and often over topping the former importance—*non refert quid notum sit iudici, si notum non sit in forma iudicis*. These two maxims seem to intimate the whole doctrine of judicial notice. *Thayer Pre Trial*, on Ev 277. When a case is presented at the bar for trial, the Court and Jury are presumed to be uninformed concerning the facts involved in the case, and it is incumbent upon the litigant parties to estab

blish by evidence facts relied upon by them respectively. There is however a large class of facts which need not be proved since they are "judicially noticed" by the Court and Jury. That is to say there are a great many things of such common knowledge that the Courts ought to be presumed to know them—such as the Declaration of Independence, the earthquake and the great fire of San Francisco in 1906, and other matters of past history, the existence and procedure of their own Court, the public laws, the calendar, the public mortality tables, treaties entered into by their own government, and many other matters of such general notoriety that every well informed man or woman within the limits of the Court's jurisdiction must or should know. If it so happened that the proof of any such facts formed part of a litigant's case, he is excused from proving them as it is said the Court will take judicial cognizance of their existence, or in other words they will be taken as proved. And the importance of the subject of judicial notice can hardly be over estimated, for there is no case in which there are not some matters which will fall within the judicial cognizance of the tribunal before which it is tried, since the very law itself which is administered by the forum is a subject of judicial notice (*Burr Jones Ev* § 105)

Facts of which Court must take judicial notice      57 The Court shall take judicial notice of the following facts:—

- (1) all laws or rules having the force of law now or heretofore, in force, or hereafter to be in force, in any part of British India
- (2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed
- (3) Articles of War for Her Majesty's Army, Navy or Airforce \*
- (4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and regulations established under the Indian Councils Act, † or any other law for the time being relating thereto

**Explanation**—The word "Parliament" in clauses (2) and (4) includes—

- (1) the Parliament of the United Kingdom of Great Britain and Ireland,
- (2) the Parliament of Great Britain
- (3) the Parliament of England,
- (4) the Parliament of Scotland and
- (5) the Parliament of Ireland,
- (5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland,
- (6) all seals of which English Courts take judicial notice the seals of all the Courts of British India and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council, the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India
- (7) the accession to office names titles functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government
- (8) the existence, title and national flag of every State or Sovereign recognized by the British Crown
- (9) the divisions of time the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette

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hostilities between

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates, attorneys proctors, vakils, pleaders and other persons authorized by law to appear or act before it

(13) the rule of the road \* [on land or at sea]

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it do so

Scope.—It will be readily seen that the subjects of judicial notice are so numerous and varied that it is next to impossible to classify them or to say further than that they embrace subjects 'judicial legislative political historical geographical, commercial, scientific and artistic in addition to a wide range of matters arising in the ordinary course of nature, or the general current of human affairs, which rest entirely upon acknowledged notoriety for their claims to judicial recognition' (*Burr Jones* § 105) The matters enumerated in this section are by no means exhaustive. In this section certain matters are mentioned of which judicial notice should be taken. But the Court can take judicial notice of facts not mentioned in this section (See also *Stephen's Dig. Art.* 58)

Clause (1)—The English Courts take judicial notice of the Laws of England and Ireland nor that of the Channel Islands nor of Scotland except in the House of Lords nor that of the colonies and India except in the Privy Council and naturally nor that of foreign countries (*Cockle's Cas* 16) The law has no need includes both public and private Acts of Parliament general customs and some local customs of well known extensive application such as Gavelkind and Borough English customs, but generally local or particular customs must be proved (*Ibid* 16) A judge may refer to authorities to refresh his memory. So far as Indian law is concerned the English rule should serve as a guide

Clause (2)—As has been mentioned in clause (1) the English Court takes judicial notice of all Public Acts passed by the Parliament and since 1850 Private Acts also. It was customary before 1850 to insert a clause in Private Acts of Parliament declaring that the same should be deemed public and be judicially noticed. The effect of this clause was to dispense with the necessity not only of pleading the Act specially but of producing an examined copy or a copy printed by the Printer of the Crown, a public Act requiring neither to be specially pleaded nor proved. By 13 and 14 Vict c 12, it was enacted "That every Act made after the commencement of this Act shall be deemed and taken to be public Act, and shall be judicially taken notice of as such unless the contrary be expressly provided and declared by such Act. This provision is now repealed by the Interpretation Act, 1889 52 and 53 Vict c 63, which provides, by s 8, that every Act passed after 1850 "shall be a Public Act and shall be judicially noticed, as such unless the contrary is expressly provided by the Act." So now every personal Act or local Act should be taken notice of by the Indian Courts

Clause (3)—Vide the Indian Army Act (VIII of 1911)

Clause (4)—The English Courts will judicially notice the Law of England

Clause (5)—The English Courts take judicial notice of the great privy seal of Great Britain, of royal proclamations, of the signature of the King (*Leinstern*, 4 R P C 470), seal of the Esq 51, seal of the Apothecaries Company of the Board of Trade seals of district registers and signatures of Commissioners for Oaths

\* These words in section 57 printed in italics in the Indian Evidence Act Amendment Act (18) 1855 (13) were inserted by the Indian Evidence

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Facts of which Court must  
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(1) all laws or rules having the force of law now or heretofore, in force,  
 or hereafter to be in force in any part of British India

(2) all public Acts passed or hereafter to be passed by Parliament, and all  
 local and personal Acts directed by Parliament to be judicially noticed

(3) Articles of War for Her Majesty's Army, Navy or Airforce \*

(4) the course of proceeding of Parliament and of the Councils for the  
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 of the United Kingdom of Great Britain and Ireland,

(6) all seals of which English Courts take Judicial notice the seals of  
 all the Courts of British India and of all Courts out of British India, estab  
 lished by the authority of the Governor General or any Local Government  
 in Council the seals of Courts of Admiralty and Maritime Jurisdiction and  
 of Notaries Public, and all seals which any person is authorized to use by any  
 Act of Parliament or other Act or Regulation having the force of law in  
 British India

(7) the accession to office names titles functions and signatures of the  
 persons filling for the time being any public office in any part of British India,  
 if the fact of their appointment to such office is notified in the Gazette of  
 India or in the official Gazette of any Local Government

(8) the existence, title and national flag of every State or Sovereign re-  
 cognized by the British Crown

(9) the divisions of time the geographical divisions of the world, and pub  
 lic festivals, fasts and holidays notified in the official Gazette

(10) the territories under the dominion of the British Crown

(11) the commencement continuance and termination of hostilities between  
 the British Crown and any other State or body of persons

\* Inserted by X of 1917

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it

(13) the rule of the road \* [on land or at sea]

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and untill such person produces any such book or document as it may consider necessary to enable it do so

Scope—It will be readily seen that the subjects of judicial notice are so numerous and varied that it is next to impossible to classify them or to say further than that they embrace subjects, "judicial, legislative political historical geographical, commercial, scientific and artistic in addition to a wide range of matters arising in the ordinary course of nature or the general current of human affairs, which rest entirely upon acknowledged notoriety for their claims to judicial recognition" (*Burr Jones* § 105) The matters enumerated in this section are by no means exhaustive In this section certain matters are mentioned of which judicial notice should be taken But the Court can take judicial notice of facts not mentioned in this section (See also *Stephen's Dig* Art. 58)

Clause (1)—The English Courts take judicial notice of the Laws of England and Ireland nor that of the Channel Islands nor Scotland except in the House of Lords nor that of the colonies and India except in the Privy Council and naturally, the law thus noticed includes both the general law and some local customs of the Colonies and Borough English customs must be proved (*Ibid* 16) A judge So far as Indian law is concerned, the

Clause (2)—As has been mentioned in clause (1) the English Court takes judicial notice of all Public Acts passed by the Parliament and since 1850 Private Acts also It was customary, before 1850 to insert a clause in Private Acts of Parliament declaring that the same should be deemed public and be judicially noticed The effect of this clause was to dispense with the necessity not only of producing an examined copy or a copy printed by authority but also of requiring neither to be specially pleaded nor proved as enacted "That every Act made after the 1st January 1850 and taken to be public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act" This provision is now repealed by the Interpretation Act, 1889, 52 and 53 Vict c 63, which provides, by s 8, that every Act passed after 1850 "shall be a Public Act and shall be judicially noticed, as such, unless the contrary is expressly provided by the Act" So now every personal Act or local Act should be taken notice of by the Indian Courts

Clause (3)—Vide the Indian Army Act (VIII of 1911)

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Clause (5)—The English Courts take judicial notice of the great privy seal of the Clerk of the Parliaments (*Birds v Levinstein*, 4 R. P. C 470), seal of the Corporation of London (*Doe v Mason*, 53), seal of the Apothecaries Company (14 and 15 Vict c 99 s 81), the seal of the Board of Trade, seals of directors of companies (Judicature Act, 1873, S 61), seals and signatures of Commissioners for

\* These words in section 57, para (13), were inserted by the Indian Act Amendment Act (18 of 1872), s 5



## CHAPTER IV

### OF ORAL EVIDENCE

**59** All facts, except the contents of documents, may be proved by oral evidence

Proof of facts by oral evidence

**Scope**—All facts except the contents of a document may be proved by oral evidence. The sworn testimony of a witness should not be ignored and disbelieved unless discredited or broken down by contrary proof or by matter elicited in cross examination which may tend to show that the persons giving such evidence have deliberately perjured themselves, or have made a false and concocted statement or unless the evidence is upon the face of it so absurd or improbable that no person ought to believe it. A W N 1887 189, 26 A 108 (P C)—31 I A 38. It is not correct to hold that, for the determination of the merits of a case, oral testimony unsupported by documentary evidence is of no value. 18 W R 328. The evidence of one witness if reliable is not insufficient to prove a fact. 11 W R 94.

Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for evidence otherwise trustworthy cannot be put aside, although its value may be *pro tanto* impaired, solely because of their concurrence. U B R (1897—1901) Vol I 162.

**60** Oral evidence must in all cases whatever, be direct, that is to say—

Oral evidence must be direct

If it refers to a fact which could be seen it must be the evidence of a witness who says he saw it,

if it refers to a fact which could be heard it must be the evidence of a witness who says he heard it,

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner,

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

Provided that the opinions expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also, that, if oral evidence refers to the existence or condition of any material thing other than a document the Court may if it thinks fit, require the production of such material thing for its inspection.

**Direct**—The term is used in two senses, as evidence of fact actually in issue as opposed to circumstantial evidence and evidence of a fact actually perceived by a witness with one of his senses or of an opinion actually held by himself (as distinguished from hearsay evidence) (*Cockle's Case* 3).

**Scope**—Direct evidence, as opposed to hearsay evidence is generally required. The evidence must be given by witness who perceived directly by one of his senses the fact to which he deposes. Hearsay evidence, that is the evidence of a witness as to a fact which he did not himself perceive, but which he proves was stated by any other person, is not admissible except in a few special cases (*Stilkart v Dryden* 5 L J Ev 218, *Cockle's Case* 149), see also 12 B L R App 18, 194 Rang 363, 1924 Lah 733.

**Principle**—The grounds commonly assigned for the rejection of hearsay evidence are—(1) the irresponsibility of the original declarant, (2) the depreciation of truth in the process of repetition, (3) the opportunities for fraud its admission would open to which may be added the tendency of such evidence to protract

legal inquiries, and to encourage the substitution of weaker or stronger proofs *Phipson L.J.* 189, In the *Berkeley Peerage Case* 4 Camp 415 *Sir James Mansfield C.J.* observed "By the general rule of law, nothing that is said by any person can be used as evidence between contending parties unless it is delivered upon oath in the presence of those parties. If material witness happen to die before the trial, the person whose cause they would have established may fail in the suit, but although all the bishops on the bench should be ready to swear to what they heard those witness to declare, and add their implicit belief of the truth of the declarations, the evidence would not be received."

It was not intended by this section to exclude the circumstantial evidence of things which can be seen, heard or felt 12 B L R App 18

Where information was given to the Police that the first three accused were collecting in the house of the fourth accused with intent to commit dacoity and the officers as to the intention was not wrong in allowing the officers to name the person who told them that they would find the first three accused in the house of the fourth 2 Weir 702

Cases—2 C W N 75 38 M 466 4 Ind Cas 579

## CHAPTER V.

### OF DOCUMENTARY EVIDENCE

61 The contents of documents may be proved either by primary or by secondary evidence

**Scope**—There are two methods of proving a document either by primary or by secondary evidence. When primary evidence is available secondary evidence is not admissible. Where a copy of a document is admitted in the Court below without any objection, objection to the admissibility of the same should not be allowed in the appellate Court 31 C 155

Primary evidence  
of the Court

62 Primary evidence means the document itself produced for the inspection of

**Explanation 1**—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart its primary evidence as against the parties executing it

Number of documents are all made by one printing lithography, or photography, each contents of the rest, but, where they are all copies of a common original, they are not primary evidence of the contents of the original

### Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other but no one of them is primary evidence of the contents of the original

Where a deed has been executed in duplicate, the document under this section U B R originals or copies executed by all parties certain parties only, are primary evidence against such parties only (*Cockle Cas* 308)

Secondary evidence

63 Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained



- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies,
- (3) copies made from or compared with the original,
- (4) counterparts or documents as against the parties who did not execute them,
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

### *Illustrations*

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the letter, if it is shown that the copy made by the copying machine was made from the original

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original

**Scope**—This section is exhaustive of the kinds of secondary evidence admissible under the Act 43 M L J 37, see also 10 Ind Cas 852

**Clause (1)**—Certified copies mean copies signed and certified as correct by official having custody of originals. They are allowed as evidence by various statutes (*Cockle Cas 323*)

**Clause (2)**—Vide illustrations (b) and (c)

**Clause (3)**—This clause includes copies proved by oral evidence to have been examined with and to correspond with the originals. The witness may either have examined the copy which another person not called as a witness read from the original. All public documents may be proved in the manner, but certified or office copies are generally used when available (*Cockle Cas 323*). See also 194 Nag 375, 20 L W 719

**Clause (4)**—‘Counterparts’ or copies executed by certain parties only, are primary evidence against such parties only (*Cockle Cas 308*)

**Clause (5)**—66 Ind Cas 557, 36 Ind Cas 696. Seen includes also “read over” 73 Ind Cas 654, See also 71 Ind Cas 654, 80 Ind Cas 939=(1924) All 792

**Illustration (c)**—A copy of a copy is inadmissible in evidence 54 Ind Cas 941=1 P L T 47, 7 A 738

**Cases**—No secondary evidence can be given of a document, which is not proved to have been written by the accused or to have ever existed 8 A L J 302=12 Cr L J 259=10 Ind Cas 852. It is not open to the appellate Court to consider whether the provisions as to secondary evidence have been complied with 3 Pat L T 397. A statement made by a party or his authorized agent in a previous suit in which he refers to a document which is against his interest, is secondary evidence of that document 53 Ind Cas 667. See also, 25 M L T 19. A translation of a *Purwana* or grant is not secondary evidence of that grant and so it is not admissible in evidence 35 Ind Cas 201=4 L W 331

**Proof of documents by primary evidence**

**64 Documents must be proved by primary evidence except in the cases hereinafter mentioned**

**Scope**—Secondary evidence is not admissible where loss of primary evidence is not proved. As regards documents the best evidence in the possession or power of the party tendering it must be given. Generally, the best evidence of a document is the original document, which is ‘primary evidence’ of its contents. Such original must be produced unless its absence is accounted for *Macdonnell v Evans* 21 L J C P 141. The original document must be produced

legal inquiries, and to encourage the substitution of weaker or stronger proofs *Phipson Ev* 189, In the *Berkeley Peerage Case* 4 Camp 415 *Sir James Mansfield C J* observed "By the general rule of law, nothing that is said by any person can be used as evidence between contending parties unless it is delivered upon oath in the presence of those parties. If material witness happen to die before the trial, the person whose cause they would have established may fail in the suit, but although all the bishops on the bench should be ready to swear to what they heard those witness to declare, and add their implicit belief of the truth of the declarations the evidence would not be received."

It was not intended by this section to exclude the circumstantial evidence of things which can be seen, heard or felt 12 B L R App 18

Where information was given to the Police that the first three accused were collecting in the house of the fourth accused with intent to commit dacoity and the person who gave the information was not produced before the Court held the judge had wrongly admitted the hearsay evidence of the Police officers as to the intention of the accused to commit dacoity, although the Judge was not wrong in allowing the officers to name the person who told them that they would find the first three accused in the house of the fourth 2 Weir 702

Cases—22 C W N 75 38 M 466 4 Ind Cas 579

## CHAPTER V OF DOCUMENTARY EVIDENCE

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Proof of contents of documents  
Scope—The secondary evidence admissible where any objection appellate Court 31 C 155

Primary evidence of the Court

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Where a number of documents are all made by one person by printing lithography, or photography, each is primary evidence of the contents of the rest, but, where they are all copies of a common original, they are not primary evidence of the contents of the original

### Illustration

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(a) A photograph of an original is secondary evidence of its contents though the two have not been compared, if it is proved that the thing photographed was the original

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**Scope**—This section is exhaustive of the kinds of secondary evidence admissible under the Act 43 M L J 37, see also 10 Ind Cas 852

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**Scope**—Secondary evidence is not admissible where loss of primary evidence is not proved. As regards documents the best evidence in the possession or power of the party tendering it must be given. Generally, the best evidence of a document is the original document, which is "primary evidence" of its contents. Such original must be produced unless its absence is accounted for (*Macdonnell v Evans* 21 L J C P 141. The original document must be produced

whenever there is a question as to its contents or terms, unless for special reasons secondary evidence is allowed *R v Elworthy*, L R 1 C C R 103=37 L J M C 3, *R v Hunt* 3 B and Ald 566. But when the loss of the original has not been proved and in spite of that the Court of first instance admitted a copy of the sale certificate, without any objection from the other party, no objection can be taken in the appellate Court 3 L B R 40

Cases in which secondary evidence relating to documents may be given

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases —

- (a) when the original is shown or appears to be in the possession or power—  
of the person against whom the document is sought to be proved,  
or  
of any person out of reach of, or not subject to, the process of the Court, or  
of any person legally bound to produce it,  
and when, after the notice mentioned in section 66,  
such person does not produce it,
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest,
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time,
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74,
- (f) when the original is document of which a certified copy is permitted by this act, or by any other law in force in British India, to be given in evidence,
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection

In cases (a), (c) and (d) any secondary evidence of the contents of the document is admissible

In case (b) the written admission is admissible

In case (e) or (f) a certified copy of the document, but no other kind of secondary evidence, is admissible

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents

Clause (a)—Secondary evidence of a document is admissible when the original is in possession of an adverse or opposite party who refuses to produce it after a proper notice to produce. The object of a notice to produce is merely to give the other party sufficient opportunity to produce the document if he pleases and not that he may have time to consider the terms of the document, and to prepare evidence

Therefore where the document is in Court and the party who is to produce it immediately is sufficient to render it admissible if it be not produced 21 L J Ex

913 1014 1015 314 Secondary evidence of a document is also admissible when the original is in the hands of a stranger or third person who is on the ground of privilege not compellable by law to produce it, and who refuses to do so, either when summoned as a witness with a *subpoena duces tecum* or when sworn as a witness without a *subpoena* if he admits that he has the document in Court *Mills v Odly*, 6 C and P 728; *Cockle Cas* 316 But where he can be compelled to

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whenever there is a question as to its contents or terms, unless for special reasons secondary evidence is allowed. *A v J. North*, L. R. 1 C. C. R. 103=37 L. J. M. C. 3, *A v Hunt* 3 B. and Ald. 366. But when the loss of the original has not been of first instance admitted a copy of the sale the other party, no objection can be taken.

Cases in which secondary evidence relating to documents may be given. 65 Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

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  - of any person out of reach of, or not subject to, the process of the Court, or
  - of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it,
- (b) when the existence of the original has been proved to whom it is proved or
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time,
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74,
- (f) when the original is a document of which a certified copy is permitted by this act, or by any other law in force in British India, to be given in evidence,
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (i) (c) and (d) any secondary evidence of the contents of the document is admissible.

In case (b) the written admission is admissible.

In case (e) or (f) a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Clause (a)—Secondary evidence of a document is admissible when the original is in possession of an adverse or opposite party who refuses to produce it after a proper notice to produce. The object of a notice to produce is merely to give the other party sufficient opportunity to produce the document if he pleases and not for argument at the time of secondary evidence.

95, *Cockle Cas* 314. Secondary evidence of a document is also admissible when the original is in the hands of a stranger or third person who is on the ground of privilege not compellable by law to produce it and who refuses to do so, either when summoned as a witness with a *subpoena duces tecum* or when sworn as a witness without a *subpoena*; if he admits that he has the document in Court. *Mills v Odly* 6 C. and L. 728; *Cockle Cas* 316. But where he can be compelled to

produce the document, secondary evidence is not competent *R v Inhabitants of*  
*law requires that a party*  
*a document by a stranger*  
*nt Cockle Cas 318 see*

— 121 Ind Cas 318, 121 Ind Cas 318

Cases—L R 3 V S 1922 (Bom) 177, 3 Lah 282, 67 I C 237, 4  
 Lah L J 418, 66 Ind Cas 360, 24 O C 272, 62 Ind Cas 60, 62 Ind Cas  
 444, 23 Bom L R 505, 49 Ind Cas 507, 41 A 592, 35 Ind Cas 328, 34 Ind  
 Cas 153, 23 C L J 112, 12 Ind Cas 861, L R 4 A 231 71 Ind Cas 825, 1923  
 Rang 112, L R 4 A 152, 78 Ind Cas 568, 6 C 753 26 C 53

Clause (c)—Secondary evidence of the contents of a document is admissible  
 when the original is lost U B R (1897—1901) Vol II 382 But it must be  
 shown that proper search has been made for it What is proper search depends  
 on the nature and value of the document More careful search will be required for  
 a valuable than for a useless document (*Brewster v Swell*, 3 B & Ald 296,  
*Cockle Cas 318*) Such evidence is not admissible by mere assertion of loss  
 L R 3 A 539, see also 67 Ind Cas 565, 4 Lah 416 49 Ind Cas 1006 32  
 Ind Cas 397, 45 Ind Cas 888

Clause (d)—Secondary evidence of a document is admissible where the original  
 cannot be brought to Court because it is physically impossible to bring the original  
 as in the case of writings on walls tombstone and the like *Mortimer v McCallan*, 4  
 Jur 172=*Cockle Cas 321*

Clause (e)—Secondary evidence of a document is admissible where the original  
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 in the case of public  
 the Bank of England  
 as the original is in  
 s admissible 63 P R  
 L R 59 34 C 293

existence no  
 1878, see also  
 22 C W N 742

Clause (f)—A registration office copy of sale deed is admissible 11 Ind Cas  
 50, 36 Ind Cas 673

Clause (g)—Vide 2 Lah L J 714, 6 M 80 5 C 568

66 Secondary evidence of the contents of the documents referred to in  
 Rules as to notice to produce section 65, clause (a), shall not be given unless  
 the party proposing to give such secondary  
 evidence has previously given to the party in whose possession or power the  
 document is [or to his attorney or pleader,] such notice to produce it as is  
 prescribed by law, and if no notice is prescribed by law, then such notice as  
 the Court considers reasonable under the circumstances of the case

Provided that such notice shall not be required in order to render second  
 ary evidence admissible in any of the following cases, or in any other case  
 in which the Court thinks fit to dispense with it—

- (1) when the document to be proved is itself a notice,
- (2) when from the nature of the case, the adverse party must know that  
 he will be required to produce it,
- (3) when it appears or is proved that the adverse party has obtained  
 possession of the original by fraud or force,
- (4) when the adverse party or his agent has the original in Court,
- (5) when the adverse party or his agent has admitted the loss of the  
 document;
- (6) when the person in possession of the document is out of reach of,  
 or not subject to, the process of the Court

Legislative changes—The words within brackets have been inserted by Act  
 18 of 1872

Scope—Secondary evidence of a document is admissible when the original is  
 in possession of an adverse or opposite party, who refuses to produce it after proper  
 notice to produce *Dwyer v Collins*, 31 L J Ex 225, see also 34 Cr L J 305 A





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Clause (d) — Secondary evidence of a document is admissible where the original is brought to Court because it is physically impossible to bring the original. The case of writings on walls tombstone and the like. *Mortimer v McCallan*, 4 *Cockle Cas* 321.

9 (e) — Secondary evidence of a document is admissible where the original  
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3 registration office copy of sale deed a document which was re  
the intention was that if the

—Vide 2 Lah L J 714, 6 M

Secondary evidence of the contents of the document was in fact signed by

notice to produce section 65, the document was in fact signed by two attesting witnesses 39 A 109=41  
the party be an attesting witness 22 A L I

as previously given to the p<sup>r</sup> be an attesting witness 22 A L J,  
is for to his attorney or r

by law, and if no notice of an attested document of its execution is considered reasonable in itself shall be sufficient proof of its execution as against him though it be a document that such notice is not required by law to be attested.

Court thinks fit is to be read subject to the proviso to section the document English law a document which requires attestation

the one of the attesting witnesses and this from the document was executed has admitted its execu

4 The re-  
presents  
from the document was executed has admitted its execution deviates from that view and lays down that where the party an attesting witness need not be called. The

of the party and attesting witness need not be called. The admission of a document by the admission of the party.

§ 85, 7 C W N 384 Non admission of execution unless it amounts to an acknowledgement of the

in p'd 36 C L J 373. The word 'execution' in this  
offering his signature or mark has signified his

ent, and if a party admits that he has done this, 1906. This section was intended to dispense

The w 1296 This section was intended to dispense witnesses and with formally proving execution

19 A. L. J. 855 Where there are two executants  
 in the presence of a witness according to law in respect of one of them  
 or opposites.

or opposite,  
v *Collins*, 3

whenever there is a question as to its contents or terms, unless for special reasons  
 "worth", L R 1 C C R 103=37 L J M C  
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 of first instance admitted a copy of the sale  
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Cases in which secondary  
 evidence relating to docume  
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 or  
 of any person out of reach of, or not subject to, the process of the  
 Court, or  
 of any person legally bound to produce it,  
 and when, after the notice mentioned in section 66,  
 such person does not produce it,
- (b) when the existence, condition or contents of the original have been  
 proved to be admitted in writing by the person against whom it is  
 proved or by his representative in interest,
- (c) when the original has been destroyed or lost, or when the party  
 has any other reason not  
 to produce it in reasonable

time,  
 (d) when the original is of such a nature as not to be easily movable,  
 (e) when the original is a public document within the meaning of  
 attested

Court and capable of giving evidence of which a certified copy is permitted  
 "Provided that it shall not be law in force in British India, to be  
 proof of the execution of a document of which has been registered in accordance with the Registration Act 1908 unless its execution has been examined in Court,  
 which has been registered in accordance with the Registration Act 1908 unless its execution has been examined in Court,  
 to have been executed is specifically denied the general result of the whole

Scope — When a document is required to be produced of the contents of the

but no other kind of  
 395 Sale deed and surety bond do not require to be proved  
 30 Ind Cas 64, 25 C 22=3 C W N 228 An unproved result of the docu  
 cannot be proved even as containing a personal copy is skilled in the  
 Such objection cannot be taken for the first time in the appeal

if the document is one required by law to be produced is also admissible when  
 transfer 55 Ind Cas 501 on who is, on the ground  
 who refuses to do so, either

\* This proviso has been added in the document in Court Mills  
 where he can be compelled to



not applicable to *kobilas* 22 W R 355 The contents of the *jama bindi* can be proved by the production of certified copies furnished as provided by ss 76 and 77 of the Act L R 3A 386 (Rev)

77. Such certified copies may be produced in proof of the contents of the

Proof of documents by pro public documents or parts of the public documents  
duction of certified copies of which they purport to be copies

Scope—Public documents can be proved by producing certified copies of the same 3 O C 235 A certified copy of the order of a Court passed upon a compromise should be received in evidence, if offered in proof of the compromise under this section as it is a copy of a document forming the record of an act of a public judicial officer 1 A L J 369 See also 22 W R 355, 14 C 486 (P C), 10 C L R 469, 10 C 608

Proof of other official documents 78 The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments or of any Local Government or any department of any Local Government—

by the records of the departments certified by the heads of those departments respectively,  
or by any document purporting to be printed by order of any such Government.

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government

(3) proclamations orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority or commonly received in that country as such or by a copy certified under the seal of the country or sovereign or by a recognition thereof in some public Act of the Governor General of India in Council

(5) The proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body

(6) Public documents of any other class in a foreign country,—

by the original or by a copy certified by the legal keeper thereof with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country

Scope—Besides certified copies there are special ways of proving certain public documents which are pointed out in this section (*Cunningham v. Evans* 270)

Clause (5)—30 Ind Cas 643—16 Cr L J 657 17 C W N 531—18 Ind Cas 61

Clause (6)—15 C W N 1053—14 C L J 37,

## PRESUMPTIONS AS TO DOCUMENTS

79. The Court shall presume every document purporting to be a certificate, certified copy of other document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine

Presumption as to genuineness of certified copies

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf

The Court shall also presume that any officer by whom any such document purports to be signed or certified held when he signed it, the official character which he claims in such paper

Scope—The registering officer's evidence is not necessary to prove the certificate of registration the genuineness of which is to be presumed under this section 71 Ind Cas 805

80 Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume—

Presumption as to documents produced as record of evidence

that the document is genuine, that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it are true, and that such evidence, statement or confession was duly taken

Scope—The statement as to which this section says that certain presumptions shall be drawn are statements or confessions taken in accordance with the law. The section does not render admissible any particular kind of evidence but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. Section 80 does not operate to render it admissible. The

*munfur rife esse acta*  
ceding 9 M 224=2  
Magistrate and where  
Judge or Magistrate,  
y be supplied by oral  
ordred by a Magistrate  
16 The attestation

of a deposition by a Magistrate in the presence of the accused is not obligatory 10 A 174=A W N 1888 11, *contra* 18 C 129. The section has no bearing on the question of the admissibility of a statement made by the deceased as a dying declaration 9 P R 1900 Cr see also 11 B H C R 247

See also 15 M 63, 15 Ind Cas 98, P L R 1900 Cr 83, 10 C P L R Cr 16 7 C W N 220, 1 L B R 340, 1 B 219, 10 O C 112 60 Ind Cas 437 56 Ind Cas 160

81 The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody,

Presumption as to Gazettes newspapers private Acts of Parliament and other documents

English law—The Government Gazettes of London, Edinburgh and Dublin are admissible (and sometimes conclusive) evidence of the public, but not of the private matters contained therein *Phipson Ev* 296

82 When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it the judicial or official character which he claims,

and the document shall be admissible, for the same purpose for which it would be admissible in England or Ireland

Scope—The object of this section is to give currency in the Courts of India to the presumptions which with regard to certain documents are made in the English Courts. Such documents are as they would be in England and it is no more than what it would be in an English Court to prove the person signing it held the office which he claims. Act 1851 (14 and 15) Vict c 99, the effect of which was to make documents which were purporting to have been signed or of the official character of the person by whom they purport to have been signed, admissible in English law. *Cunningham Ev* 175, 176. This section enacts that the document shall be admissible in India for the same purpose for which it would be admissible in England and Ireland (*Woodroffe Ev*)

83 The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate

Principle—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested (*Phipson*, 313)

Accuracy—Accuracy of a map means accuracy of drawing and measurement. It has no reference to correctness of boundaries etc., in relation to rights of parties. 25 W R 179. Government map is admissible under this section. 9 M T 415. But Government *chittis* made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands described therein. 9 C 741. A *thauk bust* map is presumed to be accurate under this section. 22 W R 519, 5 C 822, 30 C 291 (P C)=7 C W N 193, 34 C L J 205

84 The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country

and of every book purporting to contain reports of decisions of the Courts of such country

Scope—The general rule, as to the proof of foreign laws, is that the law which is proved by a copy properly authenticated, and the testimony of experts, that is by those who are conversant with the law. Lord Chief Justice Denham observed in *Ex parte* "There does not appear to be in fact any question raised here as to any executive mode

of getting at this evidence for we have both materials of knowledge offered to us. We have the witness, and he states the law, which he says is correctly laid down in these books. The books are produced, but the witness describes them as authoritative, and explains them by his knowledge of the actual practice of the law. A skilful and scientific man must state what the law is but may refer to books and statutes to assist him in so doing." *California Civil Pro Code* lays down "The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of sister state or for foreign country, as are also printed and published books of reports of decisions of the Courts of such state or country, or proved to be commonly admitted in such Courts."

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Cases—A power of attorney given by the executors under a will to a certain person authorising him to apply for letters of administration did not purport to have been executed in the presence of a Notary Public or any other of the persons designated in this section 21 M 492. In order to comply with the provisions of this section, the power of attorney must be executed before or be authenticated by one of the persons mentioned in the section 16 C 776. This section is mandatory. When a document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public is produced before the Court, an affidavit of identification as to the person purporting to make the power of attorney being the person named therein is unnecessary 9 C W N 986=33 C 625. The language of the section does not warrant the assumption that the provision contained in this section is of an exhaustive character and that other legal modes of proving the execution of a power of attorney are not admissible 21 M 492. A registered power of attorney is admissible in evidence to prove the agency under this section and unless its genuineness is suspected in which case proof of its execution can be called for, the agent should be allowed to appear and act within the meaning of O III rule 2 of C P Code 23 Ind Cas 661.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India [in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records.

[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent therefor, as defined in section 3, clause (40) of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place]

Legislative changes—The words within brackets in para 1 have been substituted by Act 3 of 1891. The last para has been substituted by Act V of 1899 s 4.

Scope—This section lays down that if a copy of a foreign judicial record purports to be certified in a given way the Court may presume it to be genuine and accurate. The section, however, does not exclude other proof 2 Bom L R 562, 27 C 639=4 C W N 429 (P C), 8 Mad Jur 14, 22 W R 303. The certificate required by law under this section cannot be dispensed with here because it can be obtained at any time 5 Lah 105.

Cases—It is doubtful whether the notification in the Calcutta Gazette of the 8th April, 1879, by the then Deputy Commissioner of Cooch Behar regarding the mode of certifying copies of judicial records as correct copies after the Governor General in Council had, under s 434 of the Civil Pro Code notified that

English law—The Government Gazettes of London, Edinburgh and Dublin are admissible (and sometimes conclusive) evidence of the public, but not of the private matters contained therein *Phipson Et 296*

**82** When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it the judicial or official character which he claims,

and the document shall be admissible, for the same purpose for which it would be admissible in England or Ireland

**Scope**—The object of this section is to give currency in the Courts of India in classes of documents are recognised and declared to be admissible in India necessary in an Indian Court than seal or signature or to prove that the facts. This is founded on the Evidence Act 1851 (14 and 15) Vict c 99, the effect of which is to make admissible in any part of the King's dominions, documents which without proof of the seal or signature by whom they purport to have been signed *Ingham Et 175 176* This section enacts that in India for the same purpose for which it would *(Woodroffe Et)*

**83** The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate

**Principle**—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested *(Phipson 313)*

**Accuracy**—Accuracy of a map means accuracy of drawing and measurement. It has no reference to correctness of boundaries etc in relation to rights of parties 25 W R 179 Government map is admissible under this section 9 M T 415 But Government *chittas* made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands described therein 9 C 741 A *thauk bust* map is presumed to be accurate under this section 22 W R 519, 30 C 822, 30 C 291 (P C)=7 C W N 193, 34 C L J 205

**84** The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country

and of every book purporting to contain reports of decisions of the Courts of such country

**Scope**—The general rule as to the proof of foreign laws is that the law which by a copy properly authenticated, and testimony of experts, that is by those *Lord Chief Justice Denham* observed in *ere* does not appear to be in fact any raised here as to any executive mode



of getting at this evidence for we have both materials of knowledge offered to us. We have the witness and he states the law, which he says is correctly laid down in these books. The books are produced, but the witness describes them as authoritative and explains them by his knowledge of the actual practice of the law of sister state or for foreign country as are also printed and published books of reports of decisions of the Courts of such state or country or proved to be commonly admitted in such Courts."

**85** The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated

**Cases**—A power of attorney given by the executors under a will to a certain person authorising him to apply for letters of administration did not purport to have been executed in the presence of a Notary Public or any other of the persons designated in this section. 21 M 49. In order to comply with the provisions of this section, the power of attorney must be executed before or be authenticated by one of the persons mentioned in the section. 16 C 776. This section is mandatory. When a document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public is produced before the Court an affidavit of indentification as to the person purporting to make the power of attorney being the person named therein is unnecessary. 9 C W N 986 = 33 C 625. The language of the section does not warrant the assumption that the provision contained in this section is of an exhaustive character and that other legal modes of proving the execution of a power of attorney are not admissible. 21 M 492. A registered power of attorney is admissible in evidence to prove the agency under this section and unless its genuineness is suspected in which case proof of its execution can be called for, the agent should be allowed to appear and act within the meaning of O III rule 2 of C P Code. 23 Ind Cas 661.

**86** The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions, and which document purports to be the manner copies of judicial records

[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent, clause (40) of the General Clauses Act, 1897 section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place]

**Legislative changes**—The words within brackets in para 1 have been substituted by Act 3 of 1891. The last para has been substituted by Act V of 1899 s 4.

**Section 86**—The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions, and which document purports to be the manner copies of judicial records

it can be obtained at any time. 5 Lah 105

**Cases**—It is doubtful whether the notification in the Calcutta Gazette of the 8th April 1879, by the then Deputy Commissioner of Cooch Behar, regarding the mode of certifying copies of judicial records as correct copies after the Governor General in Council had, under s 431 of the Civil Procedure Code, notified that

decrees of Cooh Behar Courts might be executed as if they were decrees of British Indian Courts, was a compliance with the provisions of this section of the Evidence Act when there was a representative of the Government of India resident in Cooh Behar 14 C 546

87. The Court may presume that any book to which it may refer for information on matters of public or general interest and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

**Scope**—A Court is justified in referring to books published long before the suit, in which the usage of the institution and its history are described both being matters relevant to the suit. 15 M. 241

88 The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Scoope—This section allows the Courts to treat telegraphic messages received as if they were the original sent, with the exception, that a presumption is not to be made, unless they were delivered for transmission and, unless accounted for, secondary evidence of their contents is admissible. (1901), Vol II 384 The Court is forbidden to make any presumption as to the person by whom the telegram was sent 42 M 885=37 M L J 81

89 The Court shall presume that every document, called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

Notes —Where the attesting witnesses of a mortgage deed were dead where it and that it had been returned perty to the mortgaggee, and fore Court, though called upon to do so *held* that the execution of the mortgage deed was in view of this section of the Evidence Act satisfactorily established irrespective of the provision of s 68

90 Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court Presumption as to docu in the particular case considers proper, the ments thirty years old Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

*Explanation*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be, but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81

### Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his title to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B produces deeds relating to lands in B's possessions which were deposited with him by B for safe custody. The custody is proper.

**Scope**—A document thirty years old is a document dated thirty years back proves itself, if produced from proper custody as an ancient document. *Anderson v. Weston* 9 L. J. C. P. 194. The rule that ancient documents or those thirty years old prove themselves or in other words are presumed to have been duly executed applies only to those coming from proper custody, that is, not necessarily from the strictly legal or most proper custody but from any custody consistent with their genuineness and legitimate origin, in which they might reasonably be expected to be found if they are what they purport to be. *Bishop of Meath v. Mayor of Winchester* 3 Bingham, N. C. 183. *Cockle Cas* 333. Under this section the Court can presume the genuineness of a document which was not thirty years old either on the date of the suit or on the date of its production but was thirty years old on the date when arguments were heard. 54 Ind. Cas. 368, see also 33 C. L. J. 382, 60 Ind. Cas. 96, 41 M. L. J. 310, 57 Ind. Cas. 786, 61 Ind. Cas. 959, 61 Ind. Cas. 125, 52 Ind. Cas. 314, 49 Ind. Cas. 419, 15 N. L. R. 192, 6 O. L. J. 311, 26 Ind. Cas. 117, 13 A. L. J. 921, 2 L. W. 509, 5 P. W. R. 1915.

No presumption can be made in favour of a copy of a document under this section. 16 N. L. R. 106=55 Ind. Cas. 476. *contra* 16 L. W. 462, 16 L. W. 839, 29 C. L. J. 577. The fact that a document is more than 30 years old and is registered and that the genuineness of the signature of its executant on it is admitted may go to raise a presumption as to its genuineness. But such a presumption does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was therefore inoperative. 55 Ind. Cas. 501. It is open to a party when producing an old document to rely on the presumption under this section and also on its proof and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. 49 Ind. Cas. 419. In the case of a copy of a document 30 years old, this section empowers the Court to presume that the copy is in the hand writing of the person in whose hand writing it purports to be. 31 Ind. Cas. 579. A Court is entitled to presume under this section that a sale deed more than 30 years old is genuine. 35 Ind. Cas. 598. In practice a Court does not generally decide whether it will make the presumption or not under this section, until all the evidence in the case is before it. 10 A. L. J. 87. Where the Court of first instance presumed a document to be genuine under this section, it was competent for the first appellate Court to hold that it should not be presumed to be genuine and to reject it without calling for further proof of the same. 22 M. L. J. 217=14 Ind. Cas. 394.

**Cases**—75 Ind. Cas. 57, 73 Ind. Cas. 66, 32 M. L. T. (H. C.) 89, 50 C. 526, 75 Ind. Cas. 660, 1923 Bom. 364, 1923 Bom. 293, 46 Mad. 92, 1923 A. 420(2), 27 C. W. N. 964, 9 O. & A. L. R. 893, 13 A. L. J. 921, 19 O. C. 97, 19 O. C. 321, 97 P. W. R. 1916=34 Ind. Cas. 168.

## CHAPTER VI

### OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

**91** When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall

be given in proof of the terms of the contract, or of the grant, or of any other disposition of property, or of any matter required by law to be reduced to the form of a document, if the terms of the contract, or of the grant, or of any other disposition of property, or of any matter required by law to be reduced to the form of a document, are contained in a document.

decrees of Cooch Behar Courts might be executed as if they were decrees of British Indian Courts was a compliance with the provisions of this section of the Evidence Act when there was a representative of the Government of India resident in Cooch Behar 14 C 546

**87.** The Court may presume that any book to which it may refer for information on matters of public or general interest and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published

**Scope**—A Court is justified in referring to books published long before the suit, in which the usage of the institution and its history are described both being matters relevant to the suit 15 M 241

**88** The Court may presume that a message, forwarded from a telegraphic office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent, but the Court shall not make any presumption as to the person by whom such message was delivered for transmission

**Scope**—This section allows the Courts to treat telegraphic messages received as if they were the original sent with the exception that a presumption is not to be made as to the person by whom the non production of the original contents is inadmissible U B R ( ) of their forbidden by the express provisions of this section the person by whom the telegram was sent 42

**89** The Court shall presume that every document, called for and not produced after notice to produce was attested, stamped and executed in the manner required by law

**Notes**—Where the attesting witnesses of a mortgage deed were dead where it was proved that the mortgagor had executed the deed and that it had been returned to him at the time of the sale of the mortgaged property to the mortgagee and where the mortgagor failed to produce the deed before Court, though called upon to do so *Held* that the execution of the mortgage deed was in view of this section of the Evidence Act satisfactorily established irrespective of the provision of s 68 34 Ind Cas 168

**90** Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested

**Explanation**—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be, but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable

This explanation applies also to section 81

#### Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his title to it. The custody is proper

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B produces deeds relating to lands in B's possessions which were deposited with him by B for safe custody. The custody is proper.

**Scope**—A document thirty years old *i.e.* a document dated thirty years back proves itself, if produced from proper custody as an ancient document. *Anderdon v. Weston*, 9 L. J. C. P. 194. The rule that ancient documents or those thirty years old, prove themselves or in other words are presumed to have been duly preserved, is not confined to documents coming from proper custody, that is, not necessarily per custody but from any custody consistent with the origin in which they might reasonably be expected to be. *Bishop of Meath v. Mayor of Drogheda*, 13 C. C. 333. Under this section the

Court can presume the genuineness of a document which was not thirty years old either on the date of the suit or on the date of its production but was thirty years old on the date when arguments were heard. 54 Ind. Cas. 368, see also 33 C. L. J. 382, 60 Ind. Cas. 96, 41 M. L. J. 310, 57 Ind. Cas. 786, 61 Ind. Cas. 959, 61 Ind. Cas. 125, 52 Ind. Cas. 314, 49 Ind. Cas. 419, 15 N. L. R. 192, 6 O. L. J. 311, 26 Ind. Cas. 117, 13 A. L. J. 921, 2 L. W. 509, 5 P. W. R. 1915.

No presumption can be made in favour of a copy of a document under this section. 16 N. L. R. 106=55 Ind. Cas. 476 *contra* 16 L. W. 462, 16 L. W. 839, 19 C. L. J. 577. The fact that a document is more than 30 years old and is registered and that the genuineness of the signature of its executant on it is admitted may go to raise a presumption as to its genuineness. But such a presumption does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was therefore inoperative. 55 Ind. Cas. 501. It is open to a party when producing an old document to rely on the presumption under this section and also on its proof and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. 49 Ind. Cas. 419. In the case of a copy of a document 30 years old this section empowers the Court to presume that the copy is in the hand writing of the person in whose hand writing it purports to be. 31 Ind. Cas. 579. A Court is entitled to presume under this section that a sale deed more than 30 years old is genuine. 35 Ind. Cas. 598. In practice a Court does not generally decide whether it will make the presumption or not under this section, until all the evidence in the case is before it. 10 A. L. J. 87. Where the Court of first instance presumed a document to be genuine under this section, it was competent for the first appellate Court to hold that it should not be presumed to be genuine and to reject it without calling for further proof of the same. 22 M. L. J. 217=14 Ind. Cas. 394.

**Cases**—75 Ind. Cas. 57, 73 Ind. Cas. 66, 32 M. L. T. (H. C.) 89, 50 C. 526, 75 Ind. Cas. 660, 1923 Bom. 364, 1923 Bom. 293, 46 Mad. 92, 1923 A. 420 (2), 27 C. W. N. 964, 9 O. & A. L. R. 893, 13 A. L. J. 921, 19 O. C. 92, 19 O. C. 321, 97 P. W. R. 1916=34 Ind. Cas. 168.

## CHAPTER VI

### OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

**91** When the terms of a contract, or of a grant, or of any other dis-

position of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

**Exception 1**—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

**Exception 2**—Wills admitted to probate in British India may be proved by the probate.

**Explanation 1**—This section applies equally to cases in which the contracts grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

**Explanation 2**—Where there are more originals than one, one original only need be proved.

and, in any document whatever, of a fact other than that which the section shall not preclude the admission of.

### Illustrations

(a) If a contract be contained in several letters all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange the bill of exchange must be proved.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(c) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

**Legislative Changes**—The words within brackets in exception 2 were substituted for the words 'under the Indian Succession Act' by the Indian Evidence Act, Amendment Act, 1872 (18 of 1872) s. 7.

397 L B R (1872-1892) 650 Where the document containing the transaction is inadmissible for want of registration no other evidence of the terms of the contract can be received. L B R (1872-1892) 133 When the contract between the parties has been reduced to writing no evidence of it is admissible except the writing itself. U B R (1897-1901) Vol II 395 A question as to who the contracting parties are is not a question as to the terms of the contract within the meaning of this section. 31 M 45

**Principle**—This rule is founded on the best evidence principle (*Phipson Ev* 505).

**Contract**—It seems that a contract is not admissible as evidence unless it is in writing.

as employed in a contract or transactions (1897-1898) Vol II

**Grant**—It is doubtful whether the word grant in this section means a grant of property or a grant of a right.

required by law to be in writing. In marine insurance or where a contract not so required has been intended to be complete and final it is applicable to supersede the document and although registration or

stamp Where however the oral transaction is independent of the document *e.g.*, where the possession of goods was taken on a certain understanding although a receipt and inventory was also signed or where a loan of money is secured collaterally by a promissory note oral evidence of the former is admissible Even between strangers, the terms of the transaction can only be shown by the production of the document itself and not by oral testimony (*Phipson Ev* 509)

**Exception (1)** The law assumes that any act done in public or any formal act privately performed will be done in due form by the person authorised to perform it *Harris v Knight*, 15 P D 170

**Exception (2)**—The probate of a will is in the nature of a public document, for it records the act of the Court in admitting the will to probate Moreover, a copy of the probate can be seen by any one at Court on payment of requisite fees It constitutes the legal proof of the title of an executor and it is conclusive against all the world It is a copy of the will sealed with the seal of the Court granting the probate, and attached to a certificate which states that the will has been proved and registered, and that administration of the goods of the deceased has been granted to one or more of the executors named therein (*Vide Powell Ev* 258)

**Explanation (1)**—*Vide illustration (a)*

**Explanation (2)**—*Vide illustration (c)*

**Explanation (3)**—*Vide illustrations (d) and (e)*—Extrinsic evidence is sometimes admissible to prove the existence as distinguished from the terms of a transaction or relationship which has been reduced to writing Payments of money may be proved by oral testimony although a receipt for the same exists 7 W R 384 4 B 126, 1 A 442, 17 C 951 (P C)=4 C W N 631

**92** When the terms of any such contract grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms,

**Proviso (1)**—Any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or, mistake in fact or law

**Proviso (2)**—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document

**Proviso (3)**—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved

**Proviso (4)**—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents

**Proviso (5)**—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved

Provided that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract

**Proviso (6)**—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

## Illustrations

(a) A policy of insurance is effected on goods 'in ships from Calcutta to London'. The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact, that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of a payment and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

**Legislative changes**—The words "want or failure" were substituted for the words 'want of failure' by s. 8 of the Indian Evidence Act Amendment Act, 1872 (18 of 1872).

**Notes**—The rule contained in this section is very ancient. Lord Bacon observed "The law will not couple and mingle matter of specialty, which is of higher account, with matter of averment which is of inferior account in law" (*Bacon's Maxims* Reg. 23). "It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of the parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory" (*Countess of Rutland's case*, 5 *Coke* 256).

**Scope**—Oral evidence is not admissible to add to, vary, or contradict a written agreement or any transaction in writing. *Meres v. Ansel*, 3 *Wilson*, 275, *Cockle* Cas. 339. "Another and a most important rule of evidence is also based upon the fact that the best method of preserving a clear recollection of the details of any transaction is to set them down in writing. It is for this reason that whenever the parties to any contract or grant or other disposition of property have set out its terms and conditions in writing, which they presumably intended to be a record of the transaction the law forbids any attempt to establish any other terms by means not to be found in the document. Hence parol evidence is admissible to contra-  
dict evidence cannot be adduced to



contradict the terms of a written document 6 M H C 393, see also L B R (1872—1892), 538, 11 W R 450, 12 W R 264, W R 1864, 388 Verbal evidence is not admissible to vary or alter the terms of a written contract in cases in which there is no fraud or mistake, and in which the parties intend to express in writing what their words import—as for instance to show that a deed of sale was intended to operate as a mortgage 5 W R 68 9 W R 251

Proviso (1)—Parol evidence is admissible to show that a writing is not really the valid transaction which it purports to be Such evidence may therefore be given to prove fraud mistake, illegality, incapacity failure of consideration or other matters affecting the validity of a writing as a document (*Dobell v Stevens*, 3 L J K B 89, *Cockle Cas* 341)

Case—82 Ind Cas 816

Proviso (2)—Parol evidence is admissible to prove any collateral verbal agreement as to any matter on which a document is silent, which is separable from it and not inconsistent with its terms and which might naturally be omitted from the writing (L R 6 Ex 70=*Cockle Cas* 343) There is no rule that there shall be only one agreement upon any subject There may be two or more as in the case if they can consistently stand together and one may be written and the other oral If agreement evidence may be given of the oral the written agreement although it may, at In order that parol evidence may be admissible it must not conflict with, or be inconsistent with the written document, the evidence must not amount in effect to adding additional terms to the writing *Angell v Duke* 32 L T 320 This proviso applies where the document is of an informal character 7 N L J 25 In order to prove a contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted 4 Loh 258

Cases—3 Bur L J 326 70 Ind Cas. 844, 1923 Cal 402, 25 Bom L R 818

Proviso (3)—Parol evidence to prove any collateral verbal agreement to the effect that a document, apparently complete and operative on its face should be conditioned upon and not operate until the happening of, a certain event which has not occurred *Pym v Campbell*, 25 L J Q B 277 The case of a condition precedent to the performance of a contract in writing is different and evidence to prove such an oral agreement is admissible It is open to a person who admits the execution of a promissory note to plead want of consideration 45 A 679 See also 25 Bom L R 867

Cases—1925 Rang 83, 1924 A 70, 26 O C 36, 71 Ind Cas 477

admissible to prove any subsequent verbal e terms of a written document unless writing nsaction in question enforceable, in which case rihe terms of such document (*Gass v Lord* 350) This clause does not exclude evidence for a ptevious one in writing and agreement to rescind or modify such ot exclude a distinct subsequent new 14 P R 1889

Cases—2 Mys L J 124, 74 Ind Cas 154

any local custom of general matter and bind the parties e writing (*Wigglesworth* is admissible to prove any obligation of the parties in such transaction as that in question, or as to the meaning of words or terms used, to a written me, 23 L J incidents to port into the a sale deed that the consideration has been received, it is open to the vendor to prove that no consideration has been actually paid 22 A 370 P C., 10 C L J 27

Proviso (G) —  
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In a suit for bond evidence  
Ind Crs 347 Where a bill of  
any oral agreement varying  
date is fixed in the contract for  
period is not admissible  
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Cal 38 In  
80 Ind Crs 6

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Cases — 4 Pat L T 577, 36 Ind Crs 7

Exclusion of evidence to ex-  
plain or amend ambiguous  
document

93. When the language used in a docu-  
ment is, on its face, ambiguous or defective,  
evidence may not be given of facts which would  
show its meaning or supply its defects.

#### Illustrations

(a) A agrees to sell a horse to B for Rs. 1000 or Rs. 1500  
e given

facts which would show

Notes — There are two sorts of ambiguities, patent and latent. A latent ambiguity is one which does not appear from the words of the document itself, but is created or shown by extrinsic evidence. Obviously, similar evidence should be allowed to explain or remove it. A patent ambiguity is one apparent on the face of the document. Parol evidence is inadmissible to explain such an ambiguity. (Cockle Cas 356) 'A good test of the difference is to put the instrument into the hands of an ordinarily intelligent educated person. If on perusal he sees no ambiguity, but there is nevertheless an uncertainty as to its application the ambiguity is latent; if he detects the ambiguity from merely reading the instrument, it is patent. Thus in illustration (b), the blanks would be patent ambiguities and they could not be filled in by parol testimony as to the intention of the parties, etc. In illustration (a) no one could detect any ambiguity from merely reading the instrument. The ambiguity does not consist in the language, but is introduced by extrinsic circumstances, and the maxim is *quod ex facie oritur ambiguum verificatione facti tollitur*' Norton Ev 279

Scope — Parol evidence is admissible to show the subject matter to which, or the persons to whom, a written document applies or refers, and for such purpose to explain latent ambiguities in the document, and the surrounding circumstances or apparently, a document

to explain the meaning of words or expressions  
be meaningless in themselves, by showing what a  
party to such document intended to say Baylies v Attorney General, 2 At 239  
See 1 A 275, 35 Cr L J 87

Exclusion of evidence against  
application of document to  
existing facts  
to such facts

94. When language used in a document is plain in itself, and when it applies, accurately to existing facts, evidence may not be given to show that it was not meant to apply

*Illustration*

A sells to B, by deed "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

**Scope**—This section falls under the more general rule of English law that where the words of a document are free from ambiguity and external circumstances do not create any doubt or difficulty as to the proper application of the words, the document is to be construed according to the plain and common meaning of the words, and that in such case extrinsic evidence for the purpose of explaining the document according to the supposed intention of the parties is inadmissible. *Cunn Ev* 281. When the language used in a document is plain and applies accurately to existing facts, evidence is not admissible for the purpose of showing that it was not meant to apply to those facts. 29 Ind Cas 201. When a Court is executing an award it is only in cases where the words are ambiguous or capable of more than one interpretation that oral evidence can be given as to their meaning. 78 Ind Cas 80.

Evidence as to document unmeaning in reference to existing facts

95 When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

*Illustration*

A sells to B, by deed, 'my house in Calcutta'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

**Scope**—This section and sections 96 and 97 lay down the rule as regards latent ambiguities. Parol evidence is admissible to show the subject matter to which, or the persons to whom a written instrument applies or refers, and for such purpose to explain the latent ambiguities. Such parol evidence may be of the surrounding circumstances, or apparently, of statements of intention made by parties to a document. *Doi v Needs*, 6 L J Ex 59, *Cockle Cas* 355. Where the description of property sold is such that one portion of it applies to the whole of the house but the boundaries given below apply only to a portion of the same and both read together do not apply correctly either to the whole house or to a portion of it, a case of latent ambiguity arises. Extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention was to convey the whole house or only a portion of it. 66 Ind Cas 442. See also 1913 S 42, 71 Ind Cas 589.

96 When the facts are such that the language used might have been

Evidence as to application of language which can apply to one only of several persons

meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be

given of facts which show which of those persons or things it was intended to apply to.

*Illustrations*

(a) A agrees to sell to B for Rs 1000 "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidrabad. Evidence may be given of facts showing whether Haidrabad in the Deccan or Haidrabad in Sind was meant.

**Scope**—When there are two or more persons or things and each of them exactly answers to the description in the will, then all manner of parol evidence is admissible. (*Poulet E.*, 563). When an instrument appears on its face to be free from ambiguity, but upon the endeavour being made to apply it to the persons or things indicated, it transpires that the words are equally applicable to two or more things, this is called a latent ambiguity. In such a case extrinsic evidence is admissible to resolve it. The principle that when an instrument contains an ambiguity



*Illustration*

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B but it might be shown by C if it affected his interests.

**Scope**—This section being merely an enabling provision cannot be held to prohibit the reception of evidence as to a fact in issue or a relevant fact admissible independently thereof. 27 M. 329. The rule of exclusion of oral evidence, embodied in s. 92 of the Act, is limited in its operation to parties to the instruments, which is sought to be contradicted or varied, and to the representative in interest. This section enables strangers to an instrument to prove the real nature of the transaction by parol evidence. 2 C. L. J. 338. This section gives free hand to persons who are not parties and by necessary implications when read with section 92, gives similar freedom to the executants of documents. See also 8 Ind. Cas. 508, 3 A. L. J. 92 is a disqualifying section. The ground as the words 'contradicting' v. 53 Ind. Cas. 242.

Saving of provisions of Indian Succession Act relating to wills

100 Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)\* as to the construction of wills.

**Scope**—Act X of 1865 and Act XXI of 1870 have been repealed and re-enacted by Act 39 of 1925. So the provisions of this chapter are applicable to all instruments other than wills and to all wills which are not made in accordance with the provisions contained in that Act.

**PART III****Production and Effect of Evidence****CHAPTER VII****OF THE BURDEN OF PROOF.**

**101.** Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

*Illustrations*

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

**Different meaning of the term.**—The expression 'burden of proof' has been used in a double sense (a) As meaning the duty of the person alleging the case to prove it, (b) As meaning the duty of the one party or the other to introduce evidence.

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\* See now Act XXXIX of 1925

natural method. The burden of proving a case is naturally upon the person who puts it forward. The burden of proof in any action is fixed by the pleadings upon the shoulders of the one party or the other. If the pleadings consist of the allegations of certain facts by the plaintiff, and their denial by the defendant, the burden of proof is on the defendant. It is not upon the plaintiff because it is no necessary for him to prove his case on account of an admission upon the trial does not affect the burden of proof.

which are in issue, and he

**Burden of proof**—Before a Court can proceed to hear a case it is obviously, necessary to determine which party shall begin, or upon whom the burden of proof of the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue but there may be several facts in issue, the burden of proof of some being on one party and of others on the other party. The position is practically this, that the burden of proof lies at first on the party against whom judgment would be given if no evidence at all were adduced. When such party has given sufficient evidence to entitle him to judgment if no further evidence were given, the burden of proof shifts to the other party and may be repeatedly so shifted. In a criminal case there is generally no difficulty, as all the allegations are invariably made by the prosecution on whom the general burden of proof invariably lies. So the burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. This rule as to the burden of proof applies generally to negative averments (*Cockle Cas* 123-124). See also 35 C 1051, 9 W R 192, 39 C 245, 47 M 337 (P C)=46 M L J 546, 75 Ind Cas 733, 3 U P L R 44.

On whom burden of proof lies

103. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

#### Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

**Scope**—The general burden of proof is on the party who alleges the affirmative of the facts in issue.

made out and on whom it lies to make out. It is no answer to say that the party who alleges the affirmative of the facts in issue is the party who has the burden of proof.

who would be unsuccessful has the right to begin the party who alleges the affirmative of the facts in issue (*Cockle Cas* 125). In determining the burden of proof of a substantive fact to be proved in a suit, the party who alleges the affirmative of the fact to be proved has the burden of proof. In determining the burden of proof of a negative fact to be proved, the party who alleges the negative has the burden of proof. In determining the burden of proof of a fact which is admitted by one party and denied by the other, the burden of proof is on the party who denies the fact. In determining the burden of proof of a fact which is admitted by one party and denied by the other, the burden of proof is on the party who denies the fact. In determining the burden of proof of a fact which is admitted by one party and denied by the other, the burden of proof is on the party who denies the fact.

As soon as he brings evidence against which he is contending, the burden rolls over to the other side. *Per Bowen L J* in *Q B D* 440. In the same case

*Brett M. R.* says 'But then, it is contended (I think fallaciously) that if the plaintiff has given *prima facie* evidence which, unless it be answered will entitle him to have the case decided in his favour, the burden of proof is shifted to the defendant; as to the decision of the question itself...I cannot assent to it. It seems to me that the proposition ought to be stated thus. The plaintiff may give *prima facie* evidence, either by contradictory evidence or by leading the jury to find the question in his favour, either by contradicting the plaintiff's evidence or by having to consider, upon the evidence introduced, satisfied in favour of the plaintiff with the answer. If they are, they must find for the plaintiff, but if upon a consideration of the facts, they come clearly to the opinion that the question ought to be answered against the plaintiff, they must find for the defendant. Then comes the difficulty: Suppose the jury, after considering the evidence, are left in real doubt as to which way they are to answer the question put to them on behalf of the plaintiff, in that case, also, the burden lies on the plaintiff. And if the defendant has been able by the additional facts which he has adduced to bring the minds of the whole jury to a real state of doubt the plaintiff has failed to satisfy the burden of proof which was upon him.' So the burden of proof fixes upon the party who has the duty of first going forward with the case. If he fails to introduce any evidence at all, or if he fails to introduce sufficient evidence to justify a submission of a case to the Court, the case without any evidence being introduced by the other party, must go against him. If he introduces enough evidence to justify a submission of the case to the Court, the case may still be, as it were, hanging in the balance. The Court may or may not find from the evidence introduced that he has proved his case. If however, he has introduced sufficient evidence to make out what is known as a "*prima facie* case," then in the absence of evidence to controvert such a case, the Court would be bound to find in his favour.

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103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Burden of proof as to particular fact

#### Illustration

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft, to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Cases—27 A 71=1 A L J 423, 11 B 433, U B R (1897 1901) Vol II, 412 U. B R. (1897 1901) Vol II 407.

Scope—The term "burden of proof" is used in two sense as regards (1) the whole case, (2) particular facts. Section 101 deals with burden of proof of the first class and this section deals with burden of proof of the second class. The burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. It is only necessary to add, and to emphasise, that the substance and not the mere *form* of the pleading is to be considered. The position can not be altered nor can the Court be misled by the ingenious manipulation of language. This rule as to the burden of proof applies generally to negative averments unless by reason of their complexity or difficulty of proof or by virtue of some statutory provision the burden is upon the person denying the allegation, as will be seen below (*Cattle Cas* 123). The difference between this section and s 101, consists in this. In section

natural method. The burden of proving a case is naturally upon the person who puts it forward. The burden of proof in any action is fixed by the pleadings upon the shoulders of the one party or the other. If the pleadings consist of the allegations of certain facts by the plaintiff, and their denial by the defendant the burden of proving the facts, be they negative or affirmative is upon the plaintiff. In order to recover he must prove his case. If the plaintiff alleges certain facts, and the defendant admits those facts but alleges other facts which he claims to be a defence, the

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**Burden of proof**—Before a Court can proceed to hear a case it is obviously, necessary to determine which party shall begin or upon whom the burden of proof of the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue but there may be several facts in issue, the burden of proof of some being on one party and the burden of the other on the other. If no evidence is given to entitle him to shift the burden of proof to the other there is general prosecution on whom the general burden of proof invariably lies. So the burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. This rule is to the burden of proof applies generally to negative averments (*Cockle C* 123-124). See also 35 C 1051, 9 W R 192, 39 C 245, 47 M 337 (P C)=46 M L J 546, 75 Ind C 733, 3 U P L R 44.

On whom burden of proof lies

103 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side

#### Illustrations

(a) A sues B for land of which B is in possession and which, as A asserts, was left to A by the will of C B's father

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Therefore the burden of proof is on A

(b) A sues B for money due on a bond

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved

Therefore the burden of proof is on B

**Scope**—The general burden of proof is upon the party who would be unsuccessful in the case if no evidence at all were given and such party has the right to begin. The burden of proof to an affirmative thereof (*Amos*

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*Co L R 11 Q B D 440* In the same case



task for him by letting in evidence circumstances from which such a plea necessarily follows, it is the duty of the Court to give him the benefit of it 81 Ind Cas 901

Burden of proving fact especially within knowledge

**106** When any fact is especially within the knowledge of any person the burden of proving that fact is upon him

#### Illustrations

(a) When a person does an act with some intent on other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him

(b) A is charged with travelling on a railway without a ticket The burden of proving that he had a ticket is on him

**Scope**—This is an exception to the general rule Where the subject matter of a party's allegation (whether affirmative or negative) is peculiarly within the knowledge of a particular person, the burden of proving that there was no negligence on the part of that person is upon him

the knowledge of the other, the party within the affirmative, is to prove it, and not he who avers the negative vide *A v Turner*, 5 L J 206 Where a suit was brought by the legal representative of a deceased person, who was killed at an accident while travelling in the train of the railway company, alleging that there was no negligence on the part of the company This decision is supported not only by *Western Railway Company of Canada v Braid* S P 131, namely, that the fact of a breach on a line of Railway is *prima facie* evidence of improper construction or maintenance which is for the Railway Company to rebut, but also by the general rule of the law of evidence that when any fact is especially within the knowledge of any person the burden of proving that lies upon the person 3 M L T 251 See also 17 M L J 339, 38 C 127, 1 A 53 (F B), 11 Ind Cas 202

Burden of proving death of person known to have been alive within thirty years

**107** When the question is whether a man is alive or dead and it is shown that he was alive within thirty years the burden of proving that he is dead is on the person who affirms it

**Scope**—Where there is proof of the existence of a state of things and no evidence of its cessation, the presumption is that such state of things continues for a reasonable length of time Hence, if the question is as to the life or death of a person at first, the burden of proving that he is dead is on the person who affirms it

**108** [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it

**Legislative changes**—The words within brackets were substituted by Act 18 of 1872

**Scope**—There is a presumption that a person who is proved not to have been heard of for seven years by those who would be likely to hear of him if living is dead but there is no presumption that he died at any particular time *Nephan v Doe*, 2 M & W 894 *Cockle Cas 23 In Ex-ten v Henderson* 2 Sim & G 360, *Sir John Stuart V C sa t*—‘The principle on which the Court presumes the death of a person of whom no tidings have been received for a long period of time, is this—that, if he were living, he would probably have

101 the party has to prove the whole of the facts which he alleges to entitle him to judgment when the burden of the proof is on him. The present section provides for the proof of some one particular fact. The illustration sufficiently points to the meaning. The whole of the facts however numerous and complicated, which go to make up the prisoner's guilt must be proved by the prosecution. If the prisoner wishes to prove a particular fact his *alibi*, for instance, he must prove it. If the prosecutor wishes to prove the case, not by independent oral testimony, but by the isolated fact of the prisoner's admission, or if he wishes to throw that is an additional fact, he must prove it. (*Norton Ev* 289 90)

**104** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible

#### Illustrations

- (a) A wishes to prove a dying declaration by B. A must prove B's death.  
 (b) A wishes to prove by secondary evidence the contents of a lost document. A must prove that the document has been lost.

**Scope**—The meaning of this section is that no person shall be allowed to give evidence before he has shown that he is in a legal position to do so. *Vide s* 136 Clause 2 (*Norton Ev* 290)

**105.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions

#### Illustrations

(a) A, accused of murder alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on A.

(b) A accused of murder alleges that, by grave and sudden provocation he was deprived of the power of self control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever except in the case provided for by section 335 voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

is that the prosecution must prove exception to the general rule. Under up the right of private defence, must be account of the transaction from cases. No accused person can, at the

same time deny committing an act and justifying it. 1 C L R 62, A W N 1898 209, A W N 1898 210. The burden of proving the existence of circumstances bringing a case within any special exception or proviso contained in any part of the Penal Code is upon the person accused and the Court shall presume the absence of such circumstances. 8 Ind Cas 259=11 Cr L J 612. See also 7 A L J 438, 11 C L R 232 P C, A W N 1899, 113.

**Special exception**—The onus to show that a game is a game of mere skill is on the accused. 15 Cr L J 276=23 Ind Cas 484, see 8 C W N 714, U B R (1893 1900) 207, 6 A 200 50 C 318, 45 A 329.

This section says nothing about pleas but places the burden of proof in certain circumstances on the accused. But if the prosecution has already performed the

ask for him by letting in evidence circumstances from which such a plea necessarily follows, it is the duty of the Court to give him the benefit of it 81 Ind Cas 901

Burden of proving fact especially within knowledge

106 When any fact is especially within the knowledge of any person the burden of proving that fact is upon him

#### Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him

Scope—This is an exception to the general rule. Where the subject matter of a party's allegation (whether affirm

the knowledge of the other, the party within whose knowledge it lies and who asserts the affirmative, is to prove it, and not he who avers the negative. Vide *R v Turrer*, 5 L S 206. Where a suit was brought by the legal representative of a deceased person, who was killed at an accident while travelling in the train of the

company. This decision is supported not only by *Western Railway Company of Canada v Bird* 5 P 131, namely, that the fact of a breach on a

line of Railway is *prima facie* evidence of improper construction or maintenance which is for the Railway Company to rebut, but also by the general rule of the law of evidence that when any fact is especially within the knowledge of any person the burden of proving that lies upon the person. 3 M L T 251. See also 17 M L J 339, 38 C 127, 1 A. 53 (F B), 11 Ind Cas 202

Burden of proving death of person known to have been alive within thirty years

107 When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years the burden of proving that he is dead is on the person who affirms it

Scope—Where there is proof of the existence of a state of things and no evidence of its cessation, the presumption is that such state of things continues for a reasonable length of time. Hence, if the question is as to the life or death of a person who has been once at first, on the party who a ver, there be a question as jury (*R v Willshire* 6 Q date may or may not afford ent date (*Powell Ev* 411)

108 [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it

Legislative changes—The words within brackets were substituted by Act 18 of 1872

Scope—There is a presumption that a person who is proved not to have been heard of for seven years by those who would be likely to hear of him if living is dead, but there is no presumption that he died at any particular time. *Nepean v Doe*, 2 M & W 894. *Cockle Cas* 27. In *Doe v Henderson* 2 Sim & G 360 Sir John Stuart 1 C said—"The principle is that the Court presumes the death of a person of whom no tidings have been heard, if he were living, he would prob-

communicated with some of his friends and relatives. It is a conclusion which the Court draws from the probabilities of the case. It is quite clear, therefore, that when no such probability exists, the presumption cannot arise.

But this presumption will not arise if the person in question left his home under circumstances which rendered it improbable that he would communicate with his friends. There is no presumption as to the exact time during the seven years, when the person in question died. When that question is material it must be a subject of distinct proof by the party interested in fixing the time, for there is no presumption as to when, during the seven years, the person in question died (*Portell Ev* 412). Ss 107 and 108 lay down no rule as to the presumption of the exact time of the death of a missing person so that whenever the question as regards the exact time of

the man was dead when the question was raised that is, at the date of the suit, and not at any earlier period. The English law is otherwise. 37 C 103=14 C W N 341, 35 C 25, 8 A L J 1052 (F B), *Contra* 8 Ind Cas 55. This section supersedes the rule of Mahomedan law that a man will be presumed dead only after 90 years from the date of his birth. 42 P R 1892.

Cases—41 M L J 295, 19 A L J 713, 1 Pat 475, L R 3 A 393 (Rev), 64 Ind Cas 468, 43 A 673, 1923 Bom 208, 1923 Lah 174, 45 A 466, 1923 M 182, 47 B 451.

**109** When the question is whether persons are partners, landlord and tenant, or principal and agent and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

**Principle**—  
of cal importance

**Scope**—Here the presumption arises from the probability of the continuance of things once shown to exist. *Price v Price* 16 M & W 232. Where therefore, partners continue their business as before after the partnership has expired, *Clarke v Peace* 33 L J Ch 290, or a tenant holds over after the expiration of his lease, *Torrans v Young* 6 C & P 8, or if in respect to the relation of principal and agent, *Payan v Lambs* 12 Q B D 460, if the facts existing be once established the continuance of the partnership, the tenancy or authority on the old footing will be presumed. *Norton Ev* 295.

**Partners**—11 P R 1897

**Tenants**—4 C 314, U B R (1892-1896) Vol II 363, U B R (1892-1901) Vol II 414.

**110** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

**Scope**—The fact of possession is owner is sufficient *prima facie* evidence of ownership, without the aid of any documentary proof or title deeds on the subject, until such further evidence is rendered necessary in support of the *prima facie* case of ownership which they made in consequence of the adduction of some contrary proof on the other side. *Robertson v French & East* 130. The fact of possession is clearly relevant to the fact of ownership, as the former undoubtedly renders the latter probable. The person who possesses and acts as owner is generally the owner.

(Cockle Cas be inferred of fences or of wreck o

ractions of that sum—total of enjoyment which  
) If a person is in actual possession, that is  
e *Doe v Penfold* 8 C and P 536, *Jones v*  
ssion is *prima facie* evidence of complete owner

ship throwing the burden of showing that it is held on some inferior title, upon him  
who seeks to dislodge the possessor 1 B 91 The word possession in this section  
is to be understood as opposed to judicial possession and to denote actual present  
possession U B R 1905 Ev 7, 25 B 287 The person who wants to oust a  
person in possession must prove absolute private proprietary title U B R (1897—  
1901) Vol II, 416 Such title must be subsisting title and not previous ownership  
U B R (1897—1901) Vol II 421 See 13 Bur L T 205

Cases—36 C L J 396, 1923 Bom 361, 26 C. W N 305

111 Where there is a question as to the good faith of a transaction  
between parties, one of whom stands to the  
other in a position of active confidence, the  
burden of proving the good faith of the trans-  
action is on the party who is in a position of  
active confidence

#### Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit  
brought by the client The burden of proving the good faith of the transaction is on  
the attorney

(b) The good faith of a sale by a son just come of age to a father is in question  
in a suit brought by the son The burden of proving the good faith of the transac-  
tion is on the father

Scope—The principle on which this section is based is a long established doc-  
trine of equity and it has been repeatedly applied with special emphasis by the  
Lords of the Privy Council to transactions to which the woman of this country are  
parties A. W. N 1884 84 This principle is applied by the English Courts to tran-  
sactions between  
and members  
and wards (C  
of active confid  
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must be shown she was given that care and advise which was due to her in her  
situation 78 Ind Cas 850

112 The fact that any person was born during the continuance of a  
valid marriage between his mother and any  
man, or within two hundred and eighty days  
after its dissolution, the mother remaining un-  
married, shall be conclusive proof that he is the legitimate son of that man  
unless it can be shown that the parties to the marriage had no access to each  
other at any time when he could have been begotten

Scope—In every case where a child is born in lawful wedlock the husband not  
being separated from his wife by sentence of divorce sexual intercourse is presumed  
to have taken place between the husband and wife, until that presumption is en-  
countered by such evidence as proves, to the satisfaction of those who are to decide  
the question, that such place at any time, when, by  
such intercourse, the place at any time, when, by  
of such child" *Per S.* " of nature be the father  
The presumption of of a child during wedlock,  
the husband and wife not being proved to be impotent, and having opportunities of  
access to each other, during the period in which a child be begotten and born in  
the course of nature, may be rebutted by circumstances inducing a contrary presump-

on access or impotence But  
 a boy born seven months after

Cases—146 P L R 1910, 5 C L J 1, 79 P R, 1907, 7 Bom L R 95,  
 29 C 41 (P C), 25 A 403 P C, 28 P R 1906, 10 Ind Cas 389, 68 Ind Cas 465, 44  
 A 470

113 A notification in the Gazette of India, that any portion of British  
 territory has been ceded to any Native State,  
 Proof of cession of territory Prince or Ruler, shall be conclusive proof that  
 a valid cession of such territory took place at the date mentioned in such  
 notification

Note—It is doubtful whether the Government of India without the sanction of the  
 Parliament can make a valid cession of territory Vide 10 B H C R 37 on appeal to  
 Privy Council in 1 B 367

114 The Court may presume the existence of any fact which it thinks  
 likely to have happened, regard being had to  
 Court may presume existence the common course of natural events, human  
 of certain facts conduct and public and private business, in  
 their relation to the facts of the particular case

### Illustrations

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either  
 the thief or has received the goods knowing them to be stolen, unless he can account  
 for his possession,

(b) that an accomplice is unworthy of credit unless he is corroborated in material  
 particulars,

(c) that a bill of exchange, accepted or endorsed was accepted or endorsed for good  
 consideration,

(d) that a thing or state of thing which has been shown to be in existence within  
 a period shorter than that within which such things or state of things usually cease  
 to exist is still in existence,

(e) that

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But the court shall also have regard to such facts as the following, in considering  
 whether such maxims do or do not apply to the particular case before it —

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B, the acceptor, was a young and ignorant person completely under A's influence  
 as to illustration (d)—it is proved that a river ran in a certain course five years  
 ago but it is known that there have been floods since that time which might change  
 its course.

as to illustration (f)—the question is whether a letter was received. It is shown that the letter was not received by the Government, but that it was received by the Government, which would bear on the matter.

as to *illustration (f)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it

Illustration (a)—The Court may presume from the possession of stolen property that the possessor is either the thief or has received it knowing it to be stolen. 1891 Cr. Where a deaf-mute was charged with the theft, *held* in the absence of evidence to the contrary, that he was the thief under this illustration. 1881, 135. But when the accused held that, months after the dacoity, he accused held that, of common description, not covered by s 114, upon to explain their 1881, 135. But when the theft the Court may 2 Weir 418, 32 C L J 119

CL 30 (b) - When there is no sufficient corroboration of the testimony of an  
 on such evidence. By this section the  
 unworthy of credit unless corroborated  
 15 978, 24 Ind Cas 146, 14 B 331  
 Cr, 9 Ind Cas 768, 8 Ind. Cas 193,  
 Bom L R 610, 10 C W N 669, 29 B 193, 14 B 115, 11 Bom L R 858  
 at Un Cr C 750, 4 Lah L J 284

The term "accomplice" signifies a guilty associate in crime, or when the witness is a juror, a person who is so connected with the crime that he could be jointly indicted with the principal. The term is not applied to a person who is unworthy of belief or who is an accomplice in the crime, but who is not a guilty associate in the crime. The requirement should be applied with regard to the varying circumstances.

tion This presumption can be rebutted by proof of non access or impotence But such evidence should exclude all doubt 16 Cr L J 84 A boy born seven months after marriage was also considered legitimate 26 Ind Cas 969

Cases—146 P L R 1910, 5 C L J 1, 79 P. R, 1907, 7 Bom L R 95, 29 C 41 (P C), 25 A 403 P C, 28 P R 1906, 10 Ind Cas 389, 68 Ind Cas 465, 44 A 470

113 A notification in the Gazette of India, that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification

Note—It is doubtful whether the Government of India without the sanction of the Parliament can make a valid cession of territory Vide 10 B H C R 37 on appeal to Privy Council in 1 B 367

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#### Illustrations

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession,

(b) that an accomplice is unworthy of credit unless he is corroborated in material particulars,

(c) that a bill of exchange accepted or endorsed was accepted or endorsed for good consideration,

(d) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession,

cases, induced, be un

(h) answer the obligation which he is not compelled to answer, is in the hands of the obligor

But the court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to illustration (a)—a shop keeper has in his till a marked rupee soon after it was stolen, and can not account for its possession specifically but is continually receiving rupees in the course of his business,

as to illustration (b)—A man's death by an accident of equally good character, is described for causing a very B, a person describes precisely A and himself,

as to illustration (c)—a bill of exchange is committed by several persons A, B and C, three of the criminals, are captured on the spot, h other, corroborate

B, the acceptor, was a young and ignorant person completely under A's influence

as to illustration (d)—it is proved that a river ran in a certain course five years ago but it is known that there have been floods since that time which might change its course



as to illustration (e)—a judicial act the regularity of which is in question, was performed under exceptional circumstances,

as to illustration (f)—the question is whether a letter was received. It is shown that disturbances would bear on the letter and also injure the

as to illustration (h)—a man refuses to answer a question which he is not compelled by law to answer but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked

as to illustration (i)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it

Scope—Where the fact giving rise to such a presumption as may be drawn under this section, is undisputed and no explanation negating the presumption is offered, the Court is justified in laying the onus proper where but for the presumption, the onus could not be laid. But where explanation, negating the presumption is forthcoming, the Court is not in a position to draw the presumption until it has heard the evidence in support of the explanation and, therefore, must ignore the presumption for the purpose of determining where the onus proper lies, on the principle "when conflicting evidence on a point covered by a presumption of law is to be gone into, the presumption of law is *functus officio* as presumption of law. Such a presumption therefore cannot shift "the burden of proof" in the strict sense of that term and the most it can effect is a shifting of 'the burden of evidence' the burden of going forward with new evidentiary matter—and s 4 of the Act indicates that it is for the Court which is taking evidence, to decide whether such a presumption is strong enough to produce even that limited effect. 1 N L R 169. The illustrations appended to this section are not statements of the law qualified only by particular exceptions. They are merely what they call themselves, illustrations or instances of the application of certain maxims out of many possible instances. 69 Ind Cas 257

Illustration (a)—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing it to be stolen property. 15 P R 1891 Cr. Where a deaf and dumb man was charged with the theft, held in the Court of Sessions, under this illustration, that after the dacoity, the accused, held, that, of common description, not covered by s 114, and upon to explain their possession. 1881, 155. But when the theft the Court may presume stolen property. 2 Weir 418, 32 C L J 119

Cases—20 A L J 178

Clause (b)—When there is no sufficient corroboration of the testimony of an accomplice, a conviction should not be based on such evidence. By this section the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. 22 M 491, 9 Ind Cas 978, 24 Ind Cas 146, 14 B 331. 6 Bom L R 1091=22 B 261, 16 P R 1886 Cr, 9 Ind Cas 768, 8 Ind Cas 193; 2 Bom L R 610; 10 C W N 669, 29 B 193, 14 B 115, 11 Bom L R. 858, Rat Un Cr C 750, 4 Lah L J 284

The term "accomplice" signifies a guilty associate in crime, or when the witness is jointly indicted with the accused, a person who is jointly indicted with the accused, of law or practice that is unworthy of belief as an accomplice is not which lays down the the varying circum-

stances of each particular case 15 Bom L R 288 ; see also 28 C 339 ; 16 C W. N 669, 63 I C 612, 2 Pat L T. 757.

Cases—4 Lah L J 405, 68 Ind Cas 113, 65 Ind. Cas 622 ; 67 Ind Cas 343 ; 1923 Lah 385

**Illustration (c)**—This illustration authorises the presumption that a particular judicial or official act has been performed regularly, but it does not authorise the presumption without any evidence that the act has been performed 6 C W. N. 845.

**Illustration (d)**—This illus

Court to make a presumption as  
Cas 694=20 C W N 48

of a continuous nature gives rise to rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant must obviously vary with each case—always strongest in the beginning, the inference steadily diminishes in force with the lapse of time at a rate proportionate to the quality of permanance belonging to the fact in question, until it ceases or perhaps is supplanted by a directly opposite inference. To put the matter shortly it will be inferred that a given set of facts whose existence at a particular time is once established in evidence continues to exist as long as such facts usually exist 36 C L J 336

**Illustration (e)**—There is a well known maxim of law *omnia presumuntur rite esse acta*, this is an inference of reasonable probability arising out of the experience of mankind. The law assumes that any act done in public or any formal act privately done will be performed in due form by the person authorised to do it (*Powell Ev* 391). Under this section it is presumed that official acts have been regularly performed. "Regularly performed" means performed with due regard to form and procedure 1921 Pat 343=63 Ind Cas 226, 65 Ind Cas 471, 68 Ind Cas 740, 4 Lah L J 418

**Illustration (f)**—The posting of a letter, if proved and if the same is not returned by the Dead Letter Office raises the presumption that it must have reached the addressee 45 M L J 817

**Illustration (g)** The presumption indicated in this illustration arising from non production of evidence cannot displace the contrary inference supported by adequate evidence 63 Ind Cas 740 (P C). In other cases the Court can draw such inference from non production 62 Ind Cas 697. Non-production of the account books justified by presumption under this section 25 Ind Cas 749, (1922) P C 378. Where documents relevant to the case are withheld by the Crown, the Court will be justified in drawing an adverse inference against the Crown 36 C L J 346, 36 C L J 245

**Illustration (h)**—This illustration only refers to presumptions that may be raised. It does not follow that such presumption would shift the onus of proof 18 M L T 94. Under the clause (i) it is open to the Court to presume that if a document creating an obligation is in the hands of the obligor, the obligation is discharged. But in raising such a presumption the Court has taken into regard to any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance 25 O C 125

**Presumption of death**—Where among some relations the evidence on the question who died first is quite evenly balanced the Court is entitled to say the probabilities are in favour of the younger man surviving the elder 1922 Bom 347.

## CHAPTER VIII.

### ESTOPPEL

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or procees-

ding between himself and such person or his representative, to deny the truth of that thing

### Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it

The land afterwards becomes the property of A and A seeks to set aside the sale on the ground that, at the time of the sale he had no title. He must not be allowed to prove his want of title

**Estoppels**—Most admissions can be withdrawn the fact that they were made remains, but the party who made them can be heard to explain that he made them rashly and carelessly, or under an honest misapprehension, or even that he knew what he said to be false. But an admission or statement may be made in so conclusive a manner or under such special circumstances that the law will not permit the person who made it to contradict it. He is said to be estopped from denying his former statement. In other words an estoppel is a bar which the law sometimes sets in the way of one who is endeavouring to maintain the contrary of that which he once asserted in words or unequivocally implied by his conduct. The rules of evidence forbid to allege '... with his previous representation when to the policy of the law. Neither he evidence to contradict it. This is what estoppel is where a man is concluded by his own act or acceptance to say the truth'—*Ponell Lr* 446

**Kind of estoppel**—According to English law estoppels are of three kinds (1) By Record, (2) By deed and (3) By Conduct

**Estoppels by record**—The judgment of a competent Court is an instance of this kind of estoppel. Vide ss 40 44 *supra*

**Estoppels by Deed**—Where a man has entered into a solemn engagement by deed under his hand and seal as to certain facts neither he or any one claiming through or under him is permitted to deny the facts (*Phipson Ev* 606)

**Estoppels by conduct**—Estoppels by conduct or as they are still sometimes called estoppels by matter *in pais* were anciently acts of notoriety not less solemn

justice and the rules of procedure should  
46 A 214

**Scope**—The rule is laid down in *Pickard v Sears* (6 A and E 459). The rule is that where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things and induces him to act on that belief, he is

and if, in a reasonable man would take the representation to be true and he meant he should act upon it and did act upon it as true, the first representation would be equally precluded from contesting its truth by negligence or omission where there is a duty cast upon a person by

stances of each particular case 15 Bom L. R. 288, see also 28 C. 339; 16 C. W. N. 669, 63 I. C. 612, 2 Pat. L. T. 757.

Cases.—4 Lah. L. J. 405; 68 Ind. Cas. 113, 65 Ind. Cas. 622; 67 Ind. Cas. 343; 1923 Lah. 385

**Illustration (c)**—This illustration authorises the presumption that a particular judicial or official act has been performed regularly, but it does not authorise the presumption without any evidence that the act has been performed 6 C. W. N. 845.

**Illustration (d)**—This illustration does not compel but certainly permits, the Court to make a presumption as to the continuance of the state of things 29 Ind. Cas. 694=20 C. W. N. 48. Proof of the existence at a particular time of a fact of a continuous nature gives rise to rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant may obviously vary with each case—always strongest in the beginning, the force of a presumption of continuance of a state of things at a rate proportionate to the time it continues on until it ceases or the matter shortly it will be inferred that a given set of facts whose existence at a particular time is once established in evidence continues to exist as long as such facts usually exist 36 C. L. J. 336

**Illustration (e)**—There is a well known rule of evidence, this is an inference of experience of mankind. The law assumes to do this he must believe the facts 7 A. 878 (F. B.); see also 7 C. L. R. 481

**Estoppel—Point of law**—There is no estoppel by reason of misrepresentation on a point of law and a transaction which is invalid can be declared to be such at the instance of either party alone 82 Ind. Cas. 126. Representation on a matter of law as to the validity of an adoption creates no estoppel 70 Ind. Cas. 653. An admission on a point of law is not an admission of a "thing" so as to make the admission a matter of estoppel within the meaning of this section 21 A. 285

**Person**—A minor is not estoppel from setting up his minority. As judicially interpreted the Contract Act makes contracts entered into by a minor void and the Court should not be compelled to pronounce them valid by the provisions contained in the Evidence Act. It is not apparently the case that the word "person" in the section does not include a "minor" or "certified lunatic" or other person under a disability to contract owing to imbecility of judgment. But it might be held that such a person could not be held to have intentionally caused anything. When the law of contract declared that an infant would not be liable upon a contract or in the Statute of Fraud in connection with a contract he cannot be made liable on the same contract by means of an estoppel. In other words there can be no doubt about the general law that the principle of estoppel which is a provision of adjective law cannot be invoked to defeat the plain provision of a Statute 71 Ind. Cas. 161, 20 C. W. N. 418, see also 9 A. L. J. 105, 8 A. L. J. 1058, 31 A. 21, 23 C. 126; 15 C. W. N. 239, 21 B. 198; 19 Bom. L. R. 561; 23 Bom. L. R. 975. In the latter case it was also held that "person" includes minor or lunatic. See also 25 C. 316. 1 Lah. 280. 4 A. L. J. 115 does not apply to minors. The term "person" and competent to enter into a contract of full age

**Declaration, act or omission**—The estoppel under this section may arise by reason either of a declaration, an act or an omission, but in either case there must be an intention on the part of person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of a mere omission

**Adoption**—Where an adoption made by a Hindu widow is invalid for want of permission from her deceased husband she is not estopped from repudiating or

ding between himself and such person or his representative, to deny the truth of that thing

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale he had no title. He must not be allowed to prove his want of title

**Estoppels**—Most admissions can be withdrawn, the fact that they were made remains, but the party who made them can be heard to explain that he made them rashly and carelessly, or under an honest misapprehension, or even that he knew what he said to be false. But an admission or statement may be made in so conclusive a manner or under such special circumstances that the law will not permit the person who made it to contradict it. He is said to be estopped from denying his former statement. In other words an estoppel is a "bar which the law sometimes sets in the way of one who is endeavouring to maintain the contrary of that which he once asserted in words, or unequivocally implied by his conduct". The rules of evidence forbid to allege the existence of a fact which is inconsistent with his previous representation when to do so would be contrary to the policy of the law. Neither he nor his successors can be allowed to adduce evidence to contradict it. This is what is called an estoppel.

**Principle**—In *Cockle v. Lister* 5 L R 5 *Cockle v. Lister* (1877) 5 L R 5. It is held down "Conform to the uniform rule of the law, a tenant who has been ruled at the trial to be a tenant, is estopped from denying that he is a tenant, and occupies it would not be permitted to set up a title acquired by the license of another, to call upon the other to give the title which he let the land. This is not a mere technical rule, but a rule which will cover every case in which the policy of the law requires it."

**Scope**—The estoppel of a tenant is one of the most noticeable instances of estoppel by conduct (*Cockle v. Lister* 53). By this section a tenant is only precluded, 'during the continuance of the tenancy from denying that the landlord had at the beginning of the tenancy a title to the property the subject of the tenancy'. The words of the section leave it open to the tenant to show that his landlord is not the landlord.

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(Cockle  
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licensor had a title to the possession of the property at the time when the licence was given to him to enter though there was no relationship of licensor and licensee subsisting between the parties during the period sued for 13 Ind Crs 517. The tenant is not estopped from denying the title of the lessor 44 A 671=20 A 1 J 615

persons not claiming possession of land under the title of the tenant are not estopped from denying the title of the lessor 44 A 671=20 A 1 J 615

117 No acceptor of a bill

the  
Estoppel of acceptor of bill of exchange, bailee or licensee  
the  
endc  
permitted to deny that his bailor or licensee was  
at the time when the bailment or licence commenced, authority to make such  
bailment or grant such licence

*Explanation (1)*—The exceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn

*Explanation (2)*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor

*Scope*—This is another instance of estoppel by conduct. A bailee is estopped from denying that the bailor had, at the time the bailment was made, authority to make it *Gosling v Birm*, 6, 7 Bing 339. But when the bailee is evicted by title paramount, he can set up that title against the bailor with the consent of the person whose title is set up (*Biddle v Bond*, 6 B and S 245; *Rogers v Lambert*, 24 Q B D 573 cited in *Powell* 474). The acceptance of a bill is also deemed a conclusive admission as against the acceptor, of the existence of the drawer and the genuineness of his signature, and of his capacity to draw (*Sanderson v Callman*, 1842, 11 L J C P 270), and if the bill be payable to the order of the drawer, of his capacity to endorse (*Taylor v Croker*, 1803 4 Esp 127), and if it be drawn by procuration of the authority of the agent to be drawn in the name of the principal (*Taylor* 595). This section is in accordance with English Law Sections 115, 116 and 117 of the Evidence Act are not exhaustive as regards the doctrine of estoppel by agreement 10 C W N 747=33 C 915

*Forged endorsement*—Nobody is entitled to any thing though a forged negotiable instrument, in as much as the forged endorsement is a nullity in itself 36 C 229

## CHAPTER IX

### OF WITNESSES

118 All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answer to those questions by tender years extreme old age disease, whether of body or mind, or any other cause of the same kind

*Explanation*—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them

*Comment*—Evidence must be given by legally competent witnesses. The normal man is competent and presumed to be so. The law of competency is therefore practically the law of incompetency consisting of rules of exclusion

Formerly there were several grounds of exclusion of witnesses the chief being (1) incompetency from interest and (2) incompetency from mental incapacity. On the former ground not only were parties themselves and their husbands and wives were in *pari jure* with either party or otherwise. Successive statutes have abolished this fact of interest in the proceedings to affect credit

*Scope*—Under this section all persons are competent to testify unless the Court considers that they are incapable of giving evidence or understanding the questions put to them by reason of tender years extreme old age disease whether of body or mind or any other cause of the same kind. Even a lunatic if he is capable of understanding the questions put to him and giving rational answers is a competent witness. The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency the Court under this section has not to enter into inquiries as to witness's religious belief or as to the knowledge of the consequences of false hood in this world or the next. It has to ascertain in the best ways it can, whether from the extent of his intellectual capacity and understanding he is able to give a rational account of what he has seen or heard or done on a

particular occasion. If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. *Queen Empress v Lal Sahsi*, 11 A 183. According to English law every sane person is a competent witness in both civil and criminal cases, except a child who does not understand the nature of an oath. *Powell Ev* 197. But in India, where a person is competent to testify according to the provisions of this section, but is unable owing to his tender age, to comprehend the nature of an oath or affirmation, s 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him, and the evidence of such a person recorded without oath or affirmation may be admitted. 10 O C 337=7 Cr L J 89. See also 16 B 359, 14 B L R. 204 (F. B.), 11 C P. L. R Cr 16, *contra* 16 M 105, 10 A 207, 11 A 183.

**How to ascertain competency**—By this section, the Legislature has not prescribed an inflexible rule of universal application to the effect that, before a child of tender years is questioned, the Court must by preliminary examination test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences. 18 C W N 147=41 C 406, *contra*, 11 C W N 51, 20 Bom L R 365.

**Tender years**—There is no fixed period of legal discretion under which an infant is an incompetent witness. The rule by which an infant under seven years of age cannot commit a crime, because the law presumes him conclusively not to have sufficient intelligence for the act, has no analogy in the law of evidence (*Per Pattison J* in *R v Williams*, 7 C & P 320). Age is immaterial, and the which whenever a doubt arises the Court examining the infant as regards his understanding can act on the evidence of a child of tender age and demeanour and the evidence given bears no marks of tutorage. 6 Lah L J 474. A Court should ascertain first of all by some simple questions whether a child is competent to understand and answer questions. 1923 P 91.

13 of Act does not say that a child has no understanding from his nativity and there-  
un any, and such a person is incap-  
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*Harrod*, 1 K & J at p 9, *Powell Ev*

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**Deaf and Dumb**—Deaf and dumb persons were formerly regarded as idiots, and therefore incompetent to testify but the modern doctrine is that if they are of sufficient understanding they may give evidence either by signs or through an interpreter or in writing. (*Powell Ev* 214)

**Explanation**—A lunatic is one that had understanding but by disease grief or other accident has lost the use of his reason. As long as the suspension of the intelligence continues the lunatic is incompetent to testify, but his competency is restored during a lucid interval. Moreover, the disability does not extend to cases of monomania as to some immaterial matter, nor where the hallucination permits him to give evidence on a point not expected from him (*R v* a witness who is believed to be of his capacity to give evidence. (*Powell Ev* 214).

119 A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

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Formerly there were several grounds of exclusion of witnesses the chief being (1) incompetency from interest and (2) incompetency from mental incapacity. On the former ground, not only were parties themselves and their husbands and wives excluded, but also all persons who were in *part jure* with either party or otherwise substantially interested in the proceedings. Successive statutes have abolished this kind of incompetency leaving the fact of interest in the proceedings to affect credibility only—*Cockle Car* 243

**Scope**—Under this section all persons are competent to testify, unless the Court considers that they are incapable of giving rational answers to the questions put to them by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency the Court under this section has not to enter into inquiries as to witness's religious belief or as to the knowledge of the consequences of falsehood in this world or the next. It has to ascertain in the best ways it can whether from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a



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**Deaf and Dumb**—Deaf and dumb persons were formerly regarded as idiots and therefore incompetent to testify but the modern doctrine is that if they are of sufficient understanding they may give evidence either by signs or through an interpreter or in writing. (*Powell Ev* 214)

... but by disease, grief or as the suspension of the mind, but his competency is not expected from him (*R v ...*) who is believed to possess his capacity to give evidence. (*Powell Ev* 214)

**119** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

**Deaf and Dumb witnesses**—The same rule would, no doubt, be applicable in the case of deaf and dumb witnesses.

persons were formerly excluded as witnesses on the presumption of their idiosyncrasy. It is now ascertained how groundless this presumption is (*Cunningham* 349). If the witness can write, it is a safe practice to receive his testimony in this form, than  
*C & P* 127 Persons deaf with idiots Education his  
 their tongues (*Norton* *Ex*

306)

Deemed to be oral evidence—Presumably to exclude the effect of putting in writing which would give the opposite side the right of a reply (*Norton* *Ex* 336)

120 In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent Parties to civil suit, and witnesses In criminal proceedings against any their wives or husbands person, the husband or wife of such person, Husband or wife of person respectively shall be a competent witness under criminal trial

English Law—At common law, a husband or wife of a party to the proceedings civil or criminal, is incompetent to give evidence either for or against such party *Bentley v Cooke* 3 Doug 42. The wife of a person charged with assault upon her is a competent witness against him at common law *R v Asir* 1 Strag 633. Now by Statute they are made competent witnesses as regards certain offences. But a distinction must be drawn between competency and compellability of witnesses. A wife though rendered competent by statute to give evidence against her husband in certain criminal proceedings is not thereby made compellable to give such evidence unless there is a clear and specific enactment to that effect *Leach v Renx* L R (1912) H C 305. In civil cases there appear to have been no exceptions at all.

Scope of this section—Under this section there is no exception either in civil or criminal cases. Such witnesses are always competent. See also 6 W R Cr 21. It appears that this section was only enacted to nullify the effect of the English law on the subject. The ground is covered by s 118. This section provides that parties to the suit shall be competent witnesses. 49 C 345

121 No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate be compelled Judges and Magistrates to answer any questions as to his own conduct in Court as such ne to his knowledge in Court as su ined as to other matters which

#### Illustrations

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B the Magistrate. B cannot be compelled to answer question as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B a Magistrate. B cannot be asked what A said except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B a Sessions Judge. B may be examined as to what occurred.

Scope—The privilege given by this section is the privilege of the witness, i.e. of the Judge of whom the question is asked. If he waives that privilege it does not lie in the mouth of any other person to assert it. 3 A. 573=A W N 1881, 37. But Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. 2 We 177.

122 No person who is or has been married shall be compelled to disclose Communications during any communication made to him during marriage marriage by any person to whom he is or has been married nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest,

in the office will not justly be regarded as a breach of confidence also 2 M W N 369 The words 'communication in official confidence' import no special degree of secrecy and no pledge or direction for its maintenance but include generally all matters communicated by one officer to another in the performance of duties The words have the same meaning as "professional confidence" used in s 126 In English law the privilege as to production is given to those which pass with no special result is that

persons were formerly excluded as witnesses on the presumption of their idiocy. It (Cunningham 349) If the testimony in this form than C & P 127 Persons deaf with idiots Education has their tongues (Norton Ex 306)

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120 In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent Parties to civil suit, and their wives or husbands witnesses In criminal proceedings against any Husband or wife of person person, the husband or wife of such person, under criminal trial respectively shall be a competent witness

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consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other

**Principle**—This enactment rests on the obvious ground that the admission of such testimony would have a powerful tendency to disturb the peace of families, to promote domestic broils and to weaken if not to destroy that feeling of mutual confidence, which is the most endearing solace of married life. The protection is not confined to cases where the communications sought to be given in evidence is of a strictly confidential character but the seal of the law is placed upon all communications of whatever nature which pass between husband and wife. *O'Coner v. Majori Banks*, (1842) 11 L. J. C. P. 267. It extends also to cases in which the interests of strangers are solely involved as well as to those in which the husband or wife is a party on the record. It is, however, limited to such matters as has been communicated during marriage. (*Taylor* § 909 A)

**Scope**—This section protects the individuals and not the communication if it can be proved without putting into the box for that purpose the husband or the wife to whom the communication was made. 22 M. 1=2 Weir 778. Under this section no communication between the husband and wife can be disclosed by the one against the other without the consent of the party concerned. The consent cannot be implied. It is incumbent upon the Court to ask the party, against whom the evidence is to be given, whether he or she would consent to the evidence being given and not to admit it unless such consent is given. 214 P. L. R. 1913, see also 218 P. L. R. 1913, 40 C. 891, 10 P. R. 1914 Cr., 1923 Lah. 40.

**123** No one shall be permitted to give any evidence derived from unpublished official records relating to any State affairs except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

**Scope**—Statements made before the Income tax Collector do not relate to published official records relating to any State affairs except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit. 32 M. 62=19 M. L. J. 263, records not being records of the Collector. Statements made by witnesses as in the course of a departmental enquiry into the conduct of Public Officers, who were subsequently put upon their trial on charges of taking illegal gratification are not privileged under ss. 123, 124 or 125. 16 C. W. N. 431=13 Cr. L. J. 445=15 Ind. Cas. 77. The question whether a communication is privileged or not is determined by the occasion on which and the circumstances in which it is made and not by the nature of the communication. The privilege attaching to an official communication is not absolute but is subject to the condition that it is not to be disclosed in any manner which would be prejudicial to the public interest. act 6 Bom. L. R. 131 (on appeal).

**124** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

**Scope**—This section follows the English law and makes the public officer the Judge as to whether a communication made to him in official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure he is entitled to refuse to disclose the communication. The mere fact that the publication of the communication might cause a scandal in the office will not justify a refusal to disclose it. 7 C. W. N. 246. See also 2 M. W. N. 369. The words "communication in official confidence" import no special degree of secrecy and no pledge or direction for its maintenance, but include generally all matters communicated by one officer to another in the performance of duties. The words have the same meaning as "professional confidence" used in s. 126. In English law the privilege as to production of public documents before Courts of law extends even to those which pass from hand to hand, in a public office in the usual course of business with no special mark of secrecy upon them and the ground on which the privilege rests is that it would be prejudicial to the public interest if it were disclosed.

detrimental to the public interests, to produce them 26 Ind Cas 723 An officer's refusal to disclose a document on grounds of public policy is final It is not competent to the Court to call for and examine the secret archives of the State in order to satisfy itself of their confidential nature 47 Ind Cas 225 But a custom officer cannot claim a privilege as to the information made to him by the Inspector although what took place between the two superintendents might probably be privileged 22 C W N 451 No objection can be taken in appeal 44 M L J 132 A court should decide whether the document is privileged or not 44 A 360= 20 A L J 140

125 No Magistrate or police officer shall be compelled to say whence Information as to commission of offences he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue

*Explanation*—"Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue

*Legislative changes*—This section was substituted by Act 3 of 1887

*Scope*—The words information as to the commission of any offence in this section only enact the rule which as said by *Eyre C J* in *Hardy's Case* (24 How St Tr 808) has universally obtained on account of its importance to the public for the detection of crimes that those the detection is made, should 937=Cr Rg 47 of 1897 *Eyre* opportunities should be given prisoner, but there is a rule, which has universally obtained on account of its importance to the public for the detection of crimes that those persons who are the channels by means of which that detection is made should not be unnecessarily disclosed, if it can be made to appear that really and truly it is necessary for the investigation of the truth of the case that the name of person should be disclosed I should be very unwilling to stop it, but it does not appear to me that it is with in the case eviden lutely 597=46 A 471

126 No barrister, attorney, pleader or vakil shall at any time be Professional communication permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employments as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment

Provided that nothing in this section shall protect from disclosure—

- (1) any such communication made in furtherance of any [illegal] purpose,
- (2) any fact observed by any barrister, [pleader], attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client

*Explanation*—The obligation stated in this section continues after the employment has ceased

#### *Illustrations*

(a) A, client, says to B, an attorney— I have committed forgery and I wish you to defend me'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose is not protected from disclosure

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings it is not protected from disclosure.

Legislative changes—The words within brackets have been added by Act 18 of 1872

**Principle**—The rule is established for the protection of the client, not of the lawyer, and is founded on the impossibility of conducting legal business without professional assistance and on the necessity, in order to render that assistance effectual or securing full and unreserved intercourse between the two. The privilege may be waived by the client, therefore, but not by the adviser (*Phipson* L. 170).

**Scope**—A legal adviser, (whether barrister, attorney, pleader or vakil) will not be allowed without the express consent of his client, to disclose oral or documentary communications made or obtained in professional confidence (*Phipson* *Ev* 169). The law in India relating to professional communications between a solicitor and a client is the same as in England and in interpreting this section the High Court may rightly refer to English cases. The use of the word 'disclose' in this section shows that the communication to be privileged must be of a confidential character between the solicitor and the client. A solicitor learns in the course of his dealings with his client a matter communicated to him in confidence and in disclosure of his professional advice. The use of obtaining his client. He must then state the name of the person for whom he claims the privilege. Where one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it is to be kept confidential, the solicitor is bound to disclose it to the rest of the world.

the words, the solicitor is bound to disclose the contents of the communication made in respect of which it is sought to rely, unless its consent has been obtained from the person making the statement, unless the communication was made in confidence, and it was stipulated by or on behalf of his client that it was not to be disclosed. 18 B 263, see also L B R (1894-1909) 338 26 Bom L R 887 This section must be construed as applying to all persons who came in within the category of 'pleader' as defined in s 4 (a) of Cr P Code and includes therefore a muktear 25 C 736=2 C W N. 484 The consent required by this section should be given on each occasion when a communication of the kind described is sought to be made admissible in evidence A W N 1890, 172 The communication must be of a confidential or private nature 3 B 91 The communication must be made to him in the course and for the purpose of his employment as a pleader 4 Bom L R 460 5 Bom L R 122 A Court has no power to order the production of a document which is privileged 7 Bom L P 709 See also 16 C W N 742 Neither a formal retainer, nor payment of fees is necessary to constitute the relationship of solicitor or client, it is enough if the solicitor is consulted in any way in his professional character The sale, purchase, and conveyance of estates or negotiations for a loan are within the

According to English law communications in furtherance of a fraud or crime are not protected. But according to this section communications made in furtherance of any illegal purpose are not protected (*Vide Phipson, Ev* 172). Trade secrets communicated to a vakil in course of his professional advice are also protected. 16 A L J 987

Section 126 to apply to interpreters etc

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants or barristers, pleaders, attorneys and vakils

**Scope**—Where a communication is made to a pleader's clerk he is not at liberty to disclose the communication. 26 C 53=2 C W N 649, U B R (1897-1901) Vol II 358. The communications must have been confidentially made for the purpose of employment or the knowledge confidentially obtained solely in consequence of it, to be privileged (*Gardner v Irwin* 4 Ex D 49, *O'Shea v Wood*, 1861, P 286)—*Phipson Ev* 172

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126, and, if any party to a suit or proceeding calls any such barrister, [pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

**Legislative changes**—The word within brackets has been inserted by Act 18 of 1872

**Scope**—The privilege may however be waived by the client either expressly or impliedly—e.g. by the client examining the solicitor as to the privileged matter though, if only examined as to part, he cannot be cross examined to the residue, or, by sending the matter to a court of law for decision. But if a client does not give evidence, the privilege is not waived. Under the present Act the mere fact of the party's giving such evidence himself does not imply such consent, and if he calls the barrister, etc., as a witness and questions him he is deemed to consent to disclosure by the barrister, etc., to disclose, in professional confidence. (*Cunningham*)

129. No one shall be compelled to disclose to the Court any confidential communications with legal advisers which he is not bound to disclose, and no one shall be compelled to answer any question necessary to be asked in order to decide whether or not such communications have been made, but no others.

**Reason for the rule**—Under the old law, (Act II of 1855) section 22, a party to a suit who offered himself as witness was bound to disclose all communications with his legal advisers.

here laid down, *Minet v Morgan* L R 8 Ch App 361—(*Cunningham Ev* 362)

**Scope**—Statements of witness recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether it is a good case for the Court to decide are privileged. 43 Ind Cas 71



**130** No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims

**English law**—A witness, if a stranger cannot be compelled to produce his title deeds or documents in the nature of title deeds on account, it is said, of the mischief which, in the present complicated state of the law of real property, might result if title to estates were subject to compulsory disclosure *Mr Best* suggests the reason to be the mischief which might ensue from an erroneous decision of the Judge as to the nature of the documents (*Phipson Ev* 179) A person who is not a party to the action cannot be compelled to produce his title deeds or other documents referring to his title to any property If one person wants to see another person's title deeds or documents he should himself bring an action against such person for discovery *Goale Cus* 303, *Pickering v Wyles* 1 L J K B (O S) 110 A mortgagee also cannot be compelled to produce his security including title deeds deposited with him except on payment of his principal and interest *Chichester v Marquis of Donegall* L R 5 Ch 50 A witness is not bound to produce any document which he swears will tend to criminate him *Roe v New York Press* 75 L J 31

Production of documents which another person has in possession could refuse to produce

**131** No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession unless such last mentioned person consents to their production

**Notes**—By section 6, secondary evidence can be given when a document is in the custody of a person who is legally bound to produce it and who refuses to do so In the case, therefore of a document protected under this or the preceding section secondary evidence of its contents could not be given (*Cun Ev* 366)

**132** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer

**English law**—No man is bound to criminate himself, *nemo tenetur seipsum rodere* Hence, a witness whether a party to a suit or not cannot be compelled to answer any question, whether put  *viva voce* or in the form of a written interrogatory, the answer to which may expose, or tend to expose him to a criminal charge, penalty, or forfeiture of any kind If the witness, after claiming privilege is compelled to answer, his evidence will not be admitted against him at a subsequent trial for the criminal offence (*R v Garbet* 1 Den 236) *Powell Ev* 22

**Scope**—It seems that the Indian Legislature while departing from the rule laid down in English cases have accepted the principle laid down in *P v Garbet* cited above A witness has been made compellable to answer relevant questions but he is given the protection mentioned in that case Where a person is charged with an offence with which he is alleged to have incriminated himself in his deposition in a case the fact that he was the person who gave the deposition should be proved 2 Weir 794

**Relevant to the matter in issue**—This section does not in terms deal with all criminating questions which may be addressed to a witness but only with

questions as to matters relevant to the matters in issue Irrelevant questions should not be asked of a witness as to matters with the rest of the Act, lead to the conclusion that the protection is only afforded to answers to which a witness has objected or has been constrained by the Court to give 3 M 271 12 B 440, 23 B 213 Taking a thumb impression of a witness by the Court is not equivalent to asking a question and receiving answer within the purview of the proviso to s 132 and therefore such a thumb impression may be proved against the person giving it in a criminal trial 16 C W N 500=15 C L J 399

**Claim of privilege**—A witness must claim the benefit of the protection afforded by the section before he makes statement in respect of which a question is subsequently raised 40 A 271=16 A L J 201

**Proviso**—A statement containing defamatory matter against another, made by a witness in a judicial proceeding is a privileged statement under this section of the Act for which such witness could not be proceeded against criminally If the statement were false, he might be prosecuted for giving false evidence 3 O C 80, 18 A L J 940 Where on the evidence given by certain witnesses in a murder case to the effect that they assisted the accused in concealing the dead body after the only evidence being that depositions, they had omitted to object, perhaps the question on the ground that the proviso does not apply to voluntary statements 32 C W N 750, 9 C W N 911, Rat Un Cr C 360, 12 B 440, 16 A 83, 43 A 92 37 C 878 If a person makes a statement voluntarily without using against him in his trial on a criminal case a defamatory statement which is not protected by s 133 A 163, 22 A 685, 23 C 563, 11 W 23 C 867, contra, 11 B L R 321, 22 A 234, 9 C W N 911

**133** An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice

**Accomplice**  
**Scope**—So long established a rule of practice as that which makes it prudent as a general rule to require corroboration of accomplice, cannot without great danger to society be ignored by the Magistrates and Session Judges simply because this section declares that a conviction is not illegal merely because it proceeds upon the testimony of an accomplice s should give proper effect to this illustration (b) and that in s 133 the general judgments, and discretion The illustration should show or it of the case of the case eral principle corroborated in material particulars But along with this principle must be borne in mind the qualifications contained in the further illustration which the Court is directed to consider a particular accomplices can be laid down 20 D 123=7 D W L R 694

**Corroboration**—It is generally unsafe to convict an accused person on the testimony of an accomplice unless the evidence is corroborated in material particulars conclusive does not apply to all persons who are accomplices The particular circumstances of the case may require a general rule can be laid down on this subject to corroboration being necessary to a Court of revision will not unless under exceptional circumstances, interfere in cases where the rule has not been adhered to 17 Ind Cas 19=13 Cr L J 767, 11 Bom L R 858, 7 A 160, 27 P R 1859 By the law both of India and England the evidence of an accomplice is

admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice 14 B 115

The corroboration circumstances affecting  
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independent evidence  
of the same accomplice

The amount of criminality is a matter for consideration and when a person is only an accomplice by implication or in a secondary sense this evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice the Court must exercise careful discrimination and consider all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances or whether the circumstances are of such a nature that the evidence purporting to be given by an alleged accomplice are supported in essential and material particulars by evidence *alundi* as to the facts deposed to by that accomplice 28 C 339 = 5 C W N 517 see also 15 Bom L R 288, Rat Un Cr C 750, 2 Weir 809 N To justify the Court in setting aside the conviction, it is necessary to show not only that there is no corroboration, but that the Judge taking all the evidence together was wrong in acting on it 16 C W N 669 It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender 4 Bom L R 401 See also 7 C W N 55 57 P L R 1902 = 5 P R 1902 Cr L B R 187 = 189 322 6 L B R 4 25 M 143 5 C P L R 1 Cr Pr or to the Evidence Act the rule not of law but of practice was that a conviction could not be based on the unsupported evidence of an accomplice 31 P R 1866 Cr 125 P R 1866 Cr 124 P R 1866 Cr 27 P R 1867 Cr Rat Un Cr C 844 74 P R 1860 Cr 11 P R 1867 Cr, U B R (1892 96) Vol 1 103, 2 C W N 55 5 P R 1902 17 P L R 1912 10 B 319, 24 Ind Cas 158 U B R (1897 1901) Vol 1 173, 9 A 528, Rat Un Cr C 102, L B R (1872 1892) 54 8 A 306 33 C 1353, 8 A 120, 1 M 394 1 L B R 29, 16 P R 1896 Cr *contra* 1 M 394, 35 M 247, 35 M 397 1 M L J 397 (F B)

There must be independent corroboration with respect to the identification of the persons whom accomplices charge and with respect to the facts they state 21 P R 1865 Cr, 1 P R 1868 Cr, Rat Un Cr C 840, see also 1 M L J 367, Rat Un Cr C 844, 18 C W N 850 11 B H C A C 196, see also 7 Bom L R 969 for nature of corroboration Where there is nothing in the case outside the confession of a co accused the accused must be acquitted 48 A 409 = A I R 1926 All 377

Cases—Where corroboration was found necessary vide 4 P R 1903 Cr 23 C 361 21 C 328 2 Lah 295, 73 Ind Cas 506, 1923 Lah 153, 9 O & A L R 947, 1923 Lah 666 1923 Lah 335 69 Ind Cas 462, 4 Pat L T 381, 5 Lah 429

Principle—Accomplice evidence is held untrustworthy for three reasons, (1) because an accomplice is likely to swear falsely in order to shift the guilt from himself, (2) because an accomplice is a participant in crime, and consequently as a sanction of an oath, and (3) because he is in the expectation of an immunity from those with whom he acted criminally. There is often danger that, for the purpose of saving themselves rather than stating the truth, the accomplices of saving themselves rather than stating the truth the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant 14 B 115

Accomplice—The term accomplice signifies a guilty associate in a crime when the witness sustains such a relation to the criminal act that he could be indicted with the accused he is an accomplice. 27 M 271 Where an accomplice is an involuntary one his statement is not tainted 2 Weir 809 N A spy is no

matters in issue. Irrelevant questions should be asked with the limitation in this section, that a witness is not to be asked questions tending to criminate him as to matters in issue, especially when read with the rest of the Act, lead to the conclusion that the protection is only afforded to answers to which a witness has objected or has been constrained by the Court to give. 3 M 271, 12 B 440, 23 B 213. Taking a thumb impression of a witness by the Court is not equivalent to asking a question and receiving answer within the purview of the proviso to s. 132 and therefore such a thumb impression may be proved against the person giving it in a criminal trial. 16 C W N 500 = 15 C L J 399.

**Claim of privilege**—A witness must claim the benefit of the protection afforded by the section before he makes statement in respect of which a question is subsequently raised. 40 A 271 = 16 A L J 201.

**Proviso**—A statement containing defamatory matter against another, made by a witness in a judicial proceeding is a privileged statement under this section of the Act for which such witness could not be proceeded against criminally. If the statement were false, he might be prosecuted for giving false evidence. 3 O C 80, 18 A L J 940. Where, on the evidence given by certain witnesses in a murder case to the effect that they assisted the accused in concealing the dead body after murder, they were prosecuted under s. 201 the only evidence being that depositions, held, that their conviction was not illegal, as they had omitted to object, perhaps owing to the want of legal advice to answer the question on the ground that the answers would criminate them. 2 Weir 792. The proviso does not apply to voluntary statements. 32 C W N 756, 9 C W N 911, Rat Un Cr C 360, 12 B 440, 16 A 83, 43 A 92, 37 C 878. If a person makes a statement voluntarily without any compulsion, it may be, if relevant, used against him in his trial on a criminal charge. 21 C 392, 32 C 756. A defamatory statement which is not protected under s. 499 is punishable. 14 C L J 31, 33 A 163, 22 A 685, 23 C 563, 11 M 477, 17 B 127, 15 C 264, 10 A 425, 23 C 867, *contra*, 11 B L R 321, 22 A 234, 9 C W N 911.

**133** An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

**Scope**—So long established a rule of practice as that which makes it prudent as a general rule to require corroboration of accomplice, cannot, without great danger to society, be ignored by the Magistrates and Session Judges simply because this section declares that a conviction is not illegal merely because it proceeds upon the testimony of an accomplice.

It should give proper effect to the illustration (b) and that in s. 133 the general judgments, and discretion. The illustration should appear that the circumstances show, or it should be held that the principle is that it is unsafe to convict on the evidence of accomplices, unless corroborated in material particulars. But along with this principle, the qualifications contained in the illustration should be considered. They show that a particular accomplice can be laid

convict an accused person on the testimony of an accomplice in material particulars corroborated in material particulars. But this rule does not apply to all persons, who of each case will affect its application and no general rule can be laid down on this point. 33 C 649 = 10 C W N 669. The rule as to corroboration being necessary to evidence of an accomplice being one of practice a Court of revision will not unless adhered to. 17 Ind Cas 19 = 13 Cr L J 767, 11 Bom L R 858, 7 A 160, 27 P R 1859. By the law both of India and England the evidence of an accomplice is

admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice 14 B 115

The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as participating in the transaction. Such corroboration ought to be that which is derived from unimpeachable or independent evidence derived from the earlier statements of the accomplices 6 Bom L R 481

and when a person is only an accomplice this evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice the Court must exercise careful discrimination and consider all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances or whether the circumstances are of such a nature that the evidence purporting to be given by an alleged accomplice are supported in essential and material particulars by evidence *abundant* as to the facts deposed to by that accomplice 28 C 339 = 5 C W N 517, see also 15 Bom L R 288, Rat Un Cr C 750, 2 Weir 809 N. To justify the Court in setting aside the conviction, it is necessary to show not only that there is no corroboration, but that the Judge taking all the evidence together was wrong in acting on it 16 C W N 669. It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender 4 Bom L R 401. See also 2 C W N 55, 57 P L R 1902 = 5 P R 1902 Cr, L B R (1872-1897) 322, 6 L B R 4, 25 M 143; 5 C P L R 1 Cr. Prior to the Evidence Act, the rule not of law, but of practice was that a conviction could not be based on the unsupported evidence of an accomplice 31 P R 1866 Cr, 125 P R 1866 Cr, 124 P R 1866 Cr, 27 P R 1867 Cr, Rat Un Cr C 844, 74 P R 1860 Cr, 11 P R 1867 Cr, U B R (1892-96) Vol 1 103, 2 C W N 55, 5 P R 1902, 17 P L R 1912, 10 B 319, 24 Ind Cas 158, U B R (1897-1901) Vol 1 173, 9 A 528, Rat Un Cr C 102, L B R (1872-1892) 54, 8 A 306, 33 C 1353, 8 A 120, 1 M 394, 1 L B R 29, 16 P R 1896 Cr *contra* 1 M 394, 35 M 247, 35 M 397, 1 M L J 397 (F B)

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Principle—Accomplice evidence is held untrustworthy for three reasons, (1) because the accomplice is generally in order to shift the guilt from the perpetrator in crime, and consequently as a result of an oath, and (3) because the accomplice is often in the expectation of an immunity from those with whom he acted in crime. The accomplice is often dangerous to the prosecution. There is often danger

that, for the purpose of saving themselves rather than stating the truth, the accomplices of saving themselves rather than stating the truth the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant 14 B 115

Accomplice—The term accomplice signifies a guilty associate in a crime or, when the witness is a co-accused, a person who could be jointly indicted with the accused. An accomplice is not an involuntary accomplice.

police 19 B 363 Rat Un Cr C 4-8 A person charged with an offence by the police but subsequently discharged by the Magistrate is not an accomplice 7 W R Cr 44, L B R (1893 1900) 467 A person offering bribe to the police is an accomplice 14 B 115, 14 B 331, 26 B 193, 26 M 1, 2 C W N 672 Witnesses to payment of bribes are not accomplices unless they co operate in the payment of the bribes 33 C 649, 27 C 144 No man ought to be treated as an accomplice on mere suspicion 11 Bom L R 1153 Involuntary payment of bribe does not make one an accomplice 27 C 925 See also 31 C L J 30

**134** No particular number of witness shall in any case be required for the proof of any fact

**Scope**—The general rule is that the Court can act upon the uncorroborated evidence of single witness, if satisfied with such evidence (*Cockle Cas* 141) But there are certain cases in which the legislature has required as a matter of law that evidence should not be given to the unsupported testimony of one witness (*Powell Ev* 515) But the *quantum* of evidence permitted upon a given point as distinguished from the *quantum* of evidence required, rests in the discretion of the Court  
It is not open to the trying Magistrate whose evidence the defence desires

## CHAPTER X

### OF THE EXAMINATION OF WITNESSES

**135** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court

**Scope**—This section deals with the law which regulates the order in which witnesses are to be examined Before the Court can proceed to hear a case, it is obviously necessary to determine which party shall begin or upon whom the burden of proof on the whole case lies The general rule is that the party who alleges any matter in issue must prove it This would be simple enough if there were only one fact in issue but there may be several facts in issue the burden of proof of some being on one party and of others on the other party The position against whom judgment would be given if no evidence at all were adduced (*Cockle Cas* 123). The party who would lose the case if no evidence is given has the right to begin In criminal cases there is practically no difficulty as all the allegations are invariably made by the prosecution and as such the prosecution has got the right to begin

(Civil cases)

to begin unless the defence that either in point of law or the plaintiff is not entitled to defend has the right to

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prosecution has the right to begin The first place There are different kinds Chapter XX of the Criminal Procedure in summons cases Chapter XXI lays

down the procedure to be adopted in warrant cases and Chapter XXII prescribes the procedure to be followed in summary trial. In all of them the prosecution witnesses are to be examined in the first place.

**136** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence to decide as to admit the evidence in what manner the alleged fact if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved the Judge may, in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

#### *Illustrations*

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead which statement is relevant under section 32.

The fact that the person so dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

or may require proof of B, C and D before permitting proof of A

**Para (1)**—Section 5 lays down "Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are relevant under the Act and of no others. No party is entitled to adduce evidence of any other fact. This section empowers the Court to satisfy itself as regards the admissibility of any fact—otherwise the object of the section will be frustrated. It has already been hinted that the law of evidence has evolved out of jury stringent. The improper admission of evidence has been adopted by improper

**Para 2**—This para should be read with s 104. It often happens that an agent, for instance, to carry a message and bring back an answer, or do some other act, is put into the box before the agency or authority is proved. Thereupon an objection is taken by the opposing counsel that the evidence is not receivable, as the agency, etc is not proved. An undertaking is usually then given that the agency will be forthcoming at a later period, whereupon the

place 19 B 363, Rat Un Cr C 428 A person charged with an offence by the police but subsequently discharged by the Magistrate is not an accomplice 7 W R Cr 44, L B R (1893 1900) 467 A person offering bribe to the police is an accomplice 14 B 115, 14 B 331, 26 B 193, 26 M 1, 2 C W N 672 Witnesses to payment of bribes are not accomplices unless they co operate in the payment of the bribes 33 C 649, 27 C 144 No man ought to be treated as an accomplice on mere suspicion 11 Bom L R 1153 Involuntary payment of bribe does not make one an accomplice 27 C 925 See also 31 C L J 30

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Order of production and examination of witnesses

Scope—This section deals with the law which regulates the order in which witnesses are to be examined Before the Court can proceed to hear a case, it is obviously necessary to determine which party shall begin or upon whom the burden of proof on the whole case lies The general rule is that the party who alleges any matter in issue must prove it This would be simple enough if there were only one fact in issue but there may be several facts in issue the burden of proof of some being on one party and of others on the other party The position is practically this that the burden of proof lies at first on the party adduced (*Cockle Cas* 123) The party who would lose the case if no evidence is given has the right to begin In criminal cases there is practically no difficulty as all the allegations are invariably made by the prosecution and as such the prosecution has got the right to begin

Civil cases—In civil cases the order of examination is fixed by law

to begin unless the defendant has the right to begin that either in point of law or in point of fact the plaintiff is not entitled to begin

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**136** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence to decide as to admissibility of evidence in what manner the alleged fact if proved would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact such last mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved the Judge may, in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

### Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead which statement is relevant under section 3.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

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Para (1)—Section 5 lays down "Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are relevant under the Act and of no others. No party is entitled to adduce evidence of any other fact. This section empowers the Court to satisfy itself as regards the admissibility of any fact—otherwise the object of the section will be frustrated. It has already been hinted that the law of evidence has evolved out of jury stringent. The improper admission has adopted by improper judges of facts—of the parties fact by asking

Para 2—This para should be read with s. 104. It often happens that an agent, for instance, to carry a message and bring back an answer, or do some other act, is put into the box before the agency or authority is proved. Thereupon an objection is taken by the opposing counsel that the evidence is not receivable, because the agency, etc is not proved. An undertaking is usually then given that evidence to prove the agency will be forthcoming at a later period whereupon the case proceeds.

If the proof of agency should break down, the whole of the evidence of the alleged agent is expunged from the Judge's notes. It would often be highly inconvenient to interrupt the witness in his story and call another witness in the middle of his examination, to prove agency. It is to meet such a state of things that this clause is provided (*Norton Ev* 319)

**Para 3**—Illustrations (c) and (d) explain the meaning of the para. Where the relevancy of one fact depends upon another fact which is not proved before the Court, the Court may either permit the first mentioned fact to be proved before the second fact or may require the party to adduce evidence in the first place for proving the second fact.

Examination in chief

**137** The examination of a witness by the party who calls him shall be called his examination in chief

Cross examination

The examination of a witness by the adverse party shall be called his cross examination

Re examination

The examination of a witness, subsequent to the cross examination by the party who called him, shall be called his re examination

**Notes**—As soon as the witness has taken the oath or affirmed he will be examined by the counsel for the party who called him as a witness this is examination in chief. Next he will probably be cross examined by the other party. Lastly, he may be re examined by the party who called him (*Powell Ev* 525)

**138** Witnesses shall be first examined in chief, then (if the adverse party so desires) cross examined, then (if the party calling him so desires) re examined

Order of examinations

The examination and cross examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testified on his examination in chief

The re examination shall be directed to the explanation of matters referred to in cross examination, and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross examine upon that matter

**Principle**—Long forensic experience has evolved a body of rules of practice which undoubtedly tend to elicit the truth, and thus materially assist the tribunal in ascertaining the weight which should be attached to the evidence of any witness (*Powell Ev* 525)

**Examination**—The first rule which regulates the examination in chief only such issue, everything else will be rigorous under the Act. It is the duty of counsel to put in logical order every relevant fact in such a way that the witness can depose. This task is more difficult than may at first sight appear. The timid witness must be encouraged, the talkative witness repressed, the witness who is too strong a partisan must be kept in check and yet the counsel must not suggest to the witness what he is to say. An honest witness, however, should be left to tell his tale in his own way. In criminal cases, the duty is probably the duty of the prisoner, for he tells in favour of himself, and not unduly press for conviction (*Powell Ev* 526)

"We may here observe that it is to an affirmative proof that an examination in chief is mainly addressed, and the proof is that of the issue to which the party producing the witness has by his pleadings in the cause challenged his antagonist, and this consists in avoidance of all diverting and collateral matters. The expression affirmative is used in the sense of something which is affirmed on either one side or the other. In this view a negation by a defendant of the case

of the witness to be to be regarded as an affirmation of the fact. A the

of opinion, which the witness might himself draw from the facts before him. Testifying as to facts, the witness can of course only do so according to the extent of his knowledge or recollection. He is not required to speak with such certainty as to exclude all doubt from his mind. If says *Professor Greenleaf* 'the fact is impressed on his memory but his recollection does not rise to positive assurance, it is still admissible, to be weighed by the jury, but if the impression is not derived from the recollection of the fact, and is so slight as to render it probable that it may have been derived from others, or may have been some unwarrantable deduction of facts from the facts.' The expression of *Mr Taylor* in his memory" (*Goodeve* will be found limited to more positive evidence and-writing, a witness is in its determination, the

experience to be derived from science, art or trade, witness skilled, in such matters or as they are termed experts are admitted to give as evidence the results of their own craft bearing on the issue as in questions of foreign law or usage skilled or competent persons are admitted to pronounce authoritatively and as matter of evidence, what that law or usage is. So in actions for criminal conversation or for breach of promise of marriage the terms of attachment on which the parties lived towards each other may be proved upon belief. *Ibid* p 196

In the case of experts—which is the other exception to the rule requiring witnesses to depose on actual knowledge,—their testimony, with the exception of the case of legal experts, is not so much of the facts themselves at issue (of which, in deed, they might probably be wholly ignorant) as of what science or their peculiar art or calling would pronounce concerning them under corresponding circumstances. Thus it is everyday's experience to receive as evidence the opinions of medical men as to the cause of disease or death—the probable consequences of wounds,—or the propriety or effect of any given course of medical treatment. So in the case of ancient handwriting, antiquarians have been allowed to fix its date by conjecture (*Good Ev* 203)

**Cross examination**—Cross examination is the examination of a witness by the party opposed to the party who called him, and who examined, or was entitled to examine, him in chief. It is the rule that if a competent witness is intentionally called and sworn for the purpose of giving evidence the right of cross examination exists although no testimony is actually given. According to the English rule where a witness is called to depose to a particular fact, he becomes a witness for all purposes, and may be fully cross examined upon all matters material to the issue, in the direct examination sp 357. *Fletcher v.*

facts already stated by the witness to dis-  
suppressed facts which will support the  
latitude is permitted in cross examination  
by the Court unless the question is material  
weaken the examination in chief nor to it  
to affect the credit of a witness even

—nory is not defective generally, or as  
particular transaction; and whether he has been bribed, or paid to g

If the proof of agency should break down, the whole of the evidence of the alleged agent to examine the prisoner.

Para 3—Illustrations (c) and (d) explain the meaning of the para. Where the relevancy of one fact depends upon another fact which is not proved before the Court, the Court may either permit the first mentioned fact to be proved before the second fact or may require the party to adduce evidence in the first place for proving the second fact.

Examination in chief

137 The examination of a witness by the party who calls him shall be called his examination in chief

Cross examination

The examination of a witness by the adverse party shall be called his cross examination

Re examination

The examination of a witness, subsequent to the cross examination by the party who called him, shall be called his re examination

Notes—As soon as the witness is examined by the counsel for the party in chief. Next he will be re examined by

he will be examined by the adverse party. Lastly, he will be re examined by the party who called him. 25)

138 Witnesses shall be first examined in chief, then (if the adverse party so desires) cross examined, then (if the party calling him so desires) re examined

Order of examinations

The examination and cross examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testified on his examination in chief

The re examination shall be directed to the explanation of matters referred to in cross examination, and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross examine upon that matter.

Principle—Long forensic experience has evolved a body of rules of practice which undoubtedly tend to elicit the truth, and thus materially assist the tribunal in ascertaining the weight which should be attached to the evidence of any witness (Powell Ev 525)

Examination—The first rule which regulates examination in chief is this.—In examination-in-chief only such questions are to be put which are relevant to the issue, and the answers must be admissible in law, and in proper chronological order, and to which the witness can depose. The task is more difficult. The witness must be encouraged, the talk must not be too strong a partisan must be kept to the witness what he is to say. An honest tale in his own way with as little suggestion from counsel as possible. In criminal cases, the duty of counsel for prosecution is wider. It is the practice and probably the duty, of a prosecuting counsel to ask a witness questions favourable to the prisoner, for he must lay all the material evidence before the Court whether it tells in favour of the prisoner or not, and not unduly press for conviction (Powell Ev 526)

"We may here observe that it is to an affirmative proof that an examination-in-chief is mainly addressed, and the proof is that of the issue to which the party producing the witness has by his pleadings in the cause challenged his antagonist, and this consists in avoidance of all diverting and collateral matters. The expression affirmative is used in the sense of something which is affirmed on either one side or the other. In this view a negation by a defendant of the case



But irrelevant questions which neither contradict or qualify the result of the examination in chief nor impeach the credit of the witness, are not allowed even in cross-examination. Where a question asked in cross-examination appears to be irrelevant it will not be excluded if the cross examiner undertakes to show that it is really material (*Powell Ev pp 531-533*)

"Cross examination, though very powerful, is also a very dangerous engine. It is a double edged weapon, and as often wounds him who wields it, as him at whom it is aimed. To wield it in the hands of the raw advocate is most

damage on his cause of clenching the nail examination-in chief examination There-

fore unless there is some very good ground for bringing down, or convicted of falsehood, it is rarely cross examination. Sometimes a cross examiner in order that the pleader may not seem to let he were it, show the the fishing able to th

question are asked to shake his credit or etimes, too a cross examination may have

tion is to be warily approached, and the way

When the examination in chief has resulted in clear, conclusive, or unimpeachable evidence it may be prudent for the adverse party not to cross examine, for, in such a case, he may by so doing, instead of weakening the evidence, merely strengthen and confirm it. So too, he will generally not cross examine a witness, whose evidence he admits, or which possibly can not injure his case. Reckless cross examination, moreover often lets in evidence which before was not admissible (*Powell Ev 531*)

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1850 (1851) 10 L J 825)

**Re examination**—The object of re examination is to explain the meaning of the expressions used by the witness in cross examination. The re examination is subject to the same rules as the examination-in chief. No leading questions may be asked for the witness is the witness of the party who examined him in chief. As to the introduction of new matter, see the end of the section. The Court etc. See what form the exam

**Cases**—An accused person must be allowed to cross examine witnesses called by another co accused for his defence, if the case of the latter is adverse to that of the former. 21 C 401, but see 12 W R Cr 75 which was decided before this Act. But the view expressed in 21 C 401 is in accordance with English law vide *Lord v Colvin*, (1855) 24 L J, Ch 517, *R. v Burdett*, Dears C C 431. One defendant can also cross-examine another co defendant's witness if his defence is adverse. 1 M H C R 546. In criminal cases an accused has the right to cross examine the prosecution witness when the charge is framed. If he waives that right he cannot afterwards claim that right. 7 C 28=8 C L R 328, 20 C 469, *contra* 2 A 253, 32 C 292. In the latter two cases it was laid down that the right continued till the end of the case. After a refusal of an application by the accused for re summoning the prosecution witnesses for further cross examination, the accused applied for summoning some of those witnesses as

witnesses on his behalf. On their appearing the Magistrate refused to allow the accused to cross examine them and the accused thereupon declined to examine them as his witnesses. *Hell*, that the refusal by the Court to allow the accused to cross-examine the witnesses, who were in attendance in Court has resulted in a mis-trial of the case 1 C W N 19, see also 5 C W N 447

No hard and fast rule can be laid down as to the right of counsel to demand a cross examination that a witness should repeat the story which he has told in the examination-in-chief 85 P L R 1914=23 Ind Cas 724. A Magistrate is not entitled to refuse the application of the accused made after the framing of the charge, to recall the witnesses for the prosecution, on the ground that they have already been cross examined before the framing of the charge in the understanding that they would not be required for further cross examination after the charge 6 C W N 424, see 41 C 299. Where a witness has not been asked a single question in examination-in-chief there even the opposite party has the right to cross examine 6 B L R App 88. In a criminal case it must be proved that either the accused cross examined the prosecution witnesses or was given sufficient opportunity to cross examine them 19 B 759, see also 9 W R 587, 6 W R 181, 12 C L J 124 (F B). Generally it is not the province of the Court to examine witnesses and as a rule the Court should leave the witnesses to the pleaders to be dealt with as is provided for in this section 11 O L J 333=82 Ind Cas 154 (1).

It certainly implied by this section that a party must have had an opportunity to cross examine and does not mean that merely a right to cross examine a witness without an opportunity being offered for cross examination is sufficient compliance with the requirements of the law 73 Ind Cas 339=24 Cr L J 595

### 139. A person summoned to produce a document does not become a

Cross-examination of person  
called to produce a document

witness by the mere fact that he produces it and cannot be cross examined unless and until he is called as a witness

Scope—It is the rule that, if a competent witness is intentionally called and sworn for the purpose of giving evidence, the right of cross examination exists although no testimony is actually given. *Rev v Brooke*, 2 Stark 472, *Phillips v Eamer*, 1 Esp 355, 6 B L R App 88. But there are certain exceptions to the general rule. The rule does however, extend to a witness who is simply subpoenaed to produce a document to be identified or proved by another witness. In such a case he need not be sworn. *Summers v Moreley*, 2 Crompt and M 477, *Perry v Gibson*, 1 A & E 48, *Rush v Smith* 1 C M and R 64, *Davis v Dale* 4 Car. and P 335, *Griffith v Ricketts*, 7 Hare 300, *Reed v James*, 1 Stark, 1327

Until he is called as a witness—i.e. until he is sworn intentionally. If he is unnecessarily sworn he cannot be cross examined (*Rush v Smith*, 1 C, M and R 94), nor where he is sworn by mistake (*Wood v Mackinson*, 2 M and R 273; *Clifford v Hunter*, 3 C and P 16, *Reed v James* 1 Stark, 1327)

Witnesses to character

### 140. Witnesses to character may be cross examined and re examined

Scope—According to English practice it is not usual to cross examine, except under special circumstances witnesses called merely to speak to the character of a prisoner, but there is no rule which forbids the cross examination of such witnesses (*Woodroffe*, 863). The Indian rule is also the same as the use of the word "may" suggests that it is not the usual practice though the right exists (*Norton* Ev 325)

### 141. Any question suggesting the answer which the person putting it

Leading questions

wishes or expects to receive is called a leading question

Leading questions—"A question" says *Pentim* "is a leading one, when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer. Is not your name so and so? Do reside in such a place? Are you not in the service of such and such a person? you not lived so many years with him? It is clear that under this form of information may be conveyed to the witness in disguise. It may be used to lead him to give the desired answers to the questions about to be put."

examiner, while he pretends ignorance and is asking for information, is in reality giving instead of receiving it." A leading question is one which suggests to the witness the answer desired, or which embodying a material fact, admits of a conclusive answer by a simple negative or affirmative (Taylor § 1404) "It is very clear that a question is leading which suggests to the witness the answer which he is to make, or which puts into his mouth words which he is to echo back. But if it merely suggests a subject, without suggesting an answer or a specific thing, it is not leading. It has often been declared that . . . and admits of question which . . . such questions . . . real objection . . . use which may

**142** Leading questions must not, if objected to by the adverse party, be asked in an examination in chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory and undisputed, or which have, in its opinion, been already sufficiently proved.

**Principle**—There is no rule of evidence more familiar to the practitioner than the one which forbids leading questions on direct examination of witness. Leading questions may be used to prepare a witness to give the desired answers to the questions about to be put to him, the examiner, where he pretends ignorance as in asking questions in chief or in re-examination. But witness may often be presumed to know the facts, and that leading or suggestive questions allow the party to extract only so much as is favourable or even put a false

**Scope**—Counsel when examining in chief must not ask leading questions. But the rule is not an inflexible one. In the first place, a question is not objectionable as leading when it is only introductory to what is material, or relates to matter as to which there is no dispute. In most cases it is necessary to prove a certain number of unconnected facts in order that Judge or Jury may understand the position of the parties and the circumstances.

As to those matters, leading questions may be asked on the other side, and such questions in a direct manner. But when the questions are merely as "what happened next?" This rule prevents, at least in some measure, the possibility of any collusion between a prosecutor, or party, and his witness. Leading questions may also be put to contradict evidence already given by a witness on the other side, e.g., if the plaintiff has sworn that the defendant said "The goods need not all be equal to sample," the defendant may ask the witness "Did the plaintiff say that the goods were not equal to sample?" and there is no objection to such questions. The permission of the Court is required for such questions to be put except in a

**If objected to etc**—If a leading question is objected to, the answer will be taken in the Judge's notes. The Judge himself will interfere to permit a leading question or a series of leading questions being put, but it is the duty of the opposing counsel to take objection, and it is only through want of practical skill that the omission occurs. At the same time, it is to be observed that if evidence is elicited by a series of leading questions unobjected to, the effect of the evidence so obtained is very much weakened, for it can scarcely escape the notice of the Judge. It is



advisable therefore for a counsel, examining in-chief or on re examination, not to put leading questions except of course as to those points on which they are expressly permitted by the Act (*Norton Ev* 325)

When they may be asked **143** Leading questions may be asked in cross examination.

**Comment.**—If any presumption is to be entertained as to the bias of witnesses, it is the witness who is unfavourable rather than favourable to the cross examiner, hence the reasons for the rule excluding leading questions do not apply to cross-examinations. But although it is the undoubted rule that leading questions may be

the qualification that the Court, in witness shows a *bias* in favour of the subject to the control of the Court serious injustice might result, as one secretly hostile might conceal his bias in order to be called as a witness, and would only need an intimation from the cross examining

able to him. This privilege of submit always therefore, subject to the sound Thus on Hardy's trial, a witness for the disposition towards the prisoner was asked a defence, but *Buller, J* refused to allow the lead a witness upon a cross examination to answer, but you can not go the length of

putting into the witness's mouth the very words which he is to echo back again" *R v Hardy*, 24 How St. Tr p 659 cited in *Powell Ev* 532. But in a latter case *Allerton B* observed "But you may always put a leading question in cross examination whether a witness be unwilling or no" *Parkin v Moon* 7 C & P 408

**144** Any witness may be asked, whilst under examination, whether any Evidence as to matters in writing contract grant of other disposition of property, as to which he is giving evidence was not contained in a document and if he says what it was, or if he is about to make any statement as to the contents of any document which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it

**Explanation**—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts

#### Illustration

The question is whether A assaulted B

C deposes that he heard A say to D—"B wrote a letter accusing me of theft and I will be revenged on him." This statement is relevant, as showing A a motive for the assault, and evidence may be given on it though no other evidence is given about the letter

**Scope**—This section merely points out the manner in which the provisions of section 91 and 92 as to the exclusion of oral by documentary evidence may be enforced by the parties to the suit. Documents which in the opinion of the Court ought to be produced would of course include the cases referred to in section 91, where the law requires a matter to be reduced to the form of a document (*Cunningham, Ev* 376)

**145** A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and Cross examination as to previous statements in writing writing being shown to him, or being proved, but, if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradiction

**English law**—A witness may be cross examined as to previous statement by him in writing—or reduced into writing, relating to the subject



advisable therefore for a counsel, examining in-chief or on re-examination, not to put leading questions except of course as to those points on which they are expressly permitted by the Act (*Norton Ev* 375)

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examiner, while he pretends ignorance and is asking for information, is in reality giving instead of receiving it." A leading question is one which suggests to the witness the answer desired or which embodying a material fact, admits of a conclusive answer by a simple negative or affirmative (*Taylor* † 1404) "It is very clear that a question is leading which suggests to the witness the answer which he is to make, or which puts into his mouth words which he is to echo back. But if it merely suggests a subject, without suggesting the answer, it is not leading. It has often been declared that a question which embodies a material fact and admits of only one answer is not leading. While it is true that a question which may be answered by yes or no is generally leading, there may be such questions which there is no real objection to, the answers being limited to those which may be given." (See *supra* p. 1607.)

142 Leading questions must not, if objected to by the adverse party, be asked in an examination in chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed or which have, in its opinion, been already sufficiently proved.

Principle.—The rule is not inflexible, and it is for the Court to decide whether or not to permit leading questions.

of excluding a leading question in the examination in chief or in re-examination. But the further considerations may be added that a witness may often be presumed to be truthful, and that leading or suggestive questions are necessary to extract only so much as is true, or even put a false answer.

Scope.—Counsel when examining in chief must not ask leading questions. But the rule is not an inflexible one. In the first place, a question is not objectionable as leading when it is only introductory to what is material, or relates to matter as to which the witness is necessary to prove a certain number of facts, or to help the jury to understand the position of the witness. As to those matters, leading questions are permitted on the other side, and such questions in a direct manner. But when the questions are merely as 'what happened next?' This rule prevents collusion between a prosecutor and a witness. Questions may also be put to the witness on the other side, e.g., if the plaintiff is a witness, the defendant may ask him 'what happened next?' or 'be equal to sample, what happened next?' or 'the plaintiff that the defendant did that?' and there by permission of the Court. All *viva voce* examination may be put except in a re-examination.

(*Powell Ev* 528)

If objected to etc.—If the objection is not taken at the time, the answer will be taken in the Judge's notes and it will be too late to object to the evidence afterwards on the score of its having been elicited by a leading question. Sometimes the Judge himself will interfere to permit a leading question or a series of leading questions being put, but it is the duty of the opposing counsel to take objection, and it is only through want of practical skill that the omission occurs. At the same time, it is to be observed that if evidence is elicited by a series of leading questions unobjected to, the effect of the evidence so obtained is very much weakened, for it can scarcely escape the notice of the Judge. It is

in such cases, and to refuse to compel such questions to be answered when the truth or the matter suggested would not in the opinion of the Court affect the credibility of the witness as to the matter to which he is required to testify' *Steph Ev Art 129*)

**Scope**—This does not mean that a witness may be asked questions on irrelevant topics for the mere purpose of contradicting him or of proving contradictory statements. For, unless they come within the exceptions mentioned in s 153, his answers to questions tending to shake his credit cannot be contradicted, nor by section 155, can former contradictory statements be proved unless that part of the witness's evidence, which they counteract, was itself liable to be contradicted (*Cun Ev. 378*)

**Cases**—1923 Cal 315 (2)

**147** If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto

**Scope**—The word "such," it is presumed, refers to the last clause of the preceding section and not to the word "any" in earlier part of that section. None but relevant questions can be asked in cross examination *ante* section 138, clause 2. But relevancy is of two fold, character, it may be directly relevant in its bearing on elucidating or disproving, the very merits of the points in issue. In such a case, the answer may criminate the character of the witness, and can be put in the story. Where questions are put to a witness not for proving or disproving the point in issue but exclusively and merely to show what is the character of the witness the Court is to decide whether the question is to be answered or not (*Norton Ev 328*)

**148** If any such question relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character the Court shall decide whether or not the witness shall be compelled to answer it, and may if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

- (1) such questions are proper if they are of such a nature as to affect the credit of the imputation conveyed by the opinion of the Court as to the matter to which he testifies.
- (2) such questions are improper if the imputation which they convey relates to matters so remote, in time or of such a character, that the truth of the imputation would not affect, or would affect in a degree, the slight opinion of the Court as to the credibility of the witness on the matter to which he testifies;
- (3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (4) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

**Scope**—Witnesses may be cross examined as to specific facts though no pertinent to the issue which tend to discredit the witness or impeach his moral character and credit when there is reason to believe that such examination will tend to the ends of Justice, but that a cross-examination of this character ought not to be allowed when it seems unjust to the witness and uncalled for by the circumstances of the case. According to this view it may as a rule be safely left to the trial Judge



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When witness to be compelled to answer

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- (2) such questions are improper if the imputation which they convey relates to matters so remote, in time or of such a character, that the truth of the imputation would not affect, or would affect in a degree, the slight opinion of the Court as to the credibility of the witness on the matter to which he testifies.
- (3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence
- (4) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Scope.—Witnesses may be cross examined as to specific facts though not pertinent to the issue which tend to discredit the witness or impeach his moral character and credit when there is reason to believe that such examination will tend to the ends of justice, but that a cross-examination of this kind is not to be resorted to when it seems unjust to the witness and the case. According to this view it may as a rule be the

## Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

**Legislative changes**—The word 'accepted' in para (2) was substituted for the original word 'had' by Act 18 of 1872.

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(1) By giving

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depose that he is in their judgment unworthy of belief even though he made the statement on his oath. And here the enquiry must be limited to what they know of his general character.

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**Clause (1)**—Here the enquiry must be limited to what they knew of his general character on which alone the judgment should be founded, particular facts cannot be gone into. So a party may call witnesses to swear that, in their opinion, based on their knowledge of the general character and reputation of a witness on the other side, he is not to be believed on his oath. *R v Brown* L R 1 C C R 70, *Cockle Case* 28.

**Clause (2)**—In *Att general v Hitchcock* 1 Ex 91=11 Jur 498 *Pollock C B* observed. The offer of a bribe is a matter of no importance if it be not accepted, for it does not disparage the party to whom it is offered. In the same case *Alderson B* observed. The offer of a bribe by witness to another, or the fact of a bribe having been accepted by him, tends to show that he is not impartial. This is an example of misconduct connected with the proceeding.

**Clause (3)**—See illustrations (a) and (b). Any statement, verbal as well as written, may be used for this purpose. The witness must be specifically asked whether he made such and such statements before he can be contradicted by them through another witness. Where the statements are made in writing, the witness must be asked to produce them.

**Proviso (4)** *Norton Ev* 334

H C 120, 11 B 6, 7 15 A

C 1023, 17 A 57 A. W. N

26 M 191 The expression "which is liable to be contradicted" means which is

relevant to the issue. 17 C 344, 14 L. W 612

ante Section 146,

police vide 11 B

r, 16 C 610, 33

8 C W N 218,

tempt to commit that crime,

show that the prosecutrix,

oath, proof that she is a

inference that she has yielded

will be received, though the woman be not called as a witness, and though, if called she be not asked on cross examination any questions tending to impeach her character for chastity. *Norton Ev* 334



156 When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies

#### Illustration

A, an accomplice gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

**Corroborative evidence**—This is additional evidence proving similar facts or already given in evidence. The evidence is clearly marked, ply means fortifying evidence, or additional evidence of the same.

**Scope**—This section provides for the admission of evidence given for the purpose, not of proving a relevant fact, but of testing the witness's truthfulness. There is often no better way of doing this than by ascertaining the accuracy of his evidence as to surrounding circumstances, though they are not so immediately connected with the facts of the case as to be themselves irrelevant. While, on the one hand, important corroboration may be given in the case of a truthful witness, a valuable field for cross examination and exposure is offered in the case of a false witness. In order to prepare the ground of their corroboration it is necessary to elicit these surrounding circumstances in the first instance from the witness himself, and for this the section makes provision (*Cun Ev* 383). This section, in effect, declares evidence of certain facts to be admissible, and if it had not been inserted the Judge would have had to find it, and he might have been against the

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

Former statements of witness may be proved to corroborate latter testimony as to same fact

**English law**—Former statements made by a witness are admissible to corroborate his testimony if they are made at or about the time when the fact took place, or before any authority legally competent to investigate the fact. The force of any corroboration by means of previous consistent evidence must, however, be proved otherwise than by the testimony of the witness to be corroborated. Formerly the fact that a witness had made a previous statement consistent with his testimony at the trial was not admissible to corroborate his testimony.

**Scope**—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. 5 C W. A statement made by a witness to a chief constable can only be used to corroborate the evidence of the first witness at the trial. Rat. The force of any corroboration by means of previous consistent evidence is evidently dependent

*Illustrations*

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

**Legislative changes**—The word 'accepted' in para (2) was substituted for the original word 'had' by Act 18 of 1872.

**Scope**—In addition to counter proofs and cross examination, there are three ways of throwing discredit on the testimony of an adversary's witness: (1) By giving evidence of his general bad character for veracity i.e. the evidence of persons who depose that he is in their judgment unworthy of belief even though he made the statement on his oath. And here the enquiry must be limited to what they know of his general character, on which alone judgment should be founded, particular facts cannot be gone into. (2) By showing that he has on former occasions made

and when the prosecutrix is examined

**Clause (1)**—Here the enquiry must be limited to what they knew of his general character, on which alone the judgment should be founded, particular facts cannot be gone into. So a party may call witnesses to swear that, in their opinion based on their knowledge of the general character and reputation of a witness on the other side he is not to be believed on his oath. *R v Brown* L.R. 1 C.C.R. 70. *Cockle Case* 283.

**Clause (2)**—In *Att. general v Hitchcock* 1 Ex. 91 = 11 Jur. 498. *Pollock C.B.* observed. The offer of a bribe is a matter of no importance if it be not accepted, for it does not disparage the party to whom it is offered. In the same case *Alderson B.* observed. The offer of a bribe by witness to another, or the fact of a bribe having been accepted by him, tends to show that he is not impartial. This is an example of misconduct connected with the proceeding.

**Clause (3)**—See illustrations (a) and (b). Any statement, verbal as well as written, may be used for this purpose. The witness must be specifically asked whether he made such and such a statement through another witness. *Whelan v. Whelan* 11 Q.B. 15.

**Proviso (4)** *Norton v. Norton* 33 A.H.C. 120, 11 B. 657, 15 A.C. 1023, 17 A. 57, A.W.N. 190, 64, 16 C. 612 N., 20 C. 642, 8 C.W.N. 218, 26 M. 191. The expression 'which is liable to be contradicted' means 'which is relevant to the issue'. 17 C. 344, 14 L.W. 612.

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### Illustration

A, an accomplice gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself

**Corroborative evidence**—This is additional evidence proving similar facts or facts calculated to produce the same results as facts already given in evidence. The distinction between corroborative and cumulative evidence is clearly marked, although, ordinarily, corroborative evidence, simply means fortifying evidence, whether it is evidence of different or similar facts, or additional evidence of the same fact. (*Burr Jones v. 86*)

**Scope**—This section provides for the admission of evidence given for the purpose, not of proving a relevant fact, but of testing the witness's truthfulness. There is often no better way of doing this than by ascertaining the accuracy of his evidence as to surrounding circumstances, though they are not so immediately connected with the facts of the case as to be themselves irrelevant. While, on the one hand, important corroboration may be given in the case of a truthful witness, a valuable field for cross examination and exposure is offered in the case of a false witness. In order to prepare the ground of the cross-examination on these surrounding circumstances and for this the section declares evidence of certain facts which the witness would have had to determine the relevancy of these facts by reference to secs 7 and 11, and he might perhaps have been influenced by the practice in England which has been against the admission of such evidence. (*Markby, Ev 100, 110*)

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fact, at or about the time when the fact took  
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Former statements of witness may be proved to corroborate latter testimony as to same fact

English law — Power to take evidence of a witness's  
of, although  
of the fact

10 BE corroborated. *Wheat v. O'Jurey*, 20 L. 1 N S 481. But facts which are not more consistent with the truth of such testimony than the reverse, are inadmissible. Whenever the testimony of a witness is challenged by cross examination or otherwise, corroboration thereof is allowable, and in certain cases no verdict can be obtained without the production of such evidence. The corroborative facts and evidence must, however, be proved otherwise than by the testimony of the witness to be corroborated. Formerly the fact that a witness had made a previous statement similar to his testimony in Court could be shown and a verdict

**Scope**—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given, 5 C W N XVI A statement made by a witness to a chief constable can only be used under this section to corroborate the evidence of the first witness at the trial. Rat Un Cr C 508 of any corroboration by means of previous consistent statements must

upon the truth of the proposition that he who is consistent desires to be believed  
11 B H C 197 (198)

Cases—16 C W N 145, 25 M 210, 10 C 970, 4 Bom L R 434, 7 W R Cr 31, 12 W R Cr 3, 1 C W N 712, 6 M L T 17, 12 C W N 266, 3 L B R 250, 3 P R 1904 Cr 26 Ind C1s 138, 22 B 596, 13 C W N 197, 4 Ind Cas 700, 13 O C 7, 1923 Md 20, 5 Loh 324, 82 Ind Cas 142, 19 A L J 947, 61 Ind C1s 650, 6 P1t L J 241, (1919) M W N 199, 55 Ind Cas 273, 58 Ind C1s 344, 49 C 732=26 C W N 589, 45 M 766, 2 Pat L J 42

158 Whenever any statement relevant under section 32 or 33 is proved

all matters may be proved either in order to contradict or to corroborate it or in order to impeach or confirm the credit of the person by whom it was made which might, have been proved that person had been called as a witness

and had denied upon cross examination the truth of the matter suggested.

Scoope—The statements admissible under section 32 and 33 are exceptional cases and the evidence is only admitted from the improbability or great inconvenience of producing the authors of the statements. It is only just therefore that all the same safe-  
the statement were them  
examination (*Norton Ev*  
any such statement, when  
g the advantage of all the  
examination of the person

making it (*Cun Ev* 390) See also 23 C 441

159 A witness may while under examination refresh his memory by

Refresh ng memory referring to any writing made by himself at the time of the transaction concerning which he is questioned or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct

When witness may use copy of document to refresh memory Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court refer to a copy of such document

Provided the Court be satisfied that there is sufficient reason for the non production of the original

An expert may refresh his memory by reference to professional treatises

Principle—It is a well settled and undisputed principle of the law of evidence that a witness under certain legal restrictions may refer to writings relating his recollection and memory  
The rule requires that a witness

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shing his memory the stand to consult  
answer If On the one hand

**Cases**—The writing need not be admissible in evidence 8 C 211 9 C 455, 16 C P L R 122 Under this section it is not necessary that the witness must be sure that what was reduced to writing by him is a correct record It is enough if, on reading it, the true facts are recalled to his memory If the words are not recalled to his memory the notes may be admitted under s 160 if he is sure that the facts were correctly recorded in the notes 5 M L T 393=9 Cr L J 456=32 M 384 A police officer is not bound to refresh his memory 8 C 154 (156), see also 8 C 745

**Statement made to police**—9 C 455 16 C 610, 20 C 242 31 C 1050, 11 B 657, 4 S L R 38 Cr But see 10 C W N 890

**Special diary**—19 A 390 (F B), 19 A L J 76

**Collection papers**—40 C 248, 11 C 407

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**Other cases**—27 Ind Cas 985

**Zaminder's register**—5 C 353

**Confession**—16 C P L R 122

**Arbitration proceeding**—5 C W N XVI

**160** A witness may also testify to facts mentioned in any such documents as is mentioned in section 159, although he has no specific recollection of the facts themselves, he is sure that the facts were correctly recorded in the document

Testimony to facts stated in document mentioned in section 159

#### Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

**Scope**—In order that a document may be used to refresh the memory, it is by no means necessary, that the witness after having seen it should have any independent recollection of the facts mentioned therein or connected therewith but it will suffice if he remembers that he has seen the paper before and that when he saw it, he knew its contents to be correct or even if entirely forgetting the instances themselves the fact of his having seen paper he can still in consequence of recognising his signature or writing upon it, vouch for the accuracy of the memorandum, or swear to the particular fact in question Thus where an agent who made a parole lease, and entered a memorandum of the terms in a book states that he has no memory of the transaction save from the book though on reading the entry he entertains no doubt that the fact really happened, it was held sufficient *Taylor* § 141. See 49 C 573 The question whether secondary evidence has in any given case been rightly admitted is one which is proper to be decided by the Judge of first instance and is treated as depending very much on his discretion 5 Bom L R 708=28 B 94

**161** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it such party may, if he pleases, cross-examine the witness thereupon

Right of adverse party as to writing used to refresh memory

**Scope**—In all cases where documents are used for the purpose of refreshing the memory of a witness it is usual and reasonable—and if the witness has no independent recollection of the fact, it is necessary—that they should be produced at the trial and that the opposite counsel should have an opportunity of inspecting them in order that on cross or re-examination he may have the benefit of the witness refreshing his memory by every part Neither is the adverse party bound to put the document in as part of his evidence, merely because he has looked at

... and has not seen the entries as have been previously referred to ... questions as to the parts of the ... his own evidence (*Taylor* § ... permitted to inspect a writing

upon the truth of the proposition that he who is consistent desires to be believed  
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his own knowledge and recollection but this requirement is no violated by permitting  
him to refresh his memory in the manner above indicated Bentham has pointed  
out that it is not possible for a witness to stand to counsel  
"On the one hand,  
allow him time to  
consider the matter fully like the advantage of that lively and quick examination

... the balance between the two inconveniences is by no means equal and  
that it is proper for a witness to resort to memoranda or writings in  
aid of memory. It is to be borne in mind that human memory is very fallible and  
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Testimony to facts stated in document mentioned in section 159

### Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept although he has forgotten the particular transactions entered

Scope—In order that a document may be used to refresh the memory, it is by no means necessary, that the witness after having seen it should have any independent recollection of the facts mentioned therein or connected therewith, but it will suffice if he remembers that he has seen the paper before and that when he saw it, he knew its contents to be correct or even if, entirely forgetting the instances themselves the fact of his having seen paper, he can still in consequence of recognising his signature or writing upon it, vouch for the accuracy of the memorandum or swear to the particular fact in question and entered a memorandum of the transaction save from no doubt that the fact really happened. See 49 C 573 The question been rightly admitted is one which is proper to be decided by a judge of first instance and is treated as depending very much on his discretion 5 Bom L R 708=28 B 94

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Scope—In all cases where documents are used for the purpose of refreshing the memory of a witness—and if the witness has no independent recollection of the facts mentioned therein or connected therewith, they should be produced at the trial and the witness should be given an opportunity of inspecting them, in order that he may have the benefit of the witness's refreshing his memory by every part. Neither is the adverse party to put the document in as part of his evidence, merely because he has it or examined the witness respecting such entries as have been previously to, but if he goes further than this and asks questions as to the memorandum it seems, that he thereby makes it his own evidence 1413) The grounds upon which the opposite party is permitted to inspect





Cases—The writing need not be admissible in evidence 8 C 211, 9 C 455, 16 C P L R 122 Under this section it is not necessary that the witness must be sure that what was reduced to writing by him is a correct record It is enough if, on reading it, the true facts are recalled to his memory If he words are not recalled to his memory the notes may be admitted under s 160 if he is sure that the facts were correctly recorded in the notes 5 M L T 393=9 Cr L J 456=32 M 384 A police officer is not bound to refresh his memory 8 C 154 (156), see also 8 C 745

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Right of adverse party as to writing used to refresh memory—The adverse party if he may, if he pleases, thereupon

Scope—In all cases where documents are used to refresh the memory of a witness, it is usual and reasonable that the adverse party should

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are, (1) to secure the full benefit of the witness's recollection as to the whole of the facts, (2) to check the use of improper documents and (3) to compare his oral testimony with the written statement. The opposite party may look at the writing to see what kind of writing it is in order to check the use of improper document. But it is doubtful whether he is entitled, except for his particular purpose, to question the witness as to other and independent matters contained in the same series of writing 8 C 739 (745)

#### Case—2 Ind Cas 535

**162** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it think fit, direct the translator to keep the contents secret unless the document is to be given in evidence and if the interpreter disobeys such direction he shall be held to have committed an offence under section 166 of the Indian Penal Code.

**Comment.**—If a person served with a *subpoena* admits that he has the documents required with him, he must produce them. He may be asked what documents he has with him and he is bound to answer the question without being sworn, and produce the documents. The witness produces the document to the Court and not to the parties, and the Court decides whether it is to be used or not. The witness can, of course, take any legal objection to producing the document. If a witness attends on a *subpoena tecum*, with a document which he properly produces, and refuses to produce the evidence will not be admissible. A person cannot, of course, be compelled by *subpoena* to produce documents which are not in his possession or under his control, (*Powell v. Evans* 653). If the Court decides to summon a Government official for the production of certain documents it should only do so after careful consideration and once the summons had been issued production should ordinarily be insisted on if the party who obtained the summons so desires. 45 Ind Cas 898.

**163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

**Giving as evidence of document called for and produced on notice.**

**Scope.**—The production of papers upon notice does not make them evidence in the cause, unless the party calling for them inspects them, so as to become acquainted with their contents, in which case he is obliged to use them as his evidence at least if they be in any way material to the issue. The reason for this rule is, that it would give an unconscionable advantage to a party, enable him to pry into the affairs of his adversary, without at the same time subjecting him to the risk of making whatever he inspects evidence for both parties. (*Taylor v. Taylor* 1817). If a party gives a document and inspects it, he is bound to produce it. The law will not allow him to then make use of it or not, as he pleases. (*Cun. Introduction to Ev* § 117). If the other party and inspects the document, it is evidence for both the parties. This section is applicable to accounts produced under the procedure for discovery or only to accounts produced after the trial has begun. 72 Ind Cas 459.

#### Cases—57 Ind Cas 973

**164** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Using, as evidence, of document production of which was refused on notice

#### *Illustration*

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A or in order to show that the agreement is not stamped. He cannot do so.

**Scope**—If a party, after a notice, declines to produce a document when formally called upon to do so, he will not afterwards be allowed to change his mind and therefore, if he once refuses, he cannot when his opponent has proved a copy and is about to have it read, produce the original and object to its admissibility without the evidence of an attesting witness. Neither after such refusal will he be permitted to put the document into the hands of his opponent's witness for the purpose of cross examination, or to produce and prove it as part of his own case (*Taylor* § 1818). A party who after notice, declines to produce his document cannot afterwards change his mind and produce it as part of his own case or put it in the hands of his opponent's witnesses, for the purpose of cross examination. If his adversary being entitled to give secondary evidence prove a copy, he is bound by it (*Norton* Et 341).

**165** The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing, and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court to cross examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party, nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149, nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

**Scope**—The object of the questions which the Judge is here empowered to put is to discover or to obtain proper proof of relevant facts. There is no relevancy. The section does not say whether the case is relevant or not. Under this section a Judge may ask any question relevant to the facts if he does so. See also 11

**549** Even though a document is not produced at the first hearing of a case the Court can call for the document under this section. 70 Ind Cas 278. The Court's power is established by legal authority. 66 Ind Cas 15.

**166** In cases tried by jury or with assessors the jury or assessors, may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of jury or assessors to put questions

are, (1) to secure the full benefit of the witness's recollection as to the whole of the facts, (2) to check the use of improper documents and (3) to compare his oral testimony with the written statement. The opposite party may look at the writing to see what kind of writing it is in order to check the use of improper document, but it is doubtful whether he is entitled, except for his particular purpose, to question the witness as to other and independent matters contained in the same series of writing 8 C 739 (745)

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The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it think fit direct the translator to keep the contents secret unless the document is to be given in evidence and if the interpreter disobeys such direction he shall be held to have committed an offence under section 166 of the Indian Penal Code.

**Comment**—If a person served with a *subpoena* admits that he has the documents required with him, he must produce them. He may be asked what documents he has with him and he is bound to answer the question without being sworn, and produce the documents. The witness produces the document to the

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will not be admis

person cannot, of course be compelled by *subpoena* to produce documents which are not in his possession or under his control (*Powell Ev* 653). If the Court decides to summon a Government official for the production of certain documents it should only do so after careful consideration and once the summons had been issued production should ordinarily be insisted on if the party who obtained the summons so desires 45 Ind Cas 898

**163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

**Scope**—The production of papers upon notice does not make them evidence in the cause unless he is bound to produce them, so as to become acquainted to use them as his evidence.

The reason for this rule is, that by enabling him to pry into the contents of the document, it subjects him to the risk of making a disclosure of his own secrets (*Maylor* § 1817). If a party gives notice to produce and at the trial calls for the document and inspects it he is bound to put it in as evidence if the other party requires it. The law will not allow him to compel its production, and see its contents and then make use of it or not, according as it strengthens and impairs his cause" (*Cun Introduction to Ev* § 117). Where a party to a case calls for a document from the other party and inspects the same under this section he takes the risk of making it evidence for both the parties 5 Bom L R 380. It is doubtful whether this section is applicable to accounts produced under the procedure for discovery or only to accounts produced after the trial has begun 72 Ind Cas 459.

#### Cases—57 Ind Cas 973

**164** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Using as evidence of document production of which was refused on notice

### Illustration

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

**Scope**—If a party, after a notice, declines to produce a document when formally called upon to do so, he will not afterwards be allowed to change his mind, and therefore, if he once refuses, he cannot when his opponent has proved a copy and is about to have it read produce the original and object to its admissibility without the evidence of an attesting witness. Neither after such refusal will he be permitted to put the document into the hands of his opponent's witness for the purpose of cross examination, or to produce and prove it as part of his own case (*Taylor* § 1818). A party who after notice, declines to produce his document cannot afterwards change his mind and produce it as part of his own case, or put it in the hands of his opponent's witnesses, for the purpose of cross examination. If his adversary, being entitled to give secondary evidence prove a copy, he is bound by it (*Norton* Et 341).

**165** The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing, and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court to cross examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149, nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

**Scope**—The object of the questions which the Judge is here empowered to put is to discover or to obtain proper proof of it. There is no objection to relevancy. The section does not say that the case is certain whether the case is 396) Under this section, a witness is not bound to answer relevant facts if he does so. See also 11 to B 185.

It is not a rule of law that a witness must answer questions put to him at the first hearing of a case, though it is a rule of practice. See 11 to B 185. The Court's power is not limited by the bounds of the law. See 11 to B 185.

provisions of this section the appellate Court can do so. See 47 C 1043. Cases—34 M L J 526, 45 Ind Cas 734, 44 Ind Cas 433, 66 Ind Cas 15.

**166** In cases tried by jury or with assessors, the jury or assessors, may put any questions to the witnesses, through or by leave of the Judge, which they might put and which the Judge himself might put and which

Power of jury or assessors to put questions

## CHAPTER XI

## OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

167. The improper admission or rejection of evidence shall not be ground

Now new trial for improper admission or rejection of evidence

of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such object is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision

Scope—This section is applicable to criminal as well as civil cases 1 C 207, 2 B L R 495, 10 A 707, 9 B L R 371, 16 W R (P C) 11, 20 W R 384, 20 W R 458, 19 B 749, 7 C 293, 8 C 739, 21 C 955, 82 Ind Cas 283, 23 C W N 661 The decision of a Court must rest upon the legal grounds established by legal testimony and not upon mere suspicious circumstances 25 C W N 409

(Schedule—Enactments repealed)

## SCHEDULE

## ENACTMENTS REPEALED

(See section 2)

| Number and years           | Title                                                                                                                                                                                                                                                                                                                                                                                                   | Extent of repeal                                                        |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Stat 26 Geo III Cap 57*    | For the further regulation of trial of persons accused of certain offences committed in the East Indies for repealing so much of an Act made in the twenty fourth year of the reign of his present Majesty intitled "An Act for the better                                                                                                                                                              | Section 38 so far as it relates to Courts of Justice in the East Indies |
| Sat 14 & 15 Vict, Cap 99 † | persons accused of offences committed in the East Indies," as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the law more effectual against persons unlawfully resorting to the East Indies, and for the more easy proof, in certain cases of deeds and writings executed in Great Britain or India<br>To amend the Law of Evidence | Section 11 and so much of section 19 as relates to British India        |

\* Act 1786

Act, 1851—see the Short Titles Act, 1896 (59)

† After this certain entries have been repealed by Act 12 of 1927

# THE INDIAN FATAL ACCIDENTS ACT, 1855

## ACT NO XIII OF 1855

RECEIVED THE G G'S ASSENT ON THE 27 TH MARCH, 1855

*An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong*

WHEREAS no action or suit is now maintainable in any Court against a person who by his wrongful act, neglect or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong doer in such case should be answerable in damages for the injury so caused by him, It is enacted as follows

Notes—Where the loss was not occasioned by any act, neglect or default of the Railway, the company should not be made liable 90 Ind Cas 106=A I R 1925 Lah 635

1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime

\* Every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased,

and every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgement or decree shall direct.

Notes—  
expenses, wher  
or obsequial  
damages vide, I A 60 (F B) No compensation can be allowed for mental sufferings.  
—4 M L T 238 The right to claim compensation is given by this Act where there are executors or administrators to them and they are entitled to sue in the absence of them suit may be instituted by his representatives But only one suit is maintainable The term representative applies also to European and Eurasians.  
28 M 479=15 M L J 363 see also 85 P R 1894, 56 P R 1905 Under legal liability alone is not the test of injury, in respect of which damages may be recovered, but the reasonable expectation of pecuniary advantage by relative remaining alive may be taken into account, and damages given

\* Certain words before this having been omitted have been Repealing and Amending Act X of 1914

that expectation, if it be disappointed and the probable pecuniary loss thereby incurred—20 Ind Cas 425 See also 26 P W R 1914 Where son adopted after the death of the deceased was not considered as son of the deceased an undivided brother of the deceased cannot claim compensation,—106 P R 1915 In a claim for damages under this Act the reasonable expectation of pecuniary advantage by the relations remaining alive may be taken into account by a Jury and damages assessed as the probable pecuniary loss thereby occasioned The fact that the deceased in some way provoked the quarrel does not affect so far as regards the claim for damage under s. 1 of the Act 69 Ind Cas 354 In estimating the amount of damages the Court must take into account the chances of life the chances of any improved conditions in which the family of the deceased might have passed the

2 Provided always that not more than one action or suit shall be brought for, and in respect of the same subject matter of complaint provided that, in any such action or suit, the executor, administrator, or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased

Notes—The statute by enacting the rule allowing the legal representatives to include in their suit a claim for the loss to the estate does not create any fresh liability but merely recognizes what already existed under the common law and prescribes only the procedure for enforcing it 90 Ind Cas 106=6 Lrb 451

3 The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4 The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say and the word "person" shall apply to bodies politic or corporate, and the word "parent" shall include father and mother, and grandfather and grandmother, and the word "child" shall include son and daughter and grandson and granddaughter, and step son and step daughter

## THE GENERAL CLAUSES ACT, 1897

### ACT No X OF 1897\*

PASSED BY GOVERNOR GENERAL OF INDIA IN COUNCIL  
Received His Excellency's assent on the 11th March 1897.  
An Act to consolidate and extend the General Clauses Acts, 1868† and 1887

Whereas it is expedient to consolidate and extend the General Clauses Acts, 1868, † and 1887, ‡ It is hereby enacted as follows,—

#### Preliminary

Short title and commencement. 1 (1) This Act may be called the General Clauses Act, 1897

\* For Statement of Objects and Reasons, see *Gazette of India* 1897, Pt V p 13, for Report of the Select Committee, see *ibid*, p 77, and for Proceedings in Council, see *ibid* Pt VI pp 35, 40, 56 and 76

† Acts I of 1868 and I of 1887 respectively

‡ The word "and" has been repealed by Act X of 1914



- (2) Rep by Act X of 1914.  
2. (*Repealed by Act 1 of 1903*)

*General Definitions.*

3. In this Act, and in all Acts of the Governor General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant

Definitions

in the subject or context,—

Notes—This Act applies to Act passed by the Governor General in Council only  
1 Bom L. R. 164

- (1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code  
Abet

Notes—Section 107 of the Indian Penal Code, gives the definition of abetment of a thing

- (2) \* "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts  
"Act" done extend also to illegal omissions :

Notes—Act done includes illegal omission Vide section 32 of the Penal Code ; 1 Weir 29 , 20 B 394

- (3)† "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing  
"Affidavit,"

Affidavit—The words 'oath swear' and affidavit include affirmation, declaration, affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing—*Interpretation Act* 1889 52 & (53 Vict C 63 ss 1, 3, 4,

- "(3a) ‡ 'Assam Act' shall mean an Act made by the Chief Commissioner of Assam in Council, under the Indian Councils Acts, 1881 to 1909 "or the Government of India

'Assam Act'

Act, 1915"§ "or by the local Legislature or the Governor of Assam under the Government of India Act.¶

- (4) ¶ "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland :

'Barrister "

- (5) \*\* "Bengal Act" shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under Indian

"Bengal Act

Councils Acts, 1861, or the Indian Councils Acts 1861 and 1892 or the Indian Councils Acts, 1861 to 1909 and in the case of Acts passed after that date an act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909, 'or the Government of India Act, 19 5," § "or by the local Legislature or the Governor of the presidency of Bengal under the Government of India Act" †

\* Compare the Indian Penal Code (Act XLV of 1860) and the Madras General Clauses Act (Mad Act III of 1891)

† Compare the definitions of "Oath" and "swear" in sub ss (35) and (39) respectively, *infra* As to affidavits in civil proceedings see Ch XVI of the Code of Civil Procedure (Act V of 1908) and in criminal proceedings, see Code of Criminal

Act 24 of 1917

¶ Added by Act, 18 of 1928

‡ Compare the Indian High Courts Act 1861, (24 & 25 Vict., c. 17

\*\* Clause (5) has been substituted by Act 10 of 1918

that expectation, if it be disappointed and the probable pecuniary loss thereby incurred—20 Ind Cas 425 See also 26 P W R 1914 Where son adopted after the death of the deceased was not considered as son of the deceased an undivided brother of the deceased cannot claim compensation,—106 P R 1915 In a claim for damages under this Act the reasonable expectation of pecuniary advantage by the relations remaining alive may be taken into account by a Jury and damages assessed as the probable pecuniary loss thereby occasioned The fact that the deceased in some way provoked the quarrel does not affect so far as regards the claim for damage under s. 1 of the Act 69 Ind Cas 354 In estimating the amount of damages the Court must take into account the chances of life the chances of any improved conditions in which the family of the deceased might have passed their ways, it must take into account the standard of living of the family which was depended on the deceased and having regard to all the circumstances do the best it can to estimate what is fair and reasonable sum to be awarded 52 C 602=89 Ind Cas 679=A I R 1925 All 702, 9 N L J 76=96 Ind Cas 403, 96 Ind Cas 681=A I R 1926 All 703

2 Provided always that not more than one action or suit shall be brought for, and in respect of the same subject matter of complaint provided that, in any such action or suit, the executor, administrator, or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of

the estate of the deceased

Notes—The statute by enacting the rule allowing the legal representatives to include in their suit a claim for the loss to the estate does not create any fresh liability but merely recognizes what already existed under the common law and prescribes only the procedure for enforcing it 90 Ind Cas 1026=6 Lh 451

3 The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

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† Acts I of 1868 and I of 1887 respectively

‡ The word 'and' has been repealed by Act X of 1914

- (2) Rep by Act X of 1914,  
2 (*Repealed by Act 1 of 1903*)

*General Definitions.*

3. In this Act, and in all Acts of the Governor General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant

Definitions

in the subject or context,—

Notes—This Act applies to Act passed by the Governor General in Council only  
1 Bom L R 164

- (1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code

Abet

Notes—Section 107 of the Indian Penal Code, gives the definition of abetment of a thing

- (2)\* "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions

'Act'

Notes—Act done includes illegal omission Vide section 32 of the Penal Code, 1 Weir 29, 20 B 394

- (3)† 'affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

"Affidavit,"

Affidavit—The words 'oath' 'swear' and 'affidavit' include affirmation, declaration affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing—*Interpretation Act* 1889 52 & (53 *Vict C* 63, ss 1, 3 4,

- "(3a) † 'Assam Act' shall mean an Act made by the Chief Commissioner of Assam in Council, under the Indian Councils Acts, 1881 to 1909 "or the Government of India

'Assam Act'

Act, 1915" § "or by the local Legislature or the Governor of Assam under the Government of India Act,||

- (4) ¶ 'barrister' shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland .

'Barrister'

- (5) \*\* 'Bengal Act' shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under Indian

'Bengal Act'

Councils Acts, 1861, or the Indian Councils Acts 1861 and 1892 or the Indian Councils Acts, 1861 to 1909

made by the Governor of the under the Indian Councils

Act, 19 5," § "or by the local Legislature or the Governor of the presidency of Bengal under the Government of India Act" †

\* Compare the Indian Penal Code (Act XLV of 1860) and the Madras General Clauses Act (Mad Act III of 1891)

† Compare the definitions of 'Oath' and 'swear' in sub ss (35) and (39) respectively, *infra* As to affidavits in civil proceedings see Ch XVI of the Code of Civil Procedure (No. V of 1908) or in criminal proceedings, see Code of Criminal

Act 24 of 1917

S. 25 *Vict.*, c 1: 18

"(5a)" "Bihar and Orissa Act" shall mean an Act made by Lieutenant Governor of Bihar and Orissa in Council, under the Indian Councils Acts, 1861 to 1909" "or the Government of India Act, 1915"† "or by the local Legislature or the Governor of Bihar and Orissa under the Government of India Act"‡

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under "the Indian Councils Act, 1861 or" the Indian Councils Acts, 1861 § and 1892§ of the Indian Councils Acts 1861 to 1909\* "or the Government of India Act, 1915"† "or by the local Legislature or the Governor of the Presidency of Bombay under the Government of India Act," \*

(7) "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India

(8)† "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession

(8a)\*\* "Burma Act" shall mean an Act made by the Lieutenant Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892" or the Indian Councils Acts, 1861 to 1909\* or the Government of India Act, 1915† "or by the Local Legislature or the Governor of Burma under the Government of India Act"‡

(8b)†† "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts 1861 to 1909 "or the Government of India Act, 1915" + "or by the Local Legislature or the Governor of the Central Provinces under the Government of India Act."

"Chapter" (9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs

(10)†† "Collector" shall mean, in a Presidency town, the Collector of Calcutta, Madras, or Bombay, as the case may be, and elsewhere the Chief officer in charge of the revenue administration of a district

\* Clause Added by Act 10 of 1914

† The words within quotation have been added by Act 24 of 1917

‡ Added by Act 18 of 1908

§ Statute 24 and 25 V.ict. c 14 respectively The words quoted have been inserted by Act I of 1903

"Compare 1861

53 Vict. c 63) s 18 (4) For

Vict. C 63) s 18(2)

†† Added by Act XVII of 1914

the N. W. P. and Oudh General Clauses Act (Bom. Act III of 1886) s 3, (12), and the N. W. P. and Oudh General Clauses Act (N. W. P. and Oudh Act I of 1887) s 2, (12)

'Enactment' any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such regulation as aforesaid

"Father" (18) 'father', in the case of any one whose personal law permits adoption, shall include an adoptive father

Notes—Among the Hindus, the adoptive father is a father

"Financial year" (19)†† "financial year" shall mean the year commencing on the first day of April

\* Compare the Interpretation Act 1889 (52 & 53 Vict., c. 63) s. 18(3)

† For rules determining when any given Act is to come into force see s. 5 *infra*.

‡ Compare the N. W. P. and Oudh General Clauses Act N. W. P. and Oudh Act I. of 1887)

§ Compare the Consular Salaries and Fees Act 1891 (54 & 55 Vict. c. 36) s. 3

|| As to definition of 'High Court' see sub-s. (24) *infra*

¶ Compare the Indian Evidence Act (1 of 1872) As to definition of sub-s. (58) *infra*

\*\* The words within quotations have been added by Act 10 of 1914

†† Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63) s. 29.

- (20)\* A thing shall be deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not

"Good faith"

Notes—In the Indian Penal Code nothing is said to be done or believed in good faith which is done or believed without due care and attention. So according to that Act all acts must be done with due care and caution. 21 M 249. The definition of "good faith" in this clause does not apply to the Contract Act which was enacted earlier. 27 C W N 231=50 C 399.

- (21)† "Government" or "the Government" shall include the Local Government as well as the Government of India.

Notes—Under clauses 21 and 29 the words "Government established by law in British India or the Dominion of India" do not apply only to the local Governments such as the Government of Madras, &c. but also to the Government of India. See Cas 347.

"Government of India" shall mean the Governor General in Council or, during the absence of the Governor General from his Council, the President in Council, or the Governor General alone as regards the powers which may be lawfully exercised by them or him respectively.

(23)‡

- (24) "High Court" used with reference to Civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates.

(25) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to it.

"Immovable property"

fastened to it

Immovable property—An interest in land. See Ind Cas 673. Immovable property cannot be acquired by prescription.

Ind Cas 673. Immovable property cannot be acquired by prescription. See also L R 234 (P C) Growing trees are movable property. 10 A L J 516, 262 10 A 133, 31 C 666, 16 M 439, 35 M L J 447=21 Ind Cas 213. And Cas 450. See also as to a right to fix to earth it is immovable property.

"Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code.

Imprisonment—According to the Indian Penal Code, an imprisonment may be of two descriptions, namely—

- (1) Rigorous, that is with hard labour.  
(2) Simple

- (27)§ "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor General of India.

\* Compare the Bills of Exchange Act 1882 (45 & 46 Vict. c. 61), s. 90 and the Sale of Goods Act, 1893 (56 & 57 Vict., c. 71) s. 62.

As to discussion in Council regarding definition of "good faith", see *Gazette of India*, 1807, Pt. VI pp. 56 to 62 and 76 to 79.

† Compare the Code of Civil Procedure (Act V of 1908), s. 2. As to definition of Local Government see sub-s. (29), *infra*.

‡ Repealed by Act 18 of 1919.

§ As to growing crops and timber so far as they are affected by the Indian Registration Act, (XVI of 1908), see s. 3 of that Act.

|| Compare the Interpretation Act, 1889 (52 & 53 Vict. c. 63) s. 18 (5).

(48)\* "Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund

(29) "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner

(30) "Madras Act" shall mean an Act made by the Governor of Fort St George in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861† and 1892‡ or the Indian Councils Acts, 1861 to 1909† "or the Government of India Act, 1915 § 'or by the local legislature of the Governor of the Presidency of Madras under the Government of India Act' ||

(31) "Magistrate" shall include every person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure for the time being in force : 7

Notes—44 M L I 428

(32) \*\* "master" used with reference to a ship, shall mean any person (except a pilot or harbour master) having for the time being control or charge of the ship

'Month' (33) month 'shall mean a month reckoned according to the British calendar

**Month**—The word “month” according to the Interpretation Act means calendar month, see also 13 C W N 425

'Movable property' (34) "movable property"†† shall mean property of every description, except immovable property.

**Movable Property**—Papers constituting part of the record in a criminal case is property 1 Weir 28 When 'earth' is severed from 'the earth' it becomes movable property 27 M 531=14 M L J 155 (F B), 10 M 255, 4 M 228

(35) "North Western Provinces and Oudh Act" shall mean an act made by the Lieutenant Governor of the North Western Provinces and Oudh in Council under the Indian Councils Act 1861, or' the Indian Councils Acts, 1861 and 1892

Notes.—Now read "United provinces of Agra and Oudh" and "Lieutenant Governor of the United Provinces of Agra and Oudh in Council" respectively.—Vide U. P. Act VIII of 1902.

'Oath (36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

\* Compare the Local Authorities Loan Act (XI of 1879)

† Statutes 24 & 26 Vict., c. 14 respectively. The words quoted have been inserted by Act 1 of 1903.

† The words within quotations have been added by Act 10 of 1914

§ The words within quotations have been added by Act 24 of 1917

|| Inserted by Act 18 of 1978

7 The Code now on face

“...and the

..

4 53 Vict c.  
' party'

(37)\* "offence" shall mean any Act or omission made punishable by any law for the time being in force :

'Offence'

Notes—Vide notes under 'affidavit'

'Part'

(38) "part" shall mean a part of the Act or regulation in which the word occurs.

'person'

(39) "person" shall include any company or association or body of individuals, whether

incorporated or not

Notes—By 52 & 53 Vict c 63 s 19 "person" includes any body corporate or unincorporate, 'unless the contrary intention appears' See also *R v Gardner, Cowp* 79, *R v York*, 6 A & E 419, *R v Beverleys Gas Co Ltd* 645, *Pharmaceutical Soc v London Supply Association* 5 App Cas 857, *Hirst v West Ridding* (1901) 2 K B 560 C A, 1923 Lah 31 A firm is a person 48 M 702 A company is a person 41 M 624 = 45 Ind Cas 164

Political Agent "

(40)† "Political Agent" shall include—

(a) the principal officer representing the Government in any territory or place beyond the limits of British India, and

(b) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition

(41)‡ 'Presidency town' shall mean the local limits for the time being of

'Presidency town' the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be

(42) § "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council,

Privy Council

'Province'

(43) | 'Province' shall mean the territories for the time being administered by any Local Government,

Public nuisance

(44) ¶ "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code

Public nuisance—In order to convict a person for — under the Indian Penal Code injury, danger been caused to the enjoyment of property or to part of a portion of the community or of any particular class of people 9 W R Cr 70, 1 C P L R 25 Cr, 1 Wier 245

(44a) "Punjab Act" shall mean an Act made by the Lieutenant Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892 "or the Indian

Punjab Act

\* See a similar definition in s 4 (o) of the Code of Criminal Procedure (Act V of 1893)

† See s 4 of the Code of Criminal Procedure (Act V of 1893)

‡ See s 4 of the Code of Criminal Procedure (Act V of 1893)

§ See s 4 of the Code of Criminal Procedure (Act V of 1893)

| See s 4 of the Code of Criminal Procedure (Act V of 1893)

¶ See s 4 of the Code of Criminal Procedure (Act V of 1893)

Procedure (Act V of 1893) Ch X

See the Code of Criminal



Councils Acts, 1861 to 1909" "or the Government of India Acts, 1915"\* "or by the local legislature or the Governor of the Punjab under the Government of India Act" .†

(45)‡ "Registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents

"Registered"

(46) "Regulation" shall mean a Regulation made under the Government of Indian Act, 1870 , 'or the Government of India Act, 1915§ 'or the Government of India Act" :

"Regulation"

(47) "rule," shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment ||

"Rule "

Notes.—Rules made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise exactly as if they were in the Act. If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act should be dealt with. If reconciliation is impossible the subordinate provision must give way, and probably the rule would be treated as subordinate to the section. *Per Lord Herschell in Institute of Patent Agents v. Lockwood* (1894 A C at p 360)

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs

"Schedule "

(49) "Scheduled District" shall mean a Scheduled District as defined in the Scheduled Districts Act, 1874 , ¶

"Scheduled District"

(50) "section," shall mean a section of the Act or Regulation in which the word occurs

"Section"

(51)\*\* "ship" shall include every description of vessel used in navigation not exclusively propelled by oars ,

"Ship "

(52)†† "sign," with its grammatical variations--

"Sign "

with reference

write his name,

tical variations and cognate expressions ,

Notes—Vide s 63 of the Indian Succession Act XXXIX of 1925 see also 19 Bom L R 147

"Son "

(53) "son," in the case of any one whose personal law permits adoption, shall include an adopted son ,

Sub-section "

(54) "sub section" shall mean a subsection of the section in which the word occurs ;

\* Cl (44a) has been inserted by Act I of 1903

† Inserted by Act 18 of 1928

‡ Compare the Madras General Clauses Act (Mad Act I of 1891). s 3 (11) As to the law now in force, see the Indian Registration Act (XVI of 1908)

§ Added by Act XXIV of 1917

|| The provisions of ss 20 to 24 *infra* apply to rules defined in this sub-section

¶ Act XIV, 1874

\*\* Compare s 742 of the Merchant Shipping Act. 18 definition supplements the definition of ship in sub-s (51 vessel in s. 48 of the Indian Penal Code

†† See also definition of writing" in sub-s. (58) *infra*

8 Vict. c. 60). This also definition of

(55) \* "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare  
 "Swear"  
 instead of swearing :

(55a) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Council Act, 1861, or the Indian Councils Acts, 1861 and 1892 : "or the Indian Councils Acts 1861 to 1909"† "or the Government of India Act 1915"‡ "or by the Local Legislature or the Governor of the United Provinces under the Government of India Act : §

"Vessel" (56) "vessel" shall include any ship or boat or any other description of vessel used in navigation :

"Will" (57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property

Will—This definition is incomplete It does not speak of the ambulatory character of the document *Vide Jarman on Wills* pp 27, 28 It should not take effect .. *Cocke v Cocke*, 1 P & D 243 *Masterman v Robertson v Smith* (1870) 2 P & D at p 45 is necessary 49 Ind Cas 929=25 M L T

204=9 L W 305

(58) ¶ expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form and  
 "Writing"

"Year" (59)\* "year" shall mean a year reckoned according to the British calendar

Year—Half a year consists of 182 and a quarter of a year of 91 days—*Maxwell* p 604

4 (1) The definitions in se

Application of foregoing definitions to previous enactments

"imprisonment," "local government," "magistrate," "month," "immovable property," "oath," "person," "section," "son," "swear," "will," and "year," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January, 1887

(2) The definition in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-

\* See also definition of "affidavit," and "oath" *supra*, sub-ss (3) and (36) respectively

† See the definition of will in s 3 of the Indian Succession Act X of 1865

‡ Compare s 20 of the Interpretation Act 1889 52 and 53 V c 63

§ As to "financial year" see sub s (10) *supra*

¶ Rep by Act, 18 of 1919

General in Council and Regulations made on or after the fourteenth day of January, 1887.

*General Rule of Construction*

5. (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

(2) \* Where any Act of the Governor-General in Council is reserved, under section 68 of the Government of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to, by His Majesty, on the day on which that assent is duly notified.

(3)† Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Notes—A Statute takes effect from the first moment of the day on which it is assented, unless another be expressly named, in which case it comes into operation immediately on the expiration of the previous day. But where a particular day is named for its commencement, but the Royal assent is not given till a later day, the Statute comes into operation only on the later day. *Burn v Carvalho*, (1834) 4 New, 1893, *Maxwell* pp 739 740.

6. ‡ Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of

(e) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed.

If any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Effect of Repeal—Although the effect of repealing a Statute is to obliterate it completely as if it had never been passed this rule must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions

*Mitthell*, (1912) 81 L. J. P. C. 173;

(1916) 86 L. J. K. B. 66 C. A., (1917) 1

repealing enactment is repealed by

he first shall continue repealed, the

common law rule was that the repeal of the second Act revived the first, and revived it, too, *ab initio*, and not merely from the passing of the reviving Act, 2 Inst. 325; 4 Inst. 325, *Case of Bishops*, 12 Rep. 7, *Philips v Hopwood*, 10 B. & C. 39;

\* Sub section 2 of section 5 has been substituted by Act 24 of 1917

† Compare s. 36 (2) of the Interpretation Act, 1915, *Vict. c. 63*

‡ As to Power to make rules between the passing and the coming into operation of an Act

which does not come into force at once, see s. 22,

† Compare s. 38 of the Interpretation Act, 1889

63)

(55)\* "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing

(55a) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Council Act, 1861, or the Indian Councils Acts, 1861 and 1892 "or the Indian Councils Acts 1861 to 1909"† "or the Government of India Act 1915"‡ "or by the Local Legislature or the Governor of the United Provinces under the Government of India Act. §

"Vessel" (56) "vessel" shall include any ship or boat or any other description of vessel used in navigation :

"Will" (57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property

Will—This definition is incomplete. It does not speak of the ambulatory character of the document. *Vide farman on Wills* pp 27, 28. It should not take effect until after the death of the testator. *Cocke v Cocke*, 1 P & D 243. *Masterman v Maberly* (1829) 2 Hagg at p 248, *Robertson v Smith* (1870) 2 P & D at p 45. Some disposition of property by will is necessary. 49 Ind Cas 929=25 M L T 204=9 L W 385

(58) ¶ expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form and

"Year" (59)\*\* "year" shall mean a year reckoned according to the British calendar

Year—Half a year consists of 182 and a quarter of a year of 91 days—*Maxwell* p 604

4 (1) The definitions in section 3 of the following words and expressions, that is to say "affidavit" "barrister" "British application of foregoing definitions to previous enactments

trate" "month," "immovab  
'son,' 'swear,' "will," and year, apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January, 1887

(2) The definition in the said section of the following words and expressions, that is to say, "abet" "chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-

ss (3) and (36) respectively  
of 1914.  
of 1917  
In Act X of 1865  
2 and 53 Vict c. 63  
††

General in Council and Regulations made on or after the fourteenth day of January, 1887

*General Rule of Construction*

5 (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor

General

(2) \* Where any Act of the Governor General in Council is reserved, under section 68 of the Government of India Act 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified

(3)† Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement

Notes—A Statute takes effect from the first moment of the day on which it is assented to, unless another day is expressly named, in which case it comes into operation immediately on the expiration of the previous day. But where a particular day is named for its commencement, but the Royal assent is not given till a later day, the Act comes into operation only on the later day. *Burn v Carvalho* (1834) 4 New M 893, *Maxwell* pp 730 740

6 ‡ Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against or under any enactment so repealed; or
- (e) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed.

1. Any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Effect of Repeal—Although the effect of repealing a Statute is to obliterate it completely as if it had never been passed, this rule must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions determined under the repealed law. *Lenn v Littlell*, (1912) 81 L. J. P. C. 173, (1912) A. C. 400 P. C., *Comp v Southampton*, (1916) 86 L. J. K. B. 66 C. A., (1917) 1 B. 1259. Where an Act is repealed, and the repealing enactment is repealed by another which manifests no intention that the first shall continue repealed, the common law rule was that the repeal of the second Act revived the first, and revived it, too, *ab initio* and not merely from the passing of the reviving Act, 2 Inst. 86, 4 Inst. 315, *Case of Bishops*, 12 Rep. 7, *Philips v Hopwood*, 10 B. & C. 39.

\* Sub section 2 of section 5 has been substituted by Act 24 of 1917

† Compare s. 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63)

‡ As to Power to make rules between the passing and coming into force of an Act which does not come into force at once, see s. 22, *infra*

§ Compare s. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63)

(55) \* "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing

(55a) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Council Act, 1861, or the Indian Councils Acts, 1861 and 1892. "or the Indian Councils Acts 1861 to 1909"† "or the Government of India Act 1915"‡ "or by the Local Legislature or the Governor of the United Provinces under the Government of India Act : §

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"Year" (59)\*\* "year" shall mean a year reckoned according to the British calendar

Year—Half a year consists of 182 and a quarter of a year of 91 days—*Maxwell* p 604

4 (1) The definitions in section 3 of the following words and expressions, that is to say "affidavit," "barrister," "British India," "District Judge," "father," "Government of India," †† "High Court," "immovable property," "imprisonment," "Local Government," "Magistrate," "oath," "person," "section," apply also, unless there is anything to all Acts of the Governor General in Council, January 1868, and to all Regulations made on or after the fourteenth day of January, 1887

(2) The definition in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-

\* See also definition of "affidavit," and "oath" *supra*, sub ss (3) and (36) respectively

† of 1914

†† of 1917

‡ on Act X of 1865

§ 2 and 53 Vict c 63

\*\*

††

General in Council and Regulations made on or after the fourteenth day of January, 1887

*General Rule of Construction*

5 (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor

General

(2) \* Where any Act of the Governor General in Council is reserved, under section 68 of the Government of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation if assented to by His Majesty, on the day on which that assent is duly notified

(3)† Unless the contrary is expressed an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement

Notes—A Statute takes effect from the first moment of the day on which it is assented to, unless another be expressly named, in which case it comes into operation immediately on the expiration of the previous day. But where a particular day is named for its commencement, but the Royal assent is not given till a later day, the Act comes into operation only on the later day. *Burn v Carvalho* (1834) 4 New M 893, *Maxwell* pp 739 740

6 ‡ Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed, or
- (d) affect the operation of any enactment so repealed in relation to any subject of
- (e) affect the operation of any enactment so repealed in relation to any subject of

and any such investigation legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed

Effect of Repeal.—Although the effect of repealing a Statute is to obliterate

A common law rule was that the repeal of the second Act revived the first, and revived it, too *ab initio* and not merely from the passing of the reviving Act, 2 Inst. 686, 4 Inst 325, *Case of Bishops*, 12 Rep 7 *Philips v Hopwood*, 10 B & C 39,

\* Sub section 2 of section 5 has been substituted by Act 24 of 1917

† Compare s 36 (2) of the Interpretation Act 1889 (52 & 53 Vict c 63)

‡ As to Power to make rules between the passing and commencement of an Act which does not come into force at once, see s 2 *infra*

§ Compare s 38 of the Interpretation Act 1889 (52 & 53 Vict c 63)

*Lattle v Gelumwood & Bin, & Co, Fuller v Rednan*, 29 L J Ch 324, *Kemp v Widdowham* (1877) 1 P 1 Q B at p 322. But this rule ceased to apply to the repeal of Acts since 1830, so far as England is concerned. Now by s. 11 of the Interpretation Act (52 & 53 Vict. c. 63) where an Act repealing in whole or in part a former Act is itself repealed, the last repeal does not revive the Act or provisions before repealed, unless words be added reviving them—*Maxwell* p. 728. A vested right under the repealed Act is saved 9 Ind Cas 337=14 O C 10; 20 C 614, 11 Ind Cas 94 (I B). But repeal of an article of limitation cannot revive a trust thereby barred under repealed article 14 Bom L R 1908, see also 36 C 110=15 Ind Cas 551. This rule does not apply where the first Act was only impliedly by the second, by the addition of conditions, and the enactment which imposed these was itself afterwards repealed. *Mount v Taylor* 1 R. 3 C P 645, *Levi v Sanderson*, L R 4 Q B 332. *Mirfin v Allwood*, L P 4 Q B 330, 13 Ind Cas 264=5 S L R 184, 8 Ind Cas 543.

Clause (b)—35 A. 227=17 C W N 605 P C

Clause (c)—It includes the right of appeal 16 C W N 1015 See also 45 Ind Cas 107

Clause d)—7 M H C. H C R App 8

Clause (e)—15 C 357 16 C 267

7 \* (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving enactments either wholly or partially any enactment wholly or partially repealed expressly to state that purpose

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January 1887

Notes—Where an Act repealing in whole or in part, a former Act is itself repealed, the last repeal does not now revive the Act or provisions before repealed unless words be added reviving them 52 & 53 Vict. c. 63 s. 11. It is doubtful whether this rule applies to a repeal by implication—*Maxwell* p. 728

8, † (1) Where this Act, or any Act of the Governor General in Council or regulation made after the commencement of this Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references to the provision so repealed in any instrument to the as references to the provision so re enacted intention appears, be construed

"(2) Where any Act of Parliament repeals and re-enacts, with and without modification, any provision of a former enactment, then references in any Act of the Governor General in Council or in any regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so 're enacted' †

9 (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period

\* Compare s. 1 of the Interpretation Act, 1889, (52 & 53 Vict. c. 63)

† Compare s. 38 (1) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), see a similar provision in s. 3 of the Code of Criminal Procedure (Act V of 1898)

† The words within quotations have been added by Act 18 of 1919





13A "In all Acts of the Governor General in Council and Regulations, References to the sovereign references to the sovereign or to the crown shall, as references to the sovereign for the time being" \* unless a different intention appears, be construed

*Powers and Functionaries*

14 (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act any power is conferred † then "unless Powers conferred on the Government to be exercisable from time to time a different intention appears" \* that power may be exercised from time to time as occasion requires

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after fourteenth day of January, 1887

15 Where, by any act of the Governor General in Council or Regulation a power to appoint any person to fill any office or execute any function is conferred, then, Power to appoint to include power to appoint *ex officio* unless it is otherwise expressly provided, any such appointment if it is made after the commencement of this Act, may be made either by name or by virtue of office †

16 Where by any Act of the Governor General in Council or Regulation a power to make any appointment is conferred, then unless a different intention appears, the authority having 'for the time being' § power to make the appointment shall also have power to suspend or dismiss any person appointed 'whether by itself or by any other authority' || in exercise of that power

Notes—The power of appointment includes the power of suspension and dismissal

17 (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it Substitution of functionaries shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January 1887

Notes—42 M 69=49 Ind Cas 169

18 (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it Successors shall be sufficient, for the purpose of indicating the relation of a law to the successors or any functionaries or of corporation, having perpetual succession, to express its relation to the functionaries or corporations

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January, 1887

\* The words within quotations have been inserted by Act 18 of 1919

† Certain words after this repealed by Act 18 of 1919 have been omitted

‡ See similar provision in s 39 of the Code of Criminal Procedure (Act V of 1898)

§ Inserted by Act 18 of 1908

|| Substituted by Act 18 of 1928

Notes—Where by a notification published by the Government in the local official Gazette under and by virtue of the powers vested in it by the Madras District Limits Act, I of 1865, the revenue was changed by the transfer of the area from one Revenue Division to another *Held*, that on the publication of the notification in the Gazette, the Collector of the new Revenue Division acquired situated in  
f the suits  
2 L W

255=17 M L 1 190=28 Ind Cas 269

19 (1) In any Act of the Governor General in Council, or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an Official chiefs and savor  
dinates  
office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

*Provisions as to Orders, Rules, etc., made under enactments*

20. \* Where, by any Act of the Governor General in Council or Regulation, a power to issue any 'notification,'† order, scheme, rule form or by law, is conferred, then expressions used in the "notification"† order, scheme, rule, form or bye law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21. † Where, by any Act of the Governor General in Council or Regulations, a power to "issue notifications," § orders, rules, or bye laws, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any 'notifications' † orders, rules or bye-laws so "issued"

Notes—59 Ind Cas 153

22 ‡ Where, by any Act of the Governor General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office, or appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws, or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

\* Compare s 31 of the Interpretation Act, 1889 (52 & 53 Vict c 63) and s 10 of the Madras General Clauses Act (Mad Act I of 1891)

† Inserted by Act I of 1903

‡ Compare s 32 (3) of the Interpretation Act, 1889 (52 & 53, Vict. c. 63)

§ These words were substituted by Act I of 1903

|| Inserted by Act I of 1903

‡ Compare s 37 of the Interpretation Act, 1889 (52 & 5

**Notes**—Where the statute conferring the power to make bye laws enact that any such laws consistent with the provisions of the statute, and not repugnant to any other law in force, shall have the force of law when confirmed by the executive it is doubtful whether a Court would not be precluded from questioning the reasonableness of such bye laws or whether they are *ultra vires*, unless it be some very extreme case. *Maxwell* p 527 citing *Slattery v Naylor*, 13 App Cas 446, *Institute of Patents Agents v Lockwood* (1894) A. C. 347, *Devonport Corp v Tesor*, (1902) 71 L J Ch 754, *A G v Dorin*, (1912) 81 L J Ch 225

**23** Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye laws is expressed to be given subject to the condition of the rules or bye laws being made after previous publication, then the following provisions

Provisions applicable to making of rules or bye laws after previous publication

shall apply namely —

- (1) the authority having power to make the rules or bye laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby,
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Governor General in Council or the Local Government prescribes,
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration,
- (4) the authority having power to make the rules or bye laws and where the rules or bye laws are to be made with the sanction, approval, or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye laws from any person with respect to the draft before the date so specified,
- (5) the publication in the Gazette of a rule or bye law purporting to have been made in exercise of a power to make rules or bye laws after previous publication shall be conclusive proof that the rule or bye law has been duly made

**24** \* Where any Act of the Governor General, in Council or Regulation

Continuation of "appointment notification" orders etc, issued under enactments repealed and re enacted

is, after the commencement of this Act, repealed and re enacted with or without modification, then unless it is otherwise expressly provided, any "appointment, notification"† order, scheme, rule, form, or bye law, "made or"‡ issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re enacted, continue in force and be deemed to have been "made or"‡ issued under the provisions so re enacted, unless and until it is superseded by any "appointment, notification"† order, scheme, rule, form or bye-law "made or"‡ issued under the provisions so re enacted, "and when any Act of the Governor General in Council or Regulation, which by a notification under section 5 or 5A of the Scheduled Districts Act, 1874§ or any law has been extended to any local area, has, by a subsequent notification, been withdrawn from and re extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re enacted in such area or part within the meaning of this section"§

**Notes**—Where a notification was made under s 3 of the Provincial Insolvency Act investing certain officers with powers the same remains in force without fresh

\* Compare s 18 of the Madras General Clauses Act (Mad ) Act I of 1891)

† Inserted by Act I of 1903

‡ Act XVII of 1874

§ Added by Act XVII of 1914

notification under the Act V of 1920 as s 3 has been re enacted word for word in the new Act 1921 Cal Cas 85=1925 Cal 335 Where the Government in 1885 issued a notification exempting agricultural leases from registration and did not modify or cancel the notification after the passing, held that the notification was still in force in view of an unregistered agricultural lease was admissible Ind Cas 577

### Miscellaneous

25 Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure \* for the time

Recovery of fines

being in force in relation to the issue and the execution of warrants, for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye law unless the Act, Regulation, rule or bye law contains an express provision to the contrary

26 Where an act or omission constitutes an offence under two or more

Provisions as to offences punishable under two or more enactments

enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence †

Notes—Where either of the two offences under the two different Acts are constituted by the same Acts, the offender can not be punished for both 1923 Lrb 342 76 Ind Cas 689=25 Cr L J 225 see also 10 S L R 16 42 Ind Cas 608 Separate sentences can be passed for sale and possession of opium 44 Ind Cas 974=3 Pat. LT 433, 1 P L J 373=38 Ind Cas 433

27 † Where any Act of the Governor General in Council or Regulation

Meaning of service by post

made after the commencement of this Act, authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions "give" 'send,' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the documents, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

Notes—The word 'give' in connection with notices in s 41 (2) C P Tenancy Act, is equivalent to 'serve' *Dina v Parusram* 12 N L R 42=22 Ind Cas 991

28 § (1) In any Act of the Governor General in Council or Regulation,

Citation of enactments

and in any rule, bye law, instrument or document made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained

(2) In this Act and in any Act of the Governor General in Council or regulation made after the commencement of this Act a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other parts mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation

\* See now s 386 of the Code of Criminal Procedure Act (V) of 1898

29\* The provisions of this Act respecting the construction of Acts, Regulations, rules, or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule, or bye-law made before the commencement of this Act, although the Act, Regulation, rule, or by law is continued or amended by an Act, Regulation, rule, or bye-law made after the commencement of this Act

30† In this Act, the expression "Act of the Governor General in Council," wherever it occurs, except in section 5, and the word "Act" in clauses (9), (12), (38), (48), and (50) of section 3 and in section 25 shall be deemed to include an ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act 1861† "or section 72 of the Government of India Act, 1915" §

30A| In this Act the expression "Act of the Governor General in Council" wherever it occurs "includes an Act of the Indian legislature and, except in section 5" ¶ an Act made by the Governor General under section 67 B of the Government of India Act

31 In any enactment made by any authority in British India before the date on which section 3 of the Government of India Act, 1919, comes into operation, and in any rule, order, notification, scheme, bye law or other document made under or with reference to, any such enactment, any reference by whatever form of words, to an authority authorized by law, at the time the enactment was made, to administer executive Government in any part of British India shall, where a corresponding new authority has been constituted by the Government of India Act, 1919, be construed for all purposes, after the above mentioned date, as a reference to such new authority "

### THE SHCEDULE.

[ Repealed by Act I of 1903 ]

## THE GOVERNMENT SAVINGS BANKS ACT

### ACT V OF 1873

RECEIVED THE ASSENT OF THE G G IN COUNCIL ON THE 28TH JANUARY, 1873.

*An Act to amend the Government Savings Bank*

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks, it is hereby enacted as follows —

#### *Preliminary*

Short title

1 This act may be called the Government Savings Banks Act, 1873

Local extent.

It extends to the whole of British India

\* Compare s 40 of the Interpretation Act, 1889 (52 & 53 Vict, c 63)

† Added by Act XVII of 1914

‡ 24 & 25 Vict c 97

§ The words within quo auons have been added by Act 24 of 1917

¶ Section 30 A has been added by Act XI of 1923

‡ Substituted by Act 18 of 1928

[Commencement]

*Repealed by the Repealing Act, 1874 (XVI of 1874)*

2 [Repeal of Act XXXVI of 1855]—*Repealed by the Repealing Act, 1873 (XII of 1873)*

3 In this Act, "depositor" means a person by whom, or on whose behalf, money has been heretofore or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited,

"Secretary" means in the case of a Post Office Savings Bank the Post-master General appointed for the area in which the Savings Bank is situate,\*

"Minor" means a person who is not deemed to attain his majority under the Indian Majority Act" 1875

*Deposits belonging to the Estates of deceased person*

†4. If a depositor dies and probate of his will or letters of administration of his estate or certificate granted under the Succession Certificate Act, 1839, is not produced to the Secretary of the Government Savings Bank in which the deposit is then—

(a) If the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive in or to administer the estate of the deceased, or

(b) If the deposit does not exceed one hundred rupees any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate

5 Such payment shall be a full discharge from all further liability in respect of the money so paid;

But nothing herein contained precludes any executor or administrator, or other representative, of the deceased from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demand lawfully paid or discharged by him in due course of administration

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act † or Act No XXVI of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased

6 The Secretary of any such Bank (or any officer empowered under Section 4) ‡ may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration

\* Substituted by Act 13 of 1916 † Certain words omitted by

‡ Inserted by Act XVI of 1923.

tion of the money so paid, and he may assign the said security to any person interested in such administration

7 For the purpose of ascertaining the right of the person claiming to be  
Power to administer oath the Secretary of any such Bank (or any Officer empowered under Section 4)\* may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations

Any person who upon such oath or affirmation makes any statement which  
Penalty for false statements is false and which he either knows or believes to be false or does not believe to be true shall be deemed guilty of an offence under section 193 of the Indian Penal Code

8 When the amount of the deposit belonging to the estate of a deceased  
Deposit when excluded in computing court fees depositor does not exceed three thousand rupees † such amount shall be excluded in computing the fee chargeable, under the Court Fees Act, 1870 on the probate, or letters of administration or certificate (if any), granted in respect of his property

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount

9. Nothing herein before contained applies to money belonging to the  
Act not to apply to deposits belonging to estates of European soldiers or deserters estate of any European Officer, non commissioned officer or soldier dying in her Majesty's Service in India or of any European who, at the time of his death, was a deserter from the said service

#### *Deposits belonging to Minors*

10 Any deposit made by, or on behalf of any minor may be paid to  
Payment of deposits to minor or guardian him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor

11 All payments of deposits heretofore made to minors or their guar-  
Legalization of like payments heretofore made dians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

#### *Deposits belonging to Lunatics*

12 If any depositor becomes insane or  
Payment of deposits belonging to lunatics otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person for money paid under this section, shall be a sufficient discharge thereof,

\* Inserted by Act XVI of 1913

† Substituted by Act XVII of 1917



where a committee or manager of the depositor's estate has been duly appointed nothing in this section authorizes payments to any person other than such committee or manager.

*Deposits made by Married Women.*

13 Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act 1865, section 4 applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

*Rules*

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time prescribe

## THE GOVERNMENT SEAL ACT

### ACT III OF 1862.

RECEIVED G G S ASSENT ON THE 28TH FEBRUARY, 1862

*An Act to amend the Law relating to the use of a Government Seal*

WHEREAS it is expedient to adopt the law relating to the use of a Government Seal to the present form of the Government of India, It is enacted as follows —

*Preamble*

Whenever it is required by any Regulation of a Local Government, or by any Act of the Governor General of India in Council, that the seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix in lieu of the seal of the East India Company a seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India", and such instrument or document so sealed shall to all intents and purposes be as valid and effectual as if the seal so used had been that of East India Company.

## THE GUARDIANS AND WARDS ACT, 1890.

### ACT NO VIII, OF 1890.

RECEIVED THE G G S ASSENT ON THE 21ST MARCH, 1890

*An Act to consolidate and amend the Law relating to Guardian and Ward*

WHEREAS it is expedient to consolidate, and amend the law relating to guardian and ward; It is hereby enacted as follows

Consolidate and amend the law — The previous Acts which were in force were Act X L of 1858 (Bengal Minors Act) and Act X\ of 1864 (Bombay Minors Act) The only difference between Act X L of 1858 and this Act the former is imperative whilst Act VIII of 1890 is permissive Under the

was entitled to institute or defend any suit connected with the estate of a minor unless he had obtained a certificate or unless the estate was of small value Under the present Act, the Court has the power of appointing a next friend or guardian for any suit for or against a minor, but it is not necessary that the person so appointed should be a guardian under the Act 19 C 301 A person appointed a guardian by a Will need not take out probate, in order to obtain a certificate of guardianship under the Act

a father to institute a  
Guardians and Wards  
under the Act 3 Bom  
jurisdiction of the Court  
*inter partes* 4 Bom.

L R 963

## CHAPTER I

### PRELIMINARY.

Title, extent, and com- 1 (1) This Act may be called the Guardians  
mencement and Wards Act, 1890

(2) It extends to the whole of British India, inclusive of\* British Baluchistan, and

(3) It shall come into force on the first day of July, 1890

Notes—An appeal lies to the High Court from an *ex parte* order made by the Agent to the Governor in Council at Vizagapatam appointing a guardian to the person of a minor, and finding that there was no notification under s 5 operation of the Guardians and Wards Act to attend to the whole of British India 18 M 227 L J 252=3 M L T 764)

2 (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments orders and rules made under any of those enactments, shall so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act, and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof

3 This Act, shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*)

N W P High Court in reference to the same matter 2 A L J 81 2 N W P 79, see also 21 B 137, This power can be exercised only by chartered High Courts 59 Ind Cas 562=13 Bur L T 86

\* Here the words 'Upper Burma and' have been omitted as being repealed by Act XIII of 1893

## Definitions

4 In this Act, unless there is something repugnant in the subject or context,—

(1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority,

(2) "guardian" means a person having the care of the person of a minor or of his property; or of both his person and property,

(3) "ward" means a minor for whose person or property, or both there is a guardian,

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction;

"(5) 'the Court means'—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian, or

(b) Where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the

the person of the ward the District Court where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred \*

(6) "Collector" means the chief officer in charge of the revenue administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, by name, or in virtue of his office, appoint to be a Collector in any local area, or, with respect to any class of persons, for all or any of the purposes of this Act

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1898,† and includes any Christian or European descent, and

(8) "prescribed" means prescribed by rules made by the High Court under this Act

Notes—A *de facto* guardian is a guardian 51 Ind Cas 236, 48 Ind Cas 60=21 O C 194

District Court—Vide 26 Ind Cas 709=10 N L R 161, 59 Ind Cas 562=13 Bur L T. 86

European British subjects—Vide 1 B L R O C 10, 8 B L R 372

Guardian—A *de facto* guardian is a guardian 52 Ind Cas 541, 73 P R. 1919

"4A (1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court or authorise the the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

(3) The Judge of a District Court may, at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section ( ) any proceeding under this Act pending in the Court of any other such officer

\* Substituted by Act IV of 1926

† See s (1) of

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian."

Notes—In order to lighten the work of the District Judges, the Civil Justice Committee has recommended that provisions should be inserted by which the High Court may authorise, by general or special order, any subordinate Judge to take cognizance of or any District Judge, to transfer to a Subordinate Judge under his control any proceedings under the Guardians and Wards Act. The Bill gives effect to the proposals of the committee. Under it the District Judge will have power to transfer all the proceedings relating to particular estate to be disposed of by a Judge of a Court subordinate to him who has been specially empowered and also the proceedings in regard to any particular matter connected with an estate."

*Statement of Objects and Reasons*

## CHAPTER II

### APPOINTMENT AND DECLARATION OF GUARDIANS

5 (1) Where a minor is a European British subject, a guardian or guardians of his person or property, or both, may be appointed, by will or other instrument to take effect on the death of the person appointing,—

Power of parents to appoint in case of European British subjects

(a) by the father of the minor, or

(b) if the father is dead or incapable of acting by the mother

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly

Notes—This section follows Act XIII of 1871. In certain circumstances the right of mother to appoint a guardian is not now wholly ineffectual and is likely to be declared to be valid except in as far as it may interfere with an appointment by the father. —*Statement of Objects and Reasons*

Father—"By the law of England" said Lord Esher in the case of *In re Agar Ellis* 29 Ch D 317 "the father has the control over the person education, and conduct of his children until they are twenty-one." "The Court of Chancery" said *Vice Chancellor Bacon*, in *Re Plomby*, 47 T L R 284 "has no right to interfere with the sacred right of a father over his own children." A minor father can appoint a guardian by will. Vide s 60 of the Succession Act

Mother—In the case of *In re A & B (Infants)* (1897) 1 Ch 786 it was held that the Court had full jurisdiction to override entirely the common law rights of the father. —*Statement of Objects and Reasons*

Under certain circumstances a father but a mother can appoint a guardian or guardians of his child during minority if he is not married at that time. *Atherly Jones Law of Children*, pp 93—97. Before the passing of the Act, a mother even if a widow could not exercise such powers. *Ex parte Edwards*, 3 Atk 517, *Blake v Blake*, Amb 306, *Eyre v Countess of Shaftsbury*, 2 P Wms, 103. A minor mother cannot appoint a guardian of her children by will

Illegitimate Children—A father has no legal power to appoint a testamentary guardian of his illegitimate child. *Sleeman v Wilson*, 13 Eq 35, *Re Ulee*, 53 L T 711, 54 L T 286. As to the rights of the mother of an illegitimate child, vide *Reg. v Nash*, 10 Q B D 454

*Burnards v McHugh* (1891), 1 Q B 194 (1891) A C 388 54 L T 286

Attestation by guardian—An instrument appointing a testamentary guardian is valid though attested by the guardian. *In bonis Farnell* 2 P & D 379



he has been appointed under some independent instrument such as a will. By the declaration the Court merely gives effect to the appointment. 11 Bom L R 384=2 Ind Cas 484.

**Appointing a guardian**—The Act does not authorise the appointment as guardian of a person not claiming by his own application nor proposed in accordance with the terms of the Act. 135 P R 1893. Where a minor is a member of a joint Hindu family and the property is joint and undivided, *held*, that it was competent to a Court to appoint any person guardian of the minor's interest in that property. 46 P R 1909=39 P L R 1909=56 P W R 1909=1 Ind Cas 745. In appointing a guardian the Court must consider whether such appointment is necessary. A I R 1916 Lah 393, see also 40 M 672=34 Ind Cas 766=36 M L J 504, 16 C W N 444, 19 Ind Cas 783, 28 Ind Cas 507, 54 Ind Cas 418=18 A L J 71, 26 Ind Cas 524, 68 Ind Cas 474.

**Declaration of guardian**—This section is inapplicable to non-cupative wills. The heir of a minor may be appointed as the guardian of the minor's property though not of his person as such heir is interested in the proper management of the minor's property to which he hopes to succeed. 54 P R 1898. A person, who is to succeed to the property of a minor on his death has an interest adverse to the minor, and if he is not a blood relation of the minor, he is not fit to be appointed guardian. 19 Ind Cas 783. If a person is appointed by the latter's declaration, but the property of the minor, to its provisions as regards the

**Order appointing a guardian**—So far as the infant is concerned he is put in the position of a ward as soon as the Court sets out in clis (a) and (b), and the provision is merely an additional precaution to protect the effect of the order requiring security is to suspend the guardian's power to give security. But as soon as an order is made under this section the infant becomes a minor and remains a ward irrespective of any act of the guardian until he attains the age of 21 years. 4 C L J 112, see also 9 M L J 24, 8 C 967, 14 C 338, 15 C 40, 14 C 55, 17 C 347 (P C). A guardian can be appointed in respect of trust property in the hands of a minor. 39 A 288, *contra* 42 Ind Cas 3, 40 M 672, 1 Pat 432.

**Joint Hindu family**—Under the Act it is not competent to Court to appoint a guardian of the property of a minor who is a member of a joint Hindu family. 17 A 522=A W N 189, 119 20 A 400=A W N 1898, 94 A W N 1896, 30, 165 P L R 1906, 23 A 407 (416) P C 43 P R 1909=1 Ind Cas 745, 3 B 431; 8 B 395, 30 B 152, 37 M 139, 21 Ind Cas 848, 40 Ind Cas 145, 43 Ind Cas 865, 45 Ind Cas 90, 46 Ind Cas 815, 19 C 301. This rule applies to the case of a minor belonging to an *Ahiyas santhana* family, where the only right of the infant is to share in the property. 4 M L T 462=32 M 139=1 B 11. If the minor is a co-parcener in the property, he is not a minor and 152=7 Bom L R 152=7 Bom L R 152. But if one of the group arrives at the age of majority the guardianship of the person so appointed by Court must cease. 10 Bom L R 279=32 B 259, 57 Ind Cas 678. The High Court under its general jurisdiction has power to appoint a guardian of the property of a minor who is member of a joint Hindu family. 3 Bom L R 411=1 Pat 432.

Ind Cas 887, 17 A 511, 20 A

**When minor not entitled to immediate possession**—There is nothing to prevent the appointment of a guardian of a minor in respect of an executor under a will and to the minor not entitled to the property. 70 Ind Cas 360, see 46 Ind Cas 861, *Salisbury In re* 44 L J

**Sub-section (2)**—When a guardian is appointed under this Act, persons other than such guardian can not bind the estate of the minor. Under this sub section



he has been appointed under some independent instrument such as a will By the declaration the Court merely gives effect to the appointment 11 Bom L R 384= 2 Ind Cas 484

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**Declaration of guardian**—This section is inapplicable to non cupative wills The heir of a minor may be appointed as the guardian of the minor's property though not of his person as such heir is interested in the proper management of the minor's property to which he hopes to succeed 54 P R 1898 A person, who is to succeed to the property of a minor on his death has an interest adverse to the minor, and if he is not a blood relation of the minor, he is not appointed by the latter's and property of the minor, to its provisions as regards

**Appointing a guardian**—So far as the infant is concerned he is put in position of a ward as soon as the Court has made up its mind as to the set out in cls (a) and (b), and the proviso that the guardian should give effect of the order requiring security is to suspend the acts of the guardian till he gives security But as soon as an order is made under this section the infant becomes a minor and remains a ward irrespective of any act of the guardian until he becomes the age of 21 years 4 C L J 112 see also 9 M L J 24, 8 C 967, 1338 15 C 40 14 C 55, 17 C 347 (P C) A guardian can be appointed in trust property in the hands of a minor 39 A 288, contra 42 Ind Cas 40 M 672, 1 Pal 432

**Joint Hindu family**—Under the Act it is not competent to Court to appoint a guardian of the property of a minor who is a member of a Joint Hindu family, 17 A 522=A W N 189, 119 20 A 400=A W N 1898, 94 A W N 1896 30, 165 P L R 1906, 2, A 407 (416) P C 43 P R 1909=1 Ind Cas 745, 3 B 431, 8 B 39, 30 B 152 37 M 139 21 Ind Cas 848, 40 Ind Cas 145, 43 Ind Cas 86, 45 Ind Cas 90, 46 Ind Cas 815, 19 C 301 This rule applies to the case of a minor belonging to an *Aliyas santhana* family, where the only

15=1 Bom L R 80, see 150=18 Ind Cas 251 But when subsequently one of the group arrives at the age of majority the guardianship of the person so appointed by Court must cease 10 Bom L R 279=32 B 259, 57 Ind Cas 678 The High Court under its general jurisdiction has power to appoint a guardian of the property of a minor, who is member of a joint Hindu family 3 Bom L R 411=25 B 323 see also 55 C 141 But it is open to a minor's person even when the minor belongs to the Mitakshara law 57 Ind Cas 678=11 L W 30 M L J 504, 21 B 281, 17 A 529, 20 A Ind Cas 887

**When minor not entitled to immediate possession**—There is nothing in the Act to prevent a Court from appointing a guardian of a minor in respect of property which are in the actual possession of an executor under a will and to the immediate possession of which the minor is not entitled 70 Ind Cas 360, see also 66 Ind Cas 261=48 C 802, contra 6 Ind Cas 862, *Salisbury In re*, 44 L J Ch 541, 15 C W N 538

**Sub-section (2)**—When a guardian is appointed under this Act, persons other than such guardian can not bind the estate of the minor Under this sub section



the appointment of a guardian by Court implies the removal of the one not so appointed 10 M L T 385=2 M W N 1911 461=21 M L J 1077, see also 36 M L J 189=51 Ind Cas 276, 12 Ind Cas 568=37 M 38, 27 B 390, 50 Ind Cas 580

**Sub section (3)**—When a guardian has been appointed for a minor under a will, the District Court cannot appoint another person as guardian in his stead under this sub-section, until it finds after due investigation that the will is invalid 17 B 560, see also 42 C 932=19 C W N 513=28 Ind Cas 972, 39 P R 1893 21 C 206 22 M 40 This section is not applicable to non-cumulative wills 54 P R 1898, see also 16 L W 445, 1922 M W N 167=66 Ind Cas 216. Any provision in a will made by a Hindu testator appointing a guardian of his nephew is not binding on Court under this sub-section 27 P L R 1911 see also 6 Ind Cas 1344=8 P R 1910 Where only a testamentary guardian has been appointed of a minor's person, a guardian can be appointed of his property 13 W R 230

**Persons entitled to apply for order** 8 An order shall not be made under the last foregoing section except on the application of—

- (a) the persons desirous of being or claiming to be, the guardian of the minor or
- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local authority within which the minor ordinarily resides or in which he has property or
- (d) the Collector having authority with respect to the land to which the minor belongs

**Except on the application**—A Court has no power to make an order appointing a guardian of minors, except on a substantive application 11 C L J 226=15 C W N 676=10 Ind Cas 334=38 C 783 135 P R 1893 But see 4 Ind Cas 603=3 S L R 115, 73 Ind Cas 255=A I R 1923 Oudh 126 A petition of objection can be treated as an application 18 C W N 160=17 C L J 405=16 Ind Cas 900 In an application for appointment of a guardian for a minor the Court has really to see what is for the benefit of the minor 4 A L J 22=A W N 1907 24=29 A 210 After dismissal on merits of the first application a second application for the appointment of the same person is not maintainable 68 Ind Cas 291 But a second application for the appointment of another person or an application by another person is not barred 1 A 428, 137 P R 1893 A second application is also maintainable when the first application has been dismissed for default 17 C W N 429

**9 (1)** If the application is with respect to the guardianship of the person of the minor it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides

**(2)** If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a District Court having jurisdiction in a place where he has property

the property  
jurisdiction in the  
application if  
convenient

other District Court having jurisdiction

**Notes**—This section conferring jurisdiction and disposal of applications for the guardianship of minors has taken away the jurisdiction already conferred by reference to the same matter 2 A L J 1907 section means more than a temporary residence even though

temporary residence may be considerable. 3 P L R 400 = 3 E H C R 1 C 7, 32 V 207=24 Ind Cas 200 (P C). The question of domicile is wholly immaterial to the question of jurisdiction. 11 E H C R 100 = 12 Ind Cas 260 : 2 P L R 73 = 24 Ind Cas 300

Clause (1) — An application with respect to the guardianship of the person of the minor must be made to the District Court having jurisdiction in the place where the minor resides. 3 P L R 400 = 24 Ind Cas 300 = 12 E H C R 100

Clause (2) — Vite 35 V 230 = 24 Ind Cas 300 = 12 E H C R 100

10 (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure for the signing and verification of a plaintiff, and stating so far as can be ascertained, —

- (a) the race, sex, religion, date of birth, and ordinary residence of the minor;
- (b) whether the minor is a female, where she is married, and, if so, the name and age of her husband;
- (c) the nature, situation, and approximate value of the property, if any, of the minor;
- (d) the name and residence of the person having the custody or possession of the person or property of the minor;
- (e) what relations the minor has and where they reside;
- (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled, or claiming to be entitled, by the law to which the minor is subject, to make such an appointment;
- (g) whether the application is made to the Court, or to the person or person, to what Court and

with what result,

- (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property or of both;
  - (i) where the application is to appoint a guardian the qualifications of the proposed guardian;
  - (j) where the application is to declare a person to be a guardian, the grounds on which that person claims;
  - (k) the causes which have led to the making of the application; and
  - (l) such other particulars if any as may be prescribed or as the nature of the application requires it to be necessary to state
- (2) If the application is made by the Collector, it shall be by letter addressed to the Court, and forwarded by post or in such other manner as may be found convenient, and shall state, as far as possible, the particulars mentioned in sub-section (1)

panied by a declaration of the willingness declaration must be signed by him, and

**Notes** — An application should be in the form mentioned in this section. But it is not necessary that a counter application should be made in the form prescribed in this section. 105 I L R 1933. The omission to give in the application the several particulars mentioned in sub-section (1) non fulfilment of sub ss (2) and (3) and non observance of the procedure laid down in section 11, are grave irregularities which vitiate the whole proceedings and the order appointing the guardian of a minor. 38 P W R 1910 = 4 P L R 1910 = 6 Ind Cas 645. The cause which led to the making of the application should be stated. 15 C W N 457. The age of the minor should be proved. 4 Ind Cas 744. An application should not be usually granted when the minor will attain the age of 18 years a few months after. 211 P L R 1911 = 11 Ind Cas 478, 18 Ind Cas 987 = 17 C W N 420 : 1900 P L R 419, 6 C 19

11 (1) If the Court is satisfied that there is ground for proceeding on the Procedure on admission of application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing,—

(a) to be served in the manner directed in the Code of Civil Procedure on—

(i) the parents of the minor if they are residing in British India,

(ii)

(iii)

(iv)

of the application should be given, and

(b) to be posted on some conspicuous part of the Court house and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit

(2) The Local Government may, by general or special order, require that, when any part of the property, described in a petition under section 10, sub-section (1) is land of which a Court of Wards could assume the superintendence the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2)

Notes—Non observance of the procedure laid down in this section is a grave irregularity 58 P W R 1910=74 P L R 1910=6 Ind Cas 645, see also 17 W R 269, 20 Ind Cas 578

Sub-section (1)—Failure to comply with the provisions of the section as to the service of notice of the application is not a fatal defect which would invalidate the proceedings of the Court, as all the parties interested are already before the Court 16 Ind Cas 900=17 C W N 160=17 C L J 405 But an order, appointing a person to be the guardian of the person and property of a minor without giving the person having the custody of the minor an opportunity of adducing evidence to show the unfitness of the person applying to be appointed guardian, and without fixing a date for hearing of the petition, is bad and ought to be set aside 20 Ind Cas 578, see also 18 O C 66=27 Ind Crs 121, 6 Lah L J 219, 73 Ind Cas 255 But non service of notice on a person remotely interested will not vitiate proceedings 73 Ind Cas 255

Sub-section (2)—No notice is necessary where the prayer is only for appointment of a guardian of a minor's person 25 Bom L R 1232

12 (1) The Court may direct that the person, if any, having the custody of the minor, shall produce him, or cause him to be produced, at such place and time, and before such person as it appoints and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country

(3) Nothing in this section shall authorize,—

(a) the Court to place a female minor in the temporary custody of

th

- (b) any person to whom the temporary custody and protection of the property of a minor is entrusted, to dispossess, otherwise than by due course of law, any person in possession of any of the property.

**Scope**—This section authorises the Court to make an order for temporary protection of the person of a minor and the power is not exercisable after the protection of the minor 2 C W N 521 So the Court can grant injunction restraining the marriage of the minor *Ibid*, see also 7 Lah L J 30=86 Ind Cas 226, 8 C 266 But an order sanctioning the marriage of the minor is not competent under this section 44 B 690=57 Ind Cas 79 The Court can put the guardian in possession of the minor 37 A 515=29 Ind Cas 416, 13 P R 1897 The Court has power to appoint a receiver for the protection of the minor's property 36 B 20=11 Ind Cas 6, 4=13 Bom L R 487, 7 C 357, 90 Ind Cas 611=26 P L R 576 But a rival claimant should not be appointed a receiver 17 C W N 974 The Court may also direct the payment of money belonging to a minor into Court 13 Bom L R 487=11 Ind Cas 554, but see 24 Ind Cas 58=12 A L J 788, 3 S L R 52=2 Ind Cas 367 The custody of the munsif under an order of the Court for the temporary custody and protection of minor's property is the custody of the Court and is not contrary to the provisions of s 12 (3) (b) For the words any person in that section do not include the words 'the Court' 10 P R 1898

13 On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application

**Notes**—Where a District Judge in appointing a particular person as guardian ns 11 and 13 and failed to consider whether a fit person and whether the appointment procedure is materially irregular 1923 or the appointment of guardians are not of evidence and procedure The Court 83 Ind Cas 320=A I R 1925 N17 Ind Cas 646=A I R 1925 Lah 565=26 s 976, 38 C 783=14 C L J 226=10 Ind Cas 193, 3 O W N 985, A I R 1926 Lah 117 An order appointing a person to be the guardian of the person having the custody of the minor is a fitness of the person applying to be for the hearing of the petition, is bad

intention, and no doubt it was contemplate where the Act is in force (U B R 1892=1000) vol 11 p 407 The parties cannot refer the matter to arbitration 47 M 459=84 Ind Cas 613

**Enquiry by Subordinate Judge**—1 Bom L R 185=23 B 698, but now see 7 A L J 328=6 Ind Cas 563, 44 A 587

**Procedure**—The procedure is not intended to be summary A I R 1928 Lah 108.

14 (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself

(2) If the Courts are both or all subordinate to the same High Court they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had

(3) In any other case in which proceedings are stayed under sub-section (1), the Court shall report the case through the Local Government to the Governor-

General in Council, and the Governor General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had

Courts.—The word 'Court' does not include a High Court 26 C 133

15 (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, Appointment or declaration of several guardians or both, the Court may, if it thinks fit, appoint or declare them

(2) On the death of a father being an European British subject, who has by will or o a guardian of his minor ch the child jointly with the

(3) On the death of a mother, being an European British subject who during the incapacity of the father of her minor child, has by will or other instrument to take effect uld, the Court may, if the father b guardian of the child, or guardian by the mother, as it thinks fit

(4) Separate guardians may be appointed or declared of the person and of the property of a minor

(5) If a minor has several properties the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties

Notes—There is nothing in the Hindu Law which prevents the Court from appointing more persons than one as guardian of the person of a minor 48 Ind Cas 75

Clause (4)—46 M 873

16 If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order

Note—T h proceedings might be the fact of the appointment and give a duly appointed and does not in any way when appointed generally = 2 A L J 460

Where a person has been appointed under the Act as guardian of the property and person of a minor, he becomes the guardian of the property of the minor, in which ever district or districts the property may be situated The effect of the appointment is that he becomes certificated guardian for all purposes until he is discharged and cannot lay aside his status as such and pose as a natural guardian Ibid

17 (1) In appointing or declaring the guardian of a minor the Court shall, subject to the provisions of this section, be guided by what consistently with the law to which the minor is subject, appears, in the circumstances, to be for the welfare of the minor

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property

(3) If the minor is old enough to form an intelligent preference the Court may consider that preference

- (b) any person to whom the temporary custody and protection of the property of a minor is entrusted, to dispossess otherwise than by due course of law, any person in possession of any of the property.

**Scope**—This section authorises the Court to make an order for temporary protection of the person of a minor and the power is not exercisable after the protection of the minor. 2 C W N 521. So the Court can grant injunction restraining the marriage of the minor *Ibid*, see also 7 Lah L J 30=86 Ind Cas 226, 8 C 266. But an order sanctioning the marriage of the minor is not competent under this section. 44 B 690=57 Ind Cas 79. The Court can put the guardian in possession of the minor. 37 A 515=29 Ind Cas 416, 13 P R 1897. The Court has power to appoint a receiver for the protection of the minor's property. 36 B 20=11 Ind Cas 654=13 Bom L R 487, 2 C 357, 90 Ind Cas 611=26 P L R 576. But a rival claimant should not be appointed a receiver. 17 C W N 974. The Court may also direct the payment of money belonging to a minor into Court. 13 Bom L R 487=11 Ind Cas 554, but see 24 Ind Cas 518=12 A L J 788, 3 S L R 52=2 Ind Cas 367. The custody of the munsif under an order of the Court for the temporary custody and protection of minor's property is the custody of the Court and is not contrary to the provisions of s 12 (3) (b). For the words any person in that section do not include the words 'the Court' 10 P R 1898.

- 13 On the day fixed for the hearing of the application, or as soon afterwards as may be the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application.

**Notes**—Where a District Judge in appointing a particular person as guardian ignored the procedure laid down in sections 11 and 13 and failed to consider whether the guardian was by appointment for the welfare of the minor and whether the appointment was materially irregular 1923 Nag 36, 68 Ind Cas 29. Summary and regard must be given to the procedure. The Court must hold an enquiry and summary. A I R 1925 Nag 233, 89 Ind Cas 865, 26 P L R 164, 87 Ind Cas 646=A I R 1925 Lah 565=26 P L R 255, 63 P L R 1917=41 Ind Cas 976, 38 C 783=14 C L J 226=10 Ind. Cas 334, 109 P L R 1912=15 Ind Cas 195, 3 O W N 985, A I R 1926 Lah 117. An order appointing a person to be the guardian of the person and property of a minor without giving the person having the custody of the minor an opportunity of being heard is bad. The procedure to be followed in dealing with the petition, is bad. The procedure prescribed in the Act itself. The Code of Civil Procedure shows the general intention, and no doubt it was contemplated that the code would usually be in force where the Act is in force (U B R 1892—1896) Vol II p 407. The parties cannot refer the matter to arbitration. 47 M 459=84 Ind Cas 613.

**Enquiry by Subordinate Judge**—1 Bom L R 185=23 B 698, but now see 7 A L J 328=6 Ind Cas 565, 44 A 587.

**Procedure**—The procedure is not intended to be summary. A I R 1928 Lah 108.

- 14 (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section (1), the Court shall report the case through the Local Government to the Governor.

General in Council, and the Governor General in Council shall determine in which of the Courts the proceedings, with respect to the appointment or declaration of a guardian of the minor shall be had

Courts,—The word 'Court' does not include a High Court 26 C 133

15 (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them

Appointment or declaration of several guardians

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death appointed a guardian of his minor child the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child, or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit

(4) Separate guardians may be appointed or declared of the person and of the property of a minor

(5) If a minor has several properties the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties

Notes—There is nothing in the Hindu Law which prevents the Court from appointing more persons than one as guardian of the person of a minor 48 Ind Cas 75

Clause (4)—46 M. 873

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Notes—It is to be noted that the Court before which proceedings are taken must be satisfied of the fact of the guardian being duly appointed and does not

the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties

Matters to be considered by the Court in appointing guardian

guided by what consistently with the law to which the minor is subject, appears, in the circumstances, to be for the welfare of the minor

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes of any, of a deceased parent, and any existing or previous relationship of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference the Court may consider that preference.







- (b) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor,
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor

**Notes.**—The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.—*Statement of Objects and Reasons*

**Clause (a).**—In the case of a married female the husband is the proper guardian of her person, if he is not unfit. 23 W R Cr 178, 17 C 228 The Court cannot appoint any other husband is unfit A I R 1924 L 1916 Under the legally married here the wife is Muhammadan minor daughter who has not attained puberty in preference to her husband 5 D L R 557, 11 C 649

**Clause (b).**—Where a father is living this section forbids the Court to appoint or declare a guardian the father being deemed the natural guardian without appointment or declaration U B R (1897-1896) Vol II p 413 This section pre-

judges the father as the natural guardian of the minor's person unless the father is U B R (1892-1896) Vol II 412, see also 83 Ind Oudh 282 12 O L J 441=3 O W N 242=87 86 Ind Cas 957=1925 Mad 1085, 39 M 473=27 P L R 330=95 Ind Cas 558=A I R 1926 Lah 396 As to whether this section is controlled by section 17 vide 47 Ind Cas 187=12 S L R 14 71 Ind Cas 443=19 N L R 45 The word 'father' means father of a child born in wedlock 36 Ind Cas 646=8 L B R 415=9 Bur L T 205, but see U B R (1892-96) Vol II p 413 It includes adoptive father 11 B L R 171, 5 L B R 133 The Act gives the father no superior right to the circumstances it may be property As regards summary powers of the

the Court will not support the rights of the father against the interest of the child A father may lose his rights to the guardianship of his children when he has permitted another person to maintain and educate them and it would maintenance

12 A 213, and marriage sufficient to deprive the father of the guardianship of his minor sons by his first wife 1915 M W N 414=29 Ind Cas 740, but see 29 A 210 The father is not deprived of his right by mere change of religion 47 Ind Cas 817=12 S L R 14 84 P R 1894 but see 25 C 888, 11 S L R 17=41 Ind Cas 571, see also 1 A 549, 46 Bom 415=A I R 1922 Bom 278=64 Ind Cas 576 The Court can not declare a father or any other person when the father is living as the guardian of the minor unless he is considered unfit 24 Bom L R 779=A I R 1922 (Bom) 40, -63 Ind Cas 518, 38 M 806 P C, 83 Ind Cas 308, 1925 Oudh 282 11 O L J 537, 48 Ind Cas 60, 12 O L J 441, 86 Ind Cas 937, 71 Ind Cas 443, A I R 1923 Rang 120, 46 A 706 But according to Madras and Calcutta High Courts application by husband and father is competent 44 C L J 40 86 Ind Cas 646

**Clause (c).**—Vide 24 Ind Cas 944, 25 Bom L R 1232 77 Ind Cas 702

### CHAPTER III

#### DUTIES, RIGHTS, AND LIABILITIES OF GUARDIANS

##### General

20 (1) A guardian stands in a fiduciary relation to his ward and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office

Fiduciary relation of guardian to ward

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent

Notes—“This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrima fidei*, not only while it lasts, but even after it has ceased to exist.”—*Statement of Objects and Reasons*. See also 30 B 591, 54 Ind Cas 925=157 P R 1919, 14 Ind Cas 674=33 P L R 1912 13 B 61. An Official Trustee cannot be appointed guardian of the property of a minor 1978 Bom 69

21 A minor is incompetent to

Capacity of minors to act as guardians own wife  
member  
or child of another minor member of that family.

Scope of the Section—“The second minor argument is based on section 21 of the Guardians and Wards Act, which impliedly assumes that a minor is (a) competent to act as guardian of his wife and child (b) that he is competent to be the managing member of an undivided Hindu family and that (c) he is as such manager competent to be the guardian of the wife or child of another minor member of that family. This final clause has got its own implication that while any other minor is competent to be guardian of his wife or child, a minor who is a junior member of an undivided Hindu family is not competent to be guardian even of his own wife or child. I am very doubtful whether a minor can at all be the managing member of a Hindu family though he is the senior male member ‘Guardian’ in section 21 is evidently intended to include the guardianship of both person and property. It does seem anomalous that a minor could be made guardian of the persons of his wife and children, that is, entitled to the custody of their person and the management of their property, while his own person is subject to the custody of the legal guardian of his person and his properties which are under the management of the legal guardian of his properties. But this particular section 21 cannot, in my opinion, be held to derogate from the rights of the legal guardian of a minor’s own person. I might venture to suggest that the Legislature should amend section 21 by omitting the portion following  
“his wife and  
“se his conjugal  
“power to inter-  
“ship of their  
“Per *Sardisiva*  
“child includes  
3 B 2 But it

22 A guardian appointed or declared by the Courts shall be entitled to  
Remuneration of guardian such allowance, if any, as the Court thinks fit,  
duties for his care and pains in the execution of his

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs

Notes—This section gives discretion to the Judge in the matter of allowing allowance and as such no appeal lies against his order 24 B 95=1 Bom L R 547, see also 43 P R 1901, 78 Ind Cas 108=A 1 R 1975 Oudh 260

23. A Collector appointed or declared by the Court to be guardian of the  
Control of Collector, as guardian person or property or both, of a minor, shall, in all matters connected with the guardianship of his ward, be subject to the control of the

Government, or of such authority as that Government, by notification in the official Gazette, appoints in this behalf.

Notes—Where the Collector is authorised by the Board of Revenue, as Court of Wards, to raise a loan on mortgage of the ward's properties, he can delegate his powers to the manager acting under him. The maxim *delegatus non potest delegare* applies to any particular implied from the Court as guardian of the property of a minor has got special powers under this section and section 29 which limits the power of a guardian does not apply to a Collector. 96 Ind Cas 17=28 Bom L R 628

### Guardian of the persons

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health, and education, and such other matters as law to which the ward is subject requires.

Custody—A guardian is entitled to the custody and control of his ward. *R. v Johnson* (1724) 8 Mod Rep 214, *Flemming v Pratt* (1835) 1 L J 194. *R. v Isely* 5 Ad. & El 441, *Re Andrews* (1873) L R 8 B 153

Education—A power cannot be delegated. But he must be educated according to the wishes of the parent, so far as they are not inconsistent with the interests of the child. *Clever* (1789) 2 Bro C C 409, 7 n (a). In matters of education, the guardian must be shaped in such manner as may be best for the child. *Colston v Morris* (1821) 1 Jac 245, *Re Shaninaa*, (1852) 20 L T 183, *Re Newton* (1896) 1 Ch 740 C A. *Hill v Hill* 10 W R 400. Even after the father's death the minor should be educated in the manner in which he was educated. *Re Newbury* (1866) 1 Ch 539, 57 Ind Cas 651, *Halsworth* (1882) 21 Ch 622, *Re Clarke*, 143 C A.

45=01 Ind Cas 1045

*Re Newbury* (1866) 1 Ch 539

651, *Halsworth*

(1882) 21 Ch

622, *Re Clarke*

143 C A.

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Lyons v Blenkins (1821) Jac 245, Re Shaninaa, (1852) 20 L T 183, Re Newton (1896) 1 Ch 740 C A. Hill v Hill 10 W R 400. Even after the father's death the minor should be educated in the manner in which he was educated. Re Newbury (1866) 1 Ch 539, 57 Ind Cas 651, Halsworth (1882) 21 Ch 622, Re Clarke, 143 C A.

And such other matters—It is doubtful whether these words include the marriage of the ward. 22 B 509; 25 C L J 551=38 Ind Cas 787. Where a person appointed guardian under the Guardians and Wards Act is also the guardian for marriage under the rules of Hindu law the Court can give proper directions for marriage. 16 C W N 447 22 Ind Cas 831, 13 Ind Cas 251. Where even the guardian for marriage is a different person there even he should apply to the District Judge for an order. 42 C 351, see also 40 Ind Cas 136, 20 P. L R 1914; 24 Bom L R 845, 32 B 50, 39 M 39 M 473; 57 Ind Cas 651, 40 Ind Cas 136, 50 Ind Cas, 998

25 (1) If a ward leaves or is removed from the custody of a guardian, of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return, to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order, may cause the ward to be arrested and to be delivered into the custody of the guardian

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a magistrate of the first class by section 100 of the Code of Criminal Procedure, 1898.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship

Notes—A father according to the Hindu law is entitled to the custody of his minor children 46 A 703=83 Ind Cas 24, see also *R v Thorp*, (1696) Car 384, 44 A 587=1922 All 318, 73 Ind Cas 948 84 P R 1894, 25 C 881, but see 1925 O C 222=202 S C 1. A father cannot be appointed by a Judge *Anglesey v Ostory*, 38 M 807, 42 M 137 P R 1893

A certificate of guardianship is a preliminary necessity for obtaining custody of an infant A I R 1925 Oudh, 282 A father cannot apply under the provision of this section *Ibid*, but see A I R Oudh 1925 257 87 Ind 40 B 600 86 Ind Cas 957 A I R 1925 W 44 All India father cannot be appointed under the provisions

of section 19 and therefore his application for appointment of guardian is not maintainable yet as a natural guardian he can take proceedings under this section for the custody of the child 12 O 1 J 441=87 Ind Cas 1024, see also 48 M L J 179=2 L W 244=86 Ind Cas 640 27 Bom L R 779 The father has preferential right over mother 44 A 587 73 Ind Cas 948 But for the welfare of the minor, the minor may be allowed to live with mother 68 Ind Cas 518 So also for the welfare of the minor other relatives can be given custody of the minor in preference to father 25 C 881, 84 P R 1894, 81 Ind Cas 1045, but see 7 M 29

Except in cases in which the Guardian and Wards Act provides a remedy by application, a suit *inter partes* for the custody of a minor son is the only remedy of the father 44 Ind Cas 753=10 Bur L T 186 The custody referred to in this section includes both actual and constructive custody The duty of inquiry under this section is cast upon the Court and cannot be delegated 48 Ind Cas 60=21 O C 894=5 O L J 516

26 (1) A guardian of the person appointed or declared by the Court,

Removal of ward from jurisdiction

or declared, remove the ward for purposes as may be prescribed.

(2) The leave granted by the Court under sub section (1) may be special or general, and may be defined by the order granting it

Notes—A father cannot be appointed as the guardian of a minor by Judge if he has no power to direct that the minor be placed in his custody N 1899, 204 It is objectionable if the guardian who resides out of British India

though there is no express provision to that effect in the Act 137 P R 1893 When a father, who had been appointed guardian of his minor children did not take proper care of those children all of whom except one died, and his education was not looked after, and the father set up a claim in the minor's money and took another wife held that, from the view of minor's welfare, he was not a fit and proper guardian and was liable to be removed 11 A L J 209=19 Ind Cas 65

Cases—A W N (1899) 204, 8 M H C R 94, 19 Ind Cas 655

*Guardian of Property*

**27.** A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter, he may do all acts which are reasonable and proper for the realization, protection, or benefit of the property

**Notes**—This section does not authorise a guardian to make an arrangement as regards the minor's immovable property which is against the interest of the minor 7 Ind Cts 214 A guardian appointed under this Act cannot ratify the unauthorized acts of another guardian 54 Ind Cts 711 It is not an act of ordinary prudence on the part of the guardian within this section to admit that his wards were liable for debt which could not be legally recovered owing to the lapse of time 23 O C 72

**28** Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange, or otherwise immovable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has, under this Act, been declared guardian and the Court which made the declaration permits him by an order in writing notwithstanding the restriction to dispose of any immovable property specified in the order in a manner permitted by the order

**Notes**—A testamentary guardian has the right and duty of receiving the rents and profits of the lands and of managing the personal estate of the ward for the term of any shorter period for which he is appointed see also *Bedell v Constable, Eyre v Shiftsbury* 2 P Wms 60 account for profits and in *Brice*, (1851) 14 Beav 341 A guardian under a Will who also applied for and accepted the position of a guardian under the Act, may be called upon to furnish security under s 34 of the Act 99 P R 1908 A person appointed guardian by Court cannot avoid the duties imposed by the Act, by posing as natural guardian 87 Ind Cas 238=A L R 1925 Oudh 633 The guardian has no power to fritter away the minor's property 1928 Lah 90

**29** Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court—

- (a) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immovable property of his ward, or,
- (b) lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor

**Notes**—A certificated guardian's powers are regulated and defined by the Guardians and Wards Act, and the rule of law that, there, being no mutuality in a contract to which the minor was a party, it could not be enforced by him did not apply to a contract for sale of immovable property entered into by a certificated guardian of a minor with the Court 11 Ind Cts 200 L J 783=20 Ind Cts 916=35 A 499 This section forbids the guardian to mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immovable property of his ward without the previous permission of the District Judge 6 A L J 491=31 A 378=2 Ind Cas 356 In a suit by a minor, on attaining majority to avoid a sale made by his certificated guardian, he must make restitution of any benefits which he may have received from such sale before he obtains relief 2 A L J 450=A W N 1905 122, see also 3 A L J 30 In cases of permission for raising loans the Court should

specify the rate of interest. 30 A 188 This section, which empowers the Court to deal with minor's property only enables him to give permission to the guardian to sell such portion of the properties as may be necessary on an application properly framed. It does not confer any power whatever on the Judge.

1 any way 7 Ind Cas 46=12

of his minor ward with the

he vendee unless the Court s

Even if a Court has given

permission was obtained by fraud 25 Ind Cas 810 Even if a Court has given sanction under s 29 and section 31 (1), it is not beyond the power of that Court to intervene and stop the sale, if it finds something detrimental to the ward's interest is contemplated 119 P W R 1915=29 Ind Cas 804=109 P R 1915 This

section does not apply to transfers of property made on behalf of minors by their guardian *ad litem*. 61 P W R 1918=14 Ind Cas 554 A certificated guardian is not

free from the limitations imposed by this section because he or she is a natural guardian. 47 Ind Cas 342=61 P 1018=162 P W R 1018. A suit for specific

performance of a contract is maintainable where the guardian agrees to sell with the consent of the Court. 22 C. W. N. 477-49. Ind. Cas. 420. Where the

ty without the sanction of the Court the  
but the mortgagee can recover the money

A Court guardian cannot sell his wards

District Judge and in giving or refusing sanction the Court considers if there is necessity for the sale and whether the terms

are advantageous to the minor 85 Ind Cas 667 see also 22 A L J 851-82 Ind Cas 328

**Appeal**—No appeal lies against an order of a District Judge sanctioning a

mortgage in favour of a particular person in preference to another person. Such an order cannot be treated as an order refusing since it is a mortgage. **110 C 79**,

see also 87 Inl. Cas. 251 - A.I.R. 1923 All. 14

30 A disposal of immovable property by a guardian in contravention  
Verdracht of transfer of either of the two last foregoing sections is

voidable as the instance of any other person  
made in contravention of  
affected thereby

section 28 or section 29 infected thereby

Notes—Any hypothecation of a property by the guardian without the permission of the Court is voidable. 8 A L J 754=11 Ind Cas 764. So also a permanent

the Court 28 A 30=2 A L  
was the certificated guardian

without previous permission  
to be held liable to the extent

before he is equitably  
1902 193, see also

10 C W N 703, 52 Ind Gas 209, 22 M 209, 23 A 200-A W N 1901, 78, 3  
A L I 10=A W N 1005-274. Under sections 20 and 30 of the Guardians and

of the Court is voidable and is liable to be set aside even if it had benefited the

N 715=14 Ind Cas 315=16 C L J 537 An agreement to pay interest and to make

24 P. R. 1016=51 Ind. C.

24 R K 1910-54 Ind Gas  
ourt is voidable 27 Bom

Cases—22 A I J 403 79 Ino Cas 556, 22 A L J 155, 1 O W N 775.

A I R 1928 All 77

31 (1) Permission to the guardian to do any of the acts mentioned in Practice with respect to section 29 shall not be granted by the Court

except in case of necessity or for an evident advantage to the ward

(c) The order may be made in the following circumstances:

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which

...with respect to which

act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission, and it shall be recorded, dated, and signed by the Judge of the Court with his own hand, or, when, from any cause, he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation, and be dated and signed by him—

(3) The Court may, in its discretion, attach to the permission the following among other conditions namely.—

- (a) that a sale shall not be completed without the sanction of the Court,
- (b) that a sale shall be made to the highest bidder by public auction, before the Court, or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court subject to any rules made under this Act by the High Court, directs,
- (c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years, and subject to such rents and covenants, as the Court directs
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom, or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs

(2) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

Sub section (1)—In all cases where sanction is given for the raising of loans  
 judge granting sanction  
 used and the property  
 loans are to be raised  
 are entailed only to a reason

38=5 A L J 260, 11 C 379  
 1916 Where an unconditional

sanction has been given by the District Judge to the sale of a property of the minor by the guardian appointed by the Court he has jurisdiction to order re sale of the property by auction after the sale has been executed and registered 46 Ind Cas 542

Sub section (2)—The provision of this section, though relating to procedure only are imperative and not merely directory 12 O C 78=2 Ind Cas 237 The object of this sub-section is manifestly to ensure that the Court has applied its mind to the requirements of the case and has arrived at an express finding with regard to the best interest of the minor *Ibid* See also 103 Ind Cas 898 A suit to set aside a sale of a minor's property made on his behalf during minority with the sanction of the District Judge by his successfully unless it can be shown that sale was not in conformity with order, or made on behalf of the purchaser 49 Ind is section will not cure inherent defects that may exist in a sale by a guardian 45 M 429=42 M L J 333=65 Ind Cas 964 The violation of the procedure prescribed in this section for recording the order granting the permission cannot be made the ground of brushing aside the finality of the order as enacted by s 48 87 Ind Cas 238=A I R 1925 Oudh 633 38 C L J 213, but see also 89 Ind Cas 69, 27 O C 284

Sub-section (3)—Vide 26 C W N 218, 95 Ind Cas 421

Sub section (3) (d)—No appeal lies from an order passed under this sub section 1 Bom. L R 1

Sub section (4)—The words 'any person' in the last para of this sub section are not restricted in their application to the relations and friends of the minor It



is the duty of a Court to hear any person interested in an application made on behalf of the minor, even though he is not the minor's friend or relative 10 M L T 259=2 M W N 1911, 165=11 Ind Cas 946

32. Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict, or extend his powers with respect to the property of the ward in such manner, and to such extent, as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

Notes—A District Judge has no jurisdiction to dispossess third persons from the property over which they may be rightly or wrongly in possession, but can at best give directions to guardian to take necessary steps to recover the property 47A 313=23 A L J 28=85 Ind Cas 1047=A I R 1935 All 277

33 (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice, or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject matter of application.

34 Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, he shall,—

Obligations on guardian of property, appointed or declared by the court

- (a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward,
- (b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward,
- (c) if so required by the Court, exhibit his accounts in the Court at such times, and in such form as the Court from time to time directs,
- (d) if so required by the Court, pay into the Court, at such time as the Court directs, the balance due from him on those accounts, or so much thereof as the Court directs, and
- (e) apply for the maintenance, education, and advancement of the ward, and of such persons as are dependent on him and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs and the Court so directs, the whole or any part of the pro

**Scope**—The object of this section is to give the Court, as representing the interest of the minor, certain summary powers for the protection of his property. As soon as the ward becomes *sui juris* the necessity for the power conferred on the Court by the section ceases. He can sue his guardian for an account and can ratify expenditure or dispense with accounts as he thinks fit. 5 C W N 207. This Act does not prohibit the appointment of a person residing out of British India as a guardian. 65 P R 1896.

who has also applied for and accepted the security, shall be called upon to furnish security under this section is to be given to the Judge by the Judge for the time being, with or without sureties, as may be prescribed engaging duly to account for what the guardian may receive in respect of the property of the ward. There is nothing in the section or in the form of the bond which suggests that the bond ceases, to operate either on the death of the guardian or on the termination of the guardianship otherwise than by the effect of the order requiring security is to suspend the security. 4 C L J 112. For cases under this section see 52=22 Bom L R 633=58 Ind Cas 213.

**Clause (b)**—When appointing a guardian for the estate of a minor the Court should direct the guardian to file an inventory or list of minor's property in Court and should allow a maximum sum for the maintenance, education and advancement of the minor, which sum should never be exceeded without the leave of the Court. 100 Ind Cas 243.

**Clause (c)**—The filing of accounts by a guardian does not relieve him of responsibility. The District Court should require the guardian to produce accounts. Held, that it was the duty of accounts should be produced. 100 Ind Cas 600.

had been discharged contrary to the intention held in order to ascertain

**Clause (d)**—This section empowers the Court to direct the guardian to pay into Court the balance due from him on the accounts, he has exhibited in Court, that is to say, the balance shown by such accounts and not the balance which the Court finds to be due upon taking a separate account of the administration of the property. L B R (1893—1900) p 447. Where the amount the guardian was called upon to pay was not an amount of balance due from the guardian as the same had not been paid to her nor was it a balance due on accounts filed in compliance with a requisition under this clause, the order imposing a daily fine was *ultra vires*. 20 C W N 663. 32 Ind Cas 618. The Court may direct the guardian to produce accounts.

by the direction of the Court. 39 (e) Ind Cas 45.

1912=132 L R 191. Once a guardian is appointed under the Act, any application for his removal must be considered from the point of view of the public interest and might be entitled to be heard.

**Power to award remuneration for auditing accounts**—When a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.

**Notes**—The Guardians and Wards Act, 1890, contains no specific provision for the auditing of the accounts of minor's estates and the meeting of the cost of the audit out of the estates. The audit of such accounts tends to be left to the Judges of subordinate Courts or District Court's ministerial officers, who have rarely the

of a thorough test. With a view to the audit of these accounts is intended for the purpose of a year.

scales of remuneration to be granted to the auditors—*Statement of Objects and Reasons*

35 Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition, and on proof that the bond has not been kept, and upon the petition being received be paid into the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof

Notes—If a guardian of property wastes the property he may be sued under 42 M and may then The Court is the Court alone is m of law 42 M 49 Ind Cas 587 guardian are liable to the heirs of a minor even a bond 44 B 852=22 Bom I R 633=58 Ind remedy for the realisation of the amount due

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36 (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.

Notes—A suit brought against the guardian of the property of a minor under the provision of section 35 of the Act is in order even if the leave of the Court is obtained subsequent to the filing of the plaint. 44 B 602=22 Bom. L R 727=57 Ind Cas 540

37 Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of General liability of guardian as trustee remedy against his guardian, or the representative of the guardian, which, not being provided in either of those sections, any other beneficiary or his would have against his trustee or the representative of the trustee

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no one of the children is to be put under a guardianship  
until the death of the surviving parent or survivor until a  
further order of the court.

app. It is understood that applicant is of any person interested or of its own estate to give a guardian appointed or declared by the Court or a guardian appointed by will or other instrument for any of the following cases namely:-

- (a) for waste of his trust,  
(b) for continued failure to perform the duties of his trust,  
(c) for inability to perform the duties of his trust,  
(d) for ill treatment or neglect take proper care of his ward,  
(e) for contravention or disregard of any provisions of this Act, or of any order of the Court,  
(f) for conviction of an offence implying, in the opinion of the Court, a defect of character which renders him to be the guardian of his ward.

- (g) for having an interest adverse to the faithful performance of his duties

- (F) it is necessary to read within the local limits of the jurisdiction of the Court

- (f) in the case of a guarantor of the property for bankruptcy or insolvency

- ✓) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject

Forced this will in accordance with will or other instrument, whether he has been declared incompetent or no shall not be removed.

- (a) for the time being in class (g) unless the adverse interest arises before the death of the person who appointed him, or it is shown that the person made and maintained the appointment in ignorance of the existence of the adverse interest; or

- (d) for the cause mentioned in clause (b) unless such guardian has taken up such a role as in the opinion of the Court renders it impracticable for him to discharge the functions of guardian.

Scope — A Court may remove a guardian declared to be a self-guardian. 11 B.C.R. 347

Testamentary guardian—The Court has no power under the Act to remove a testamentary guardian except for reasons stated in this section. 4 B.M.L.R. 799  
see also 33 P.F. 1502.

Instrument.—The will in question as used in this case should be compared to the will in *Widow's Case*, 18 B. 375, and also to *Ind. Cas.* 10.

When the Court remove a guardian of its own motion, it may hear what he has to say, the order removing him is "but" and must be set aside. 7 Ind. Cas. 46 = 1 C. L. J. 307. Where a guardian is removed on the motion of the Court under section 4(1) of the Guardians and Wards Act, 1925, he is removed from guardianship under s. 4(e). 13 P. L. R. 1012.

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| Cases       | 735    |
| 575, 85 Ind | 71 Ind |
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A. L. J. 20,  
127



(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered

Sub section (1) — A ward cannot sue the son of his late guardian for a rendition of accounts 22 A 332 = A W N 1900 98 A declaration made by the Court under —

detecting  
property

33 B 419 = 3 Ind Cas 172

Sub section (3) — A ward's suit against the widow and minor sons of his late

as 591

Cas 674

is whose

otherwise,

prior to the passing of the Act 17 B 566 No appeal lies from an order passed under the sub section 1 Bom L R 822 The guardian must without prejudice to title or to anything which he could establish by suit, be compelled to give up possession on ceasing to be guardian 14 Ind Cas 574 = 33 P L R 1912 Where the Court on the death of a minor directed the guardian to hand over the minor's property to a person who claimed as heir of the minor the action of the Court was within its powers under this clause (1918) M W N 440, see also 42 A 1 = 52 Ind Cas 167 As regards maintainability of suits by ward against guardian's representative, vide

present property of the ward 5 C W N 207, 29 C L J 41 = 49 Ind Cas 132 Until the powers of the guardian of the property cease under section 41 (2) he cannot be called upon to deliver the property in his possession on behalf of the ward 18 N L R 184 A I R 1925 Sind 269

Cases — See 78 L W 642, 92 Ind Cas 98 96 Ind Cas 173, 97 Ind, Cas 578, 92 Ind Cas 196, 50 M 80

Sub-section (4) — Where a previous guardian failed to deposit the process fee, which he was required to put in, for the purpose of notice being given to the succeeding guardian to come in and inspect the accounts and the Court has made no order declaring —

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R 1918 The order under this clause must be an express order 6 Pat L J 273,

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42 When a guardian appointed or declared by the Court is discharged, or

Appointment of successor to  
guardian dead, discharged or  
removed

under the law to which the ward is subject,  
ceases to be entitled to act or when any such  
guardian or a guardian appointed by will or other

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Notes — An appeal lies against an order under this section appointing the Court of Wards as the guardian of the property of certain minors The order of appointment expressed to be made under this section is made in exercise of the power given under section 7 Section 47 allows an appeal against an order under section

= 20 Ind Cas 776 An appeal

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guardian is properly removed

20 C L J 298

## CHAPTER IV

## SUPPLEMENTAL PROVISIONS

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders

43 (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct of proceedings of any guardian appointed or declared by the Court

(2) Where there are more guardians than one of a ward, and they are unable to agree as to the welfare, any of them may apply to the Court to make such order respecting the

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor, or of the intention of the Court to make it, as the case may be, to be given, in a case under sub section (1), to the guardian, or, in a case under sub section (2) to the guardian who has not made the application

(4) In case of disobedience to an order made under sub section (1) or sub-section (2) the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case where the guardian was made

(5) Except in a case under sub section (2) nothing in the section shall apply to a Collector who is as such a guardian

and will issue an order as 922= M L J Ind Cas 147=14 Ind Cas 380

Sub-section (4) —Vide 23 M 517=10 M L J 305, 14 Ind Cas 380=15 C L J 147; 24 M L J 231=18 Ind Cas 922, 23 Ind Cas 351=20 P L R 1214; 103 Ind Cas 493

44 If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees or to imprisonment in the civil jail for a term which may extend to six months

Penalty for contumacy

45. (1) In the following cases, namely :

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to cause the minor to return to the custody of his guardian in compliance with an order under section 25 sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section, (3) the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy, to further fine not exceeding ten rupees for each day after the first during which the default continues and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor, or cause him to be produced, or to compel his return or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be

(2) If a person who has been released from detention on giving an undertaking under sub section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitment to the civil jail

Notes — The fact that one of the minors under the guardianship has ceased to be action under section 45 of any property of the ward that J 286 The remedies for are altogether inappropriate for defalcations made by a manage the ward's property

arises 11 Bom L R 190=1 Ind Cas 338

Clause (a)—Vide 15 C L J 147 49 Ind Cas 624 17 A L J 377=51 Ind Cas 88 29 C L J 44 42 Ind Cas 625, 23 A L J 736=88 Ind Cas 444 4 Pat. 264

Clause (b)—Where a guardian omitted to obey the direction of the Court under s 34 (e) of the Guardians and Wards Act he could be removed from the guardianship under s 39 (e) of the Act But such omission is not punishable with the imposition of a fine and this section does not make such omission punishable 34 P R 1912=90 P W R 1912=137 P L R 1917

Clause (c)—93 Ind Cas 628=7 Pat L J 473

46 (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any Reports by Collectors and subordinate Courts matter arising in any proceeding under this Act, and treat the report as evidence—

(2) For the purpose of preparing the report, the Collector or the Judge of the subordinate Court as the case may be, shall make such inquiry as he deems necessary and may, for the purposes of the inquiry, exercise any power of compelling the attendance of a witness to give evidence, or produce a document, which is conferred on a Court by the Code of Civil Procedure

Effect of the Report — Apart from section 46 of the Guardians and Wards Act the report called for by District Judge is not evidence 4 Bom L R 800 When the report is called for by the District Judge such report only is evidence 25 Bom R 1912=90 P W R 1912=137 P L R 1917





guardian to pay into Court the balance due from him on settlement of his accounts, 55 Ind Cas 587. An order refusing to remove a guardian is final and is not open to appeal 42 A 514=18 A L J 624=56 Ind Cas 208. The order under section 34 of the Act directing the guardian to pay into Court a certain sum of money as being the balance due to him on an examination of accounts is not open to appeal 4 Lah L J 272, 67 Ind Cas 309, see also 1923 Lah 89. Where an order of a District Judge under this Act has not been appealed against the order becomes final and is not therefore liable to be contested by suit or otherwise 85 Ind Cas 667. Where the District Court refuses to take action under s 45 acting on the erroneous view that it has no power to compel the guardian to furnish fresh accounts and to pay the amount due after deleting objectionable items, the order of the District Court is not appealable 22 P L J 585.

48 Save as provided by the last foregoing section, and by section 62<sup>2</sup> of the Code of Civil Procedure an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

Notes—It is doubtful what is the degree of conclusiveness which is attached to an order under this Act.

16 Ind Cas 943=1913 M W N. guardian of an infant was dismissed hearing was refused. Held that a parent as guardian is maintainable, action as not maintainable. Held, the order 17 C W N 472=18 Ind District Judge declining to compel a person in possession of a minor's property to hand it over to the guardian and referring the guardian to a separate suit 40 P L R 1912=13 Ind Cas 326=115 P W R 1912. A Court of revision may look into the evidence to determine whether the irregularity in the exercise of its jurisdiction is such as to affect the plaintiff's right to claim the guardianship of the minor. The expression 'orders made under this Act' does not cover the case of a suit under s 41 (3) and a separate suit will lie to contest the propriety of the order.

The expression 'orders made under this Act' does not cover the case of a suit under s 41 (3) and a separate suit will lie to contest the propriety of the order.

36 M L J 189, 49 Ind Cas 875, 55 Ind Cas 587, 42 A 514=18 A 624=56 Ind Cas 208, 4 Lah L J 274=1922 Lah 395, 27 O C 284=A I R 5 Oudh 237, 85 Ind Cas 667, 46 Mad 873, 1924 Nag 269, 1925 Nag 141, 924 Mad 327, 1 O W N 775, 92 Ind Cas 482.

49 The costs of any proceeding under this Act including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50 (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

- as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts,
- as to the allowances to be granted to, and the security to be required from guardians and the cases in which such allowances should be granted,
- as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

- (f) as to the circumstances in which such requisitions as are mentioned in clauses (a) (b) (c) and (d) of section 34 should be made
- (g) as to the preservation of statements and accounts delivered and exhibited by guardians,
- (h) as to the inspection of those statements and accounts by persons interested,
- \* "(ff) as to the audit of accounts under section 34 A, the class of persons who should be appointed to audit accounts, and the scales remuneration to be granted to them,"
- (i) as to the custody of money and securities for money, belonging to wards,
- (j) as to the securities on which money belonging to wards may be invested,
- (k) as to the education of wards for whom guardians not being Collectors, have been appointed or declared by the Court, and,
- (l) generally for the guidance of the Courts in carrying out the purposes of this Act

2) Rules under clauses (a) and (i) of sub section (1) shall not have effect until they have been approved by the Local Government nor shall any rule under this section have effect until it had been published in the official gazette

**51** A guardian appointed, by, or holding a certificate of administration from a Civil Court, under any enactment repealed by this Act shall save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it as if he had been appointed or declared by the Court under Chapter II

Applicability of Act to guardians already appointed by Court

**Notes**—The word guardian in this section when read with definition thereof in s 4 (2) can only mean a guardian who was such at the time when the Act came into force 17 B 268

**52.** In section 3 of the Indian Majority Act 1875 for the words, "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards" the following shall be substituted, namely—

"every minor of whose person or property, or both, a guardian other than a guardian for a suit within the meaning of Chapter XXVI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age"

**Notes**—The order of a District Judge acknowledging a person as the guardian of minor is a declaration of such guardianship within the meaning of s 7 and the age of majority in such a case is therefore 21 under section 3 of the Indian Majority Act as amended by this section 9 M L J 24, see also 6 L R L Cas 6, 29 A 672-4 A L J 507-A. W N 1907, 213

**53** [Repealed by Act 5 of 1908]

\* Inserted by Act 17 of 1909

guardian to pay into Court the balance due from him on settlement of his accounts, 55 Ind Cas 587. An order refusing to remove a guardian is final and is not open to appeal 42 A 514=18 A L J 624=56 Ind Cas 208. The order under section 34 of the Act directing the guardian to pay into Court a certain sum of money as being the balance due to him on an examination of accounts is not open to appeal 4 Lah L J 272, 67 Ind Cas 309, see also 1923 Lah 89. Where an order of a District Judge under this Act has not been appealed against the order becomes final and is not therefore liable to be contested by suit or otherwise 85 Ind Cas 667. Where the District Court refuses to take action under s 45 acting on the erroneous view that it has no power to compel the guardian to furnish fresh accounts and to pay the amount due after deleting objectionable items, the order of the District Court is not appealable 22 P L J 585.

48 Save as provided by the last foregoing section, and by section 62<sup>1</sup>/<sub>2</sub> of the Code of Civil Procedure an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

Notes—It is doubtful what is the decree of conclusiveness which is attached to an order under this section 24 M L J 49=16 Ind Cas 943=1913 M W N 365. Where an application for appointment for non appearance and an application for a second substantive application for an appo. Where the District Judge refused such an ap that appeal lies to the High Court again Cas 985. No appeal lies against an order of a person in possession of a minor's prop.

P L R 1912=13 Ind Cas 320  
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Cases—36 M L J 189, 49 Ind Cas 875, 55 Ind Cas 587, 42 A 514=18 A L J 624=56 Ind Cas 208, 4 Lah L J 274=1922 Lah 395, 27 O C 284=A I R 1925 Oudh 237, 85 Ind Cas 667, 46 Mad 873, 1924 Nag 269, 1925 Nag 141, 1914 Mad 327, 1 O W N 775, 92 Ind Cas 483.

49 The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50 (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

- (a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;
- (b) as to the allowances to be granted to, and the security to be required from guardians and the cases in which such allowances should be granted;
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

- (i) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 31 should be made
- (e) as to the preservation of statements and accounts delivered and exhibited by guardians;
- (f) as to the inspection of those statements and accounts by persons interested;
- \* "(ff) as to the audit of accounts under section 34 A, the class of persons who should be appointed to audit accounts, and the scales remuneration to be granted to them,"
- (g) as to the custody of money and securities for money, belonging to wards,
- (h) as to the securities on which money belonging to wards may be invested;
- (i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,
- (j) generally for the guidance of the Courts in carrying out the purposes of this Act.
- (2) Rules under clauses (a) and (1) of subsection (1) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it had been published in the official gazette

51. A guardian, appointed, by, or holding a certificate of administration from a Civil Court, under any enactment repealed by this Act shall save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it as if he had been appointed or declared by the Court under Chapter II.

Applicability of Act to guardians already appointed by Court

from a Civil Court, under any enactment repealed by this Act shall save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it as if he had

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52. In section 3 of the Indian Majority Act 1875 for the words, "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely—

Amendment of Indian Majority Act

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court before the minor has attained that age"

including a person as the guardian of s. 7 and the Indian Majority 6; 19 A 672=4

Act "A. L. J. 307=A. W. 1, 1901,

53. [Repealed by Act 5 of 1908.]



| Number and year | Title or subject                                                | Extent of repeal                               |
|-----------------|-----------------------------------------------------------------|------------------------------------------------|
| II of 1884      | Punjab Courts Act, 1884,                                        | So much of section 29 as has not been repealed |
| of 1887         | Bengal North Western Provinces, and Assam Civil Courts Act 1887 | Clause (b) of section 23, sub-section (2)      |
| * [             | •                                                               | • ]                                            |
|                 | <i>Madras regulations</i>                                       |                                                |
| † [             | •                                                               | • ]                                            |
| of 1831         | Minor States                                                    | Section 1                                      |

*Regulations under the Statute 33 Victoria Chapter 3*

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|---------|---------------------------|--------------------------------------------------------|
| of 1874 | Arakan Hill District Laws | So far as it relates to Acts XI of 1858 and IX of 1861 |
|---------|---------------------------|--------------------------------------------------------|

\* Repealed by the Lower Burma Courts Act (6 of 1900)

† Repealed by Mad II Act of 1902





